# TONGASS TIMBER REFORM ACT

## HEARING

BEFORE THE

## COMMITTEE ON RESOURCES

AND THE

## SUBCOMMITTEE ON RESOURCE CONSERVATION, RESEARCH, AND FORESTRY

OF THE

## COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

## H.R. 3659

**A BILL TO AMEND THE TONGASS TIMBER REFORM ACT TO ENSURE THE PROPER STEWARDSHIP OF PUBLICLY OWNED ASSETS IN THE TONGASS NATIONAL FOREST IN THE STATE OF ALASKA, A FAIR RETURN TO THE UNITED STATES FOR PUBLIC TIMBER IN THE TONGASS, AND A PROPER BALANCE AMONG MULTIPLE USE INTERESTS IN THE TONGASS TO ENHANCE FOREST HEALTH, SUSTAINABLE HARVEST, AND THE GENERAL ECONOMIC HEALTH AND GROWTH IN SOUTHEAST ALASKA AND THE UNITED STATES**

JULY 11, 1996—WASHINGTON, DC

Serial No. 104–92
(Committee on Resources)
Serial No. 104-38
(Committee on Agriculture)

Printed for the use of the Committee on Resources

U.S. GOVERNMENT PRINTING OFFICE
26–689cc WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053778-9

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

## COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN L. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
PETER G. TORKILDSEN, Massachusetts
J.D. HAYWORTH, Arizona
FRANK A. CREMEANS, Ohio
BARBARA CUBIN, Wyoming
WES COOLEY, Oregon
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
RICHARD (DOC) HASTINGS, Washington
JACK METCALF, Washington
JAMES B. LONGLEY, JR., Maine
JOHN B. SHADEGG, Arizona
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
SAM GEJDENSON, Connecticut
BILL RICHARDSON, New Mexico
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
NEIL ABERCROMBIE, Hawaii
GERRY E. STUDDS, Massachusetts
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELÓ, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island

DANIEL VAL KISH, *Chief of Staff*
David Dye, Chief Counsel
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

## COMMITTEE ON AGRICULTURE

PAT ROBERTS, Kansas, *Chairman*

STEVE GUNDERSON, Wisconsin
*Vice Chairman*
LARRY COMBEST, Texas
WAYNE ALLARD, Colorado
BILL BARRETT, Nebraska
JOHN A. BOEHNER, Ohio
THOMAS W. EWING, Illinois
JOHN T. DOOLITTLE, California
BOB GOODLATTE, Virginia
RICHARD W. POMBO, California
CHARLES T. CANADY, Florida
NICK SMITH, Michigan
TERRY EVERETT, Alabama
FRANK D. LUCAS, Oklahoma
RON LEWIS, Kentucky
RICHARD H. BAKER, Louisiana
MICHAEL D. CRAPO, Idaho
KEN CALVERT, California
HELEN CHENOWETH, Idaho
JOHN N. HOSTETTLER, Indiana
ED BRYANT, Tennessee
TOM LATHAM, Iowa
WES COOLEY, Oregon
MARK ADAM FOLEY, Florida
SAXBY CHAMBLISS, Georgia
RAY LAHOOD, Illinois

E (KIKA) DE LA GARZA, Texas,
*Ranking Minority Member*
GEORGE E. BROWN, JR., California
CHARLIE ROSE, North Carolina
CHARLES W. STENHOLM, Texas
HAROLD L. VOLKMER, Missouri
TIM JOHNSON, South Dakota
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
CALVIN M. DOOLEY, California
EVA M. CLAYTON, North Carolina
DAVID MINGE, Minnesota
EARL F. HILLIARD, Alabama
EARL POMEROY, North Dakota
TIM HOLDEN, Pennsylvania
SCOTTY BAESLER, Kentucky
KAREN L. THURMAN, Florida
SANFORD D. BISHOP, JR., Georgia
BENNIE G. THOMPSON, Mississippi
SAM FARR, California
ED PASTOR, Arizona
JOHN ELIAS BALDACCI, Maine

### PROFESSIONAL STAFF

GARY R. MITCHELL, *Chief of Staff*
JOHN E. HOGAN, *Chief Counsel*
VERNIE HUBERT, *Minority Staff Director/Counsel*
JACKIE COTTRELL, *Press Secretary*

## SUBCOMMITTEE ON RESOURCE CONSERVATION, RESEARCH, AND FORESTRY

WAYNE ALLARD, Colorado, *Chairman*

STEVE GUNDERSON, Wisconsin
*Vice Chairman*
BILL BARRETT, Nebraska
JOHN T. DOOLITTLE, California
RICHARD W. POMBO, California
NICK SMITH, Michigan
FRANK D. LUCAS, Oklahoma
RON LEWIS, Kentucky
MICHAEL D. CRAPO, Idaho
HELEN CHENOWETH, Idaho
JOHN N. HOSTETTLER, Indiana
RAY LAHOOD, Illinois

TIM JOHNSON, South Dakota
JOHN ELIAS BALDACCI, Maine
GEORGE E. BROWN, JR,Caalifornia
CHARLES W. STENHOLM, Texas
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
EVA M. CLAYTON, North Carolina
DAVID MINGE, Minnesota
EARL POMEROY, North Dakota
TIM HOLDEN, Pennsylvania

# CONTENTS


| | Page |
|---|---|
| Hearing held July 11, 1996 | 1 |
| Text of H.R. 3659 | 61 |
| Statements of Members: | |
| Allard, Hon. Wayne, a U.S. Representative from Colorado | 1 |
| Johnson, Hon. Tim, a U.S. Representative from South Dakota | 4 |
| Miller, Hon. George, a U.S. Representative from California | 5 |
| Young, Hon. Don, a U.S. Representative from Alaska; and Chairman, Committee on Resources | 2 |
| Statements of witnesses: | |
| Ballard, Ernesta, Environmental Consultant, Barnes and Associates | 31 |
| Prepared statement | 164 |
| Cohen, Gershon, Alaska Clean Water Alliance, Haines, AK. | 51 |
| Prepared statement | 245 |
| Estey, J. Scott, Vice President of Corporate and Investment Analysis, Jaakko Poyry Consultants, Tarrytown, NY | 43 |
| Prepared statement | 167 |
| Graham, Owen, Timberlands Manager, Ketchikan Pulp Company | 30 |
| Hartley, Mark F., D.B.A., Associate Professor of Business Administration, College of Charleston, SC (prepared statement) | 252 |
| Horngren, Scott W., law firm of Haglund and Kirtley, Portland, OR | 21 |
| Prepared statement | 78 |
| Knapp, Al, The Industrial Company, Steamboat Springs, CO | 45 |
| Leonard, George, U.S. Forest Service [retired], Virginia | 20 |
| Lewis, Ralph, President, Ketchikan Pulp Company | 29 |
| Prepared statement | 89 |
| Lindekugel, Robert, Southeast Alaska Conservation Council, Juneau, AK. | 48 |
| Prepared statement | 171 |
| Lyons, James R., Under Secretary, Natural Resources and the Environment, U.S. Department of Agriculture | 8 |
| Prepared statement | 71 |
| Marby, Samuel A., Vice President of Government Affairs, Hercules, Incorporated, Washington, DC | 45 |
| Munson, Mary, Public Lands Associate, Defenders of Wildlife, Washington, DC | 55 |
| Prepared statement | 248 |
| O'Donnell, Brian, Executive Director, Alaska Wilderness League, Washington, DC | 56 |
| Roets, David L., Southeast Regional Sales Manager, Graseby STI, Waldron, AR | 45 |
| Weihing, Wayne, Tongass Conservation Society, Ketchikan, AK | 50 |
| Additional material supplied: | |
| Lewis, Ralph D. (KPC): | |
| Attachment A—Excerpts from consideration of the Tongass Timber Reform Act | 112 |
| Attachment B—Supplementary testimony | 119 |
| Attachment C—Ketchikan Pulp Company Permits and Reporting Procedures | 160 |
| Lindekugel, Robert: | |
| Attachments to statement | 193 |
| Resolutions and petitions | 203 |
| Communications submitted: | |
| Leonard, George M.: Letter of July 25, 1996, to Hon. Don Young | 270 |

Page

Communications submitted—Continued
Lindekugel, Buck, and Bart Koehler (Southeast Alaska Conservation Council): Letter with attachment of July 15, 1996, to Katie McGinty (CEQ) ..... 268
Lindekugel, Buck, (Southeast Alaska Conservation Council): Letter with attachment of July 23, 1996, to Hon Don Young ..... 272

# TONGASS TIMBER REFORM ACT

---

**THURSDAY, JULY 11, 1996**

HOUSE OF REPRESENTATIVES, COMMITTEE ON RESOURCES, JOINT WITH THE SUBCOMMITTEE ON RESOURCE CONSERVATION, RESEARCH, AND FORESTRY OF THE COMMITTEE ON AGRICULTURE,

*Washington, DC.*

The committees met, pursuant to call, at 1:03 p.m., in room 1324, Longworth House Office Building, Hon. Don Young (Chairman of the Committee on Resources) presiding.

The CHAIRMAN. I want to welcome you to this joint hearing today for the Agriculture Committee and the Resources Committee on the Contract Extension Act of 1996. I'd like to introduce, representing the Agriculture Committee in Congress from the State of Colorado, Wayne Allard.

## STATEMENT OF HON. WAYNE ALLARD, A U.S. REPRESENTATIVE FROM COLORADO

Mr. ALLARD. Thank you, Mr. Chairman. It is a pleasure to hold this joint hearing with you. Today's hearing should be interesting and informative to those who have never had the opportunity to visit the Tongass National Forest.

As the largest national forest in the United States, it is unique in its natural diversity and beauty. However, with most issues involving our national forests, tensions exist between those who value that diversity and beauty and those whose livelihood is dependent on the wise use of its resources. However, between Under Secretary Lyons and Chairman Young, I am sure a solution to these tensions can be quickly found.

The specific subject of today's hearing is Chairman Young's legislation to extend by 15 years the contract between the pulp company and the Forest Service for timber from the Tongass. The legislation would also make several modifications of the contract that are designed to make it more economically viable for the pulp company. The larger question surrounding the details of today's hearing are jobs and environment and is there a nexus between the two. Of course there'll be questions that we have all been struggling with for some time, but maybe today we can move closer to achieving that goal.

Thank you, Mr. Chairman. I look forward to today's hearing.

The CHAIRMAN. I want to thank the gentleman from Colorado.

## STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

The CHAIRMAN. July 13, 1989, and October 26, 1990. I remember those dates. I still hear the echoes of what was said on the Floor of the House on those sad days.

Unfortunately Members who are not here but are still on this committee puffed as they plunged the Federal dagger into the hearts of the working people in the Tongass timber industry. They would not admit their actions, but I knew the fate of the working men and women in the Tongass after the votes on those days. They also said that timber would be there to meet industry needs. They said timber would be there for industry in double the amounts. They said they did not intend to drive the timber industry out of Southeast Alaska. I am talking about statements on the days when the House passed the Tongass Timber Reform Act.

Groups that will be testifying today also made their views known about that legislation. They said the bill would have no impact on existing Tongass-dependent timber jobs. They said they did not intend to close the pulp mills and timber jobs would not be lost.

I remember what was said on July 13, 1989, and October 26, 1990, and in prior hearings as the Federal Government in Federal process with a Federal hand plunged the Federal dagger into the renewable resource timber economy and into hundreds of families in Southeast Alaska. It has taken almost six years to bleed the industry and the timber families. The industry is almost dead, but the hearts of families still beat faintly for yet another Federal hearing about the Tongass.

This hearing is about H.R. 3659, a bill that extends by 15 years the only remaining long-term contract for timber from the Tongass National Forest. The Ketchikan Pulp Corporation holds that contract, the contract that was changed unilaterally under the Tongass Timber—changed unilaterally under the Tongass Timber Reform Act. I want to stress that, because the new Supreme Court ruling makes this a far-reaching legal liability of every taxpayer and this Congress.

This bill does undo unfair, one-sided changes and saves the government at least 357 million. It also adds 15 years to the term of the contract. It does nothing more.

All of the wilderness areas Mr. Miller agreed to in 1990 are still there. The mandatory 100-foot fish stream buffers are left alone. The LUD II set-asides are left alone. The Tongass Timber Supply Fund so strongly opposed by Mr. Miller in 1989 is not reinstated by this bill. The 1980 wilderness set-asides are left alone. None of this is touched, even though I disagreed with the changes at that time and did not sign the conference report. Everything that was put in and signed by Mr. Miller, agreed to by Mr. Miller, agreed to by environmental groups, agreed by the environmental community, it is all there. It is still the same.

This bill does not increase the timber harvest in the Tongass. Only areas open for harvest under the land plan are open for harvest under the contract.

Today we are not here to discuss where harvesting will occur. The team of Congress and the Administration have already done that. This bill and this hearing is not about harvesting practices on

the Tongass, nor are we here to discuss the harvest level. The Federal land-planning process is doing that. We are not here to discuss the conditions of the harvest. This bill concerns none of these issues. This is not the usual Tongass debate. I suggest that if you want to debate any of these issues, save your breath for TLMP.

I want to be very clear on that point, because testimony addressing any Tongass issues other than the contract extensions are not relevant. I hope that witnesses do not waste their time or my time on irrelevant testimony. It does not serve the process. It does not serve the committee's needs. It is irrelevant testimony that wastes time that Ketchikan doesn't have the time to waste.

To me this is a moral issue. People said in 1989 and 1990 that the situation we face today in Tongass would not occur. When I look around this room, I see subjects in this room today that told me, sat down in my office and said this would not occur. I happen to know there are a few old-fashioned people who believe their word is their word is their word and a commitment is a commitment is a commitment. But now that I'm older it shows me very little. And that includes this Administration and those people within the Administration.

KPC is the only large mill in the Tongass. It is responsible for employing 1200-plus Alaskans. KPC's new management has come to the Congress with a request. They want to improve their mill by building a chlorine free pulp process, the second such system in the nation. I want to stress the second such system in the nation. They want to make the facility more energy efficient. Doing so will cost about $175 to $200 million. They need a reasonably secure timber supply for 23 years to get financing for the mill improvements. Their only viable timber supply comes from Federal Tongass forest. Their timber request is well within the maximum sustainable harvest level for the Tongass, even the maximum allowed by the pending Tongass Land Plan Revision. Even with the extension, the independent timber program would still have to have an adequate supply for its needs. The Governor of Alaska and the State legislature support this extension.

Frankly, my friends, this is a no-brainer. Unless someone does really want—does not want timber harvested in the Tongass, and I know all of those that do not want it harvested at all, we should pass this bill.

This hearing is to address the contract changes in the bill. I encourage witnesses to keep their testimony and answers on the point. The contract changes ordered by the 1990 Tongass Timber Reform Act are in a large part responsible for the closure of the Alaska pulp mill. They are responsible for a 42 percent decline in Southeast Alaska timber jobs. I don't want to see that repeated by the performance at KPC mill.

The unfair, unilateral contract changes ordered by TTRA still plague the Ketchikan Pulp Company. They are addressed in my bill and my intent is to make sure the contract is commercially viable and fair.

Imagine if you owned a house backed by a Federal loan. What would you think if the government said we are going to change the terms of your loan, instead of six percent your interest rate is now eight, it will never go down but we can increase it again when we

want to, and, oh, by the way, your payment is now $1500 per month not $900 a month? What would you think if the government said tough luck if you do not like it, we are changing our contract to say that we can call your loan at any moment, even if you make all of your payments on time? What would you think? Is that fair? Would that help you plan for your family's future? Would that give you security?

Well, that is exactly what the Federal Government, this committee, did to the Ketchikan Pulp Corporation. It is unfair and it is unjust. And under the U.S. Supreme Court doctrine, it is illegal for the government to change a contract without paying for damages caused by the breach. This type of action is precisely why the United States Congress and the Federal Department of Agriculture should not be making the decision on extending the KPC contract. The State of Alaska should do it, be here we are again airing this issue in the Federal arena.

My other Tongass bill would give the State the power to control the Tongass, but we will talk about that bill another day in this committee.

I want to stress one thing. If Ketchikan Pulp decides not to reinvest and shuts down their mill and will go to court and is in court now, and receives a payment, it is in the billions of dollars, dollars the taxpayers will pay, but it doesn't help the city of Ketchikan. It doesn't help the working families that reside in Ketchikan because it did not help them in Sitka. It will kill the industry. There will be no more logging in Southeast Alaska.

And those that would like that, at least I wish they would be honest about it. At least the Sierra Club is honest. They don't want any more trees cut on the national forest and they have said that. They have finally come to the front and said what they want. Let us not play the charade that we are for a timber industry but we don't like this con. We are for added value, but we don't like pulp, the highest added-value product we have in the Tongass.

I think it is very important that my colleagues, even to have the problem we have today in the Tongass. Mr. Miller and I have sat through this, I don't know how many years. Mr. Miller has made comments to me, as I said—you were not here, Mr. Miller, about not losing any jobs, about not having any mills shut down, about not having deletion of the timber supply. Yet the Forest Service keeps cutting back, back and back to where the mill no longer is a viable industry.

In an area where I flew the other day 45 minutes out of the city of Sitka on my way to Ketchikan, all I saw was 45 standing minutes of flying at 105 miles an hour of dead trees, just dead trees. No live trees, dead trees. People forget that is what we want the pulp mill to do. People forget that is what we were told we would have an industry in 1989 and 1990. Both times people have said that. In fact, they have lied to us.

The gentleman from South Dakota.

## STATEMENT OF HON. TIM JOHNSON, A U.S. REPRESENTATIVE FROM SOUTH DAKOTA

Mr. JOHNSON. Thank you, Mr. Chairman. I simply have a statement that I would to submit for the record. And I suspect that the

ranking member, Mr. Miller, has a more extensive statement, but I will submit my opening statement for the record to expedite this hearing. Thank you, Mr. Chairman.

[Statement of Hon. Tim Johnson follows:]

STATEMENT OF HON. TIM JOHNSON, A U.S. REPRESENTATIVE FROM SOUTH DAKOTA

Mr. Chairman, I appreciate your calling today's hearing, which will give the Members of the committees with jurisdiction over the Tongass National Forest the opportunity to examine the legislation that has been introduced by Congressman Young.

I can understand the urgency and earnestness shown by the Chairman of the Resources Committee as well as the rest of the Alaska delegation and Governor Knowles regarding the future of the Ketchikan Pulp Company. KPC is an integral part of the economy of southeastern Alaska, and the company is facing some important decisions about how to modernize their plant and construct facilities to meet environmental requirements.

While I believe that an extension of the current contract is a legitimate issue for discussion in regard to the future of the plant, I'm concerned about some of the other modifications to the contract contained in H.R. 3659. I look forward to a full airing of these issues today with the witnesses in attendance.

Again, thank you for convening the hearing. I look forward to the testimony of the various witnesses and to working with Chairman Young on this issue.

## STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. MILLER. Mr. Chairman, let me just be somewhat brief as I am late, but let us see whether or not there is some opportunity in this hearing to sort of pull this issue and separate this issue apart.

Currently this issue is being presented on its own, and that may be the situation, but I think that those who would suggest that it is this legislation or KPC shuts down, that may not be doing justice to the underlying issues.

I also suggest that there needs to be some demonstration that in fact that this bill represents the margin of difference on whether or not that decision would or would not be made. And I don't know that that is the case.

Thirdly, I would also suggest that we should not underestimate—some members were not here in the Congress, but I think clearly the issue continues to resound. We should not underestimate the feelings of this Congress who were overwhelmingly bipartisanly expressed time and again about uncertainties over these initial contracts throughout the '80's and into the '90's when in fact the House voted numerous times within excess of 300 votes to cancel these contracts.

We then arrived at a negotiated agreement, yourself and Senator Stevens and myself and the other supporters in the House that were supporters for the cancellation of those contracts during this process, that substantially changed the manner and method of operation on the Tongass Forest because there was a strong feeling in the Congress and among many in Southeast Alaska that in fact that the current practices were not sustainable.

Louisiana Pacific, in my meetings with them last week, suggested that they believe that those practices were sustainable and they are sustainable today. That is a difference of opinion.

Let us also remember what we did at that time. At that time there was—if you will remember, there was a very large national organization around the Tongass that was engaged in bringing this

to the attention of Congress, working to bring it to the attention of Members of Congress back home in their districts. And their position was flat out cancellation. And we made a decision at that time that what we would do is we would work with the people in Southeast Alaska, with the varied interests, and we would try to come to some kind of an agreement for the reform of the timbering practices on the Tongass. And that was in fact accomplished. That was accomplished with a great deal of input by yourself and by the senators from Alaska.

What we have been handed in this legislation is an essential—a dual track, here. I won't reclaim that which they have sued for or force them to reclaim that which they lost in the Acts of Congress with the Tongass Reform Act. And what we don't know, what is not answered in this legislation is whether or not in fact this is all necessary for the economic viability of KPC. I would suggest that in fact this legislation—and I think some people suggested this also in the hearings yesterday in the Senate. In fact, this legislation substantially overreaches if it is to address that problem.

But I think it is also very clear that this legislation as it is currently written, I would believe, is going to be not only unacceptable to a bipartisan majority in this House, but I think clearly already we have strong indications that this is strongly opposed at this stage by the Administration. And so I think that not only do we have to look at the contents of this legislation and the claims and the merits of those claims, I think you also better be careful about the process.

If people believe for the moment that they can use the claims of the imminent shutdown as a reason by which we will slam dunk this legislation or somehow add this in conference committee to the Parks Bill or to some other vehicle, I think at that point you are probably just inviting a veto, and we would be no further along after these deliberations than we were before they began.

And so with that, I look forward to the hearing, but I do so with a rather skeptical frame of mind at this point that this is the only legislation or this is the only means by which this company has the ability to stay in business. I have to tell you as one who represents a district—and I am sure many other Congressmen and Members of Congress share this. A lot of companies in this country have made some very difficult choices about whether or not they can continue to stay in business or not, and they didn't have the luxury and their workers didn't have the luxury of somehow believing that they could simply get the Federal Government to hand over the resources and to let them run in a manner that they would be able to run in a competitive economic atmosphere.

And so I think that this bill is going to be measured and the claims here are going to be measured by what many Members have experienced in their own districts with respect to difficult and tough economic choices that companies have had to make and communities have had to make. Thank you.

The CHAIRMAN. Thank the gentleman. I might suggest one thing. At least you are not shutting the door completely. I would like to see some suggestions on legislation. I know my goal is to keep the city viable, not a dying city like other cities in Southeast Alaska. Regardless of what testimony we heard, I can read the reports of

businesses. I can read the reports of what is happening. We are losing the young society in Southeast Alaska, and that is not healthy.

Now the company no doubt, they will walk away and gain, through the courts at your cost and my cost, the taxpayers, a tremendous amount of money, but that doesn't keep the town viable and the people employed, and that is our main goal here.

I wish people would understand one thing. If there was a shortage of trees, I would be the first one to say shut it down, but you and I know that there is not a shortage of trees. There is a tremendous abundance of trees in every forest; I don't have to tell you this.

The gentleman from Oregon.

Mr. COOLEY. I have no comments.

The CHAIRMAN. Anybody else? We should get on. Mr. Janik has an important appointment.

Mr. COOLEY. I have no comments at this time, Mr. Chair. I just wondered if we were going to put the witnesses under oath.

The CHAIRMAN. I had not planned on doing that. It doesn't do a whole lot of good.

Mr. COOLEY. It sure does. When you review it after one makes a statement here and at another hearing one turns around and makes another statement——

The CHAIRMAN. I understand, and I know what this is pointed at, but my thought at this time is we will not do that unless the gentleman from California has no objection.

Mr. MILLER. Pardon?

The CHAIRMAN. Do you have any objections?

Mr. MILLER. To what?

The CHAIRMAN. To putting them under oath.

Mr. MILLER. I do have objection, because——

The CHAIRMAN. Nothing too violently or I will do it.

Mr. MILLER. No, you are entitled. They are just entitled to notice prior to the hearing that that would be the situation. I think that would be unfair to the witnesses.

The CHAIRMAN. I understand that.

Mr. COOLEY. Mr. Chair, please, does that imply that they may have not prepared to tell the truth when they got ready?

The CHAIRMAN. I would be——

Mr. MILLER. No, that same kind of notice that you would request if you were going to be put under oath or any other situation like that.

The CHAIRMAN. Well, I——

Mr. MILLER. People are entitled to notice in this society.

The CHAIRMAN. Well, the one thing about it, I have notified them before, everybody from this Administration, through this committee as I have said at times I will put them under oath. I just want you to know that.

My first two witnesses are Mr. Lyons, the Under Secretary, and Mr. Janik, Regional Forester. And I would definitely like to thank Mr. Phil Janik for being here. I mean, I have had two hearings in the State of Alaska, but unfortunately one time he had a heart problem. The second time it may have been a heart problem, too. I am not exactly sure what it was, but it is nice to see him in Washington.

Mr. JANIK. Thank you.

The CHAIRMAN. Mr. Lyons, you are first up.

**STATEMENT OF JAMES R. LYONS, UNDER SECRETARY, NATURAL RESOURCES AND THE ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY PHIL JANIK, REGIONAL FORESTER, ALASKA REGION FOREST SERVICE; JIM PERRY, ASSOCIATE GENERAL COUNSEL; AND FRED WALK, ALASKA REGION TIMBER MANAGEMENT DIRECTOR AND CONTRACT OFFICER FOR KPC**

Mr. LYONS. Thank you very much, Mr. Chairman. Chairman Young, Chairman Allard, and members of the committee, I appreciate this opportunity to appear before you this afternoon. If I could beg the committee's indulgence, there is a memorial service beginning shortly for Mollie Beattie, Director of the Fish and Wildlife Service, who passed away recently. And I would like to be able to attend that, so I will present my testimony and then hopefully answer some questions, but if I could, I would ask I be able to depart soon afterwards.

I am joined today by Phil Janik, who of course is the regional forester for the Alaska Region Forest Service; by Jim Perry to my right, who is the Assistant—excuse me, Associate General Counsel in the Department of Agriculture for Natural Resources; Brad Powell next to Phil, who is Forest Supervisor of the Ketchikan area of the Tongass; and Fred Walk, who is the Alaska Region Timber Management Director and Contract Officer for KPC.

Let me State at the outset, Mr. Chairman, that the Administration strongly opposes Senate bill 1877, and they are concerned the bill unilaterally modifies provisions of the long-term timber sale contract with KPC and that it extends it for 15 years until the year 2019. In so doing, the bill undermines the Secretary of Agriculture's authority to manage the resources of the Tongass National Forest, restricts the Secretary's ability to adapt to changing environmental information, provides special benefits to a private corporation and conflicts with certain existing law, including the National Forest Management Act and the Tongass Timber Reform Act. Of course, the same applies to H.R. 3659.

Secretary Glickman has committed the Department to maintaining a sustainable timber flow to KPC in accordance with the terms of the existing contract, TTRA, and other relevant statutes. I would submit, Mr. Chairman, that we have and we will stand by our contractual commitments to KPC.

We object to specific provisions of the bill. We object to the statutory modification of the existing long-term timber sale contract with KPC. The contract is almost 50 years old and is the subject of substantial litigation. In addition, a number of significant environmental laws have been enacted since the contract was signed.

Section 2(b)(1) of the bill states that the contract acknowledges an intention on the part of the Forest Service to supply adequate timber after the completion of the contract for permanent operation of the purchaser's facilities. However, neither the original 1951 contract nor the post-Tongass Timber Reform Act contract obligate the Forest Service to grant or approve an extension of the long-term contract.

Language in Section 2(b)(3) states that KPC plans to make environmental and operational improvements to its facility. Language in Section 2(b)(4) states that 15 years is the minimum reasonable contract extension period necessary to allow for amortization of these improvements. The bill requires that the government continue a contractual relationship with KPC in order to assure that investments made by KPC can be amortized. An arrangement of this kind between the government and a private corporation to substantially reduce business risk associated with improvements made to a private facility is, to say the least, unusual. We are concerned that this may create a precedent.

The bill contains provisions that are unclear, problematic, or subject to ongoing litigation. Section 2(a) contains problematic definitions, such as definitions of the contract, the term mid-market and proportionality. Language in Section 2(c)(2) concerning the sale offering plan would effectively put the contract above the land management plan. Language in Section 2(c)(3) and 2(e) would put into law volume requirements currently disputed in litigation. Language in Section 2(c)(4) requiring that contract stumpage rates not place the purchasers at a "competitive disadvantage to similar enterprises in the Pacific Northwest" is legally inexact and certainly would lead to extensive litigation. Language in Section 2(c)(7) would compromise the Chief's ability to terminate the contract to prevent serious environmental damage, serious damage to cultural resources or should the contract be significantly inconsistent with land management plans adopted or advised. These are provisions that are common to all timber sale contracts.

I would submit, Mr. Chairman, that through the revision of the land management plan, we believe we will be better equipped to assure the sustainability of resources reflecting sound scientific information and extensive public input once the revision process is completed. We believe we will have better information on which to base decisions about future long-term commitments to the timber-related industries in Southeast once the negotiation process is completed.

One of the significant factors to be taken into consideration in any discussion with KPC related to contract extension is the pending litigation against the United States. KPC is currently pursuing four claims against the United States, claiming approximately $350 million in damages. While KPC is suing the United States over the interpretation of the provisions of the original contract and the changes brought about in the Tongass Timber Reform Act, it is difficult for the Administration to consider entering into any new arrangement with them.

We would welcome a broad-based discussion of future timber industry opportunities in Southeast Alaska, as well as discussion with KPC, but we object to the bill's attempt to circumvent the planning process, the conflicts it creates with Tongass Timber Reform Act, and the manner in which it obligates the resources of the Tongass to one company for one purpose only without a thorough analysis and additional discussion of options.

This concludes my testimony, Mr. Chairman. We would be pleased to attempt to answer questions. Thank you.

[Statement of James Lyons may be found at end of hearing.]

The CHAIRMAN. I know you are under a time restraint, Mr. Lyons, but I want to ask one question. You served here as a committee staff in Agriculture, did you not?

Mr. LYONS. Yes, sir.

The CHAIRMAN. Did you work on the TTRA?

Mr. LYONS. Yes, sir.

The CHAIRMAN. In your statement you object to Congress making unilateral changes in this bill. What is the difference from what you did in the TTRA and now?

Mr. LYONS. Well, I believe, Mr. Chairman, that the circumstances——

The CHAIRMAN. Now you are the Under Secretary, and you were the staff at that time, but there is little difference. It is exactly the same thing.

Mr. LYONS. I was staff to the House Agriculture Committee at that time, as you indicated, Mr. Chairman. At that time there were various and sundry attempts to do different things to the contracts, everything from termination to modification.

The CHAIRMAN. But the Congress did it, didn't it?

Mr. LYONS. That is correct.

The CHAIRMAN. The Congress did it.

Mr. LYONS. However, under the circumstances, Mr. Chairman, the Secretary of Agriculture has administrative authority to rescind the contracts. For ten years it would have——

The CHAIRMAN. You are running out of time, but this is not a bit of difference. This is the difference between, you know, where you are sitting now and where you were before. You were assisted in those changes. You said there would be no attack on the timber industry. You said there would be no attack on—we'd have no loss of jobs. You were an instigator on the Agriculture Committee. You were the majority. Now you are on the executive side of it. There is not a bit of difference.

I have no questions at this time. Anybody else have any questions? The gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, and Mr. Lyons, in your written testimony on page 2, you indicate Secretary Glickman has committed the Department to maintaining a suitable timber flow to Ketchikan Pulp Company in accordance with the terms of the existing contract and other relevant statutes. Does that mean you have committed beyond the term—that Secretary Glickman has committed beyond the term of the existing contract, or is this just saying he has committed to honor the current contract?

Mr. LYONS. It would seem to me to indicate, Congressman, that we intend to fulfill our commitments under the existing contract. We have not addressed the issue of any commitments beyond the current term contract.

Mr. CRAPO. So you are not saying—this legislation would extend for 15 years. You are not saying in this testimony that Secretary Glickman has committed to that part of this legislation?

Mr. LYONS. He has not committed to an extension.

Mr. CRAPO. But he does have—did I hear you just say earlier that he does have administrative authority to do so if he chooses to?

Mr. LYONS. That is correct.

Mr. CRAPO. Do you have any information you can give the committee as to whether he is or the Department is looking at the impact on not only the pulp company but the economy of the region if the company is not allowed to continue to have a contractual relationship in this area?

Mr. LYONS. Congressman, the contract as it currently stands expires in the year 2004. Our focus immediately is on completing the Tongass land management planning process, which will allow us to understand what constitutes a sustainable level of timber harvest on the Tongass. We feel, in fact, seven of the ten alternatives identified in that land management plan would provide adequate volume to meet what we understand to be the current contract obligations for timber to KPC—and that is in dispute. It is litigation with KPC—as well as a substantial volume of timber to address the independent sale program, the small business program on the Tongass. So we feel we can and we will meet our contract obligations. That option is open.

Mr. CRAPO. And that would extend beyond the contract term if one of those documents were to work out to be acceptable volume?

Mr. LYONS. Our view is there is sufficient volume that that could in fact be the case.

Mr. CRAPO. All right, thank you.

The CHAIRMAN. Any questions on this side?

Mr. COOLEY. I have one, Mr. Chair.

The CHAIRMAN. Mr. Cooley.

Mr. COOLEY. Yes, can you tell us what the maximum harvest level is for Tongass right now?

Mr. LYONS. If I could, Congressman, I would defer to Mr. Janik, who would be in better position to address that.

Mr. JANIK. I will have to answer that in two parts. The current forest plan, the one we are operating under now, has a calculated allowable sale quantity of 450 million board feet. Over the past several years, we have been offering up approximately 300 to 320 to 330 million board feet. That is the maximum we have been able to move forward through the system based on the additional requirements that we have been facing.

The draft environmental impact statement that is out for public review right now as part of the revision identifies a calculated allowable sale quantity of about 357 million board feet, but that is qualified in the document in terms of what we believe will be economic to the timber industry, and that estimate, which is the more pertinent one in terms of the interest of the industry, is 300 million board feet. I believe the actual figure is 297.

And it is based on that number that there is a statement in the environmental impact statement basically saying that that is enough timber to satisfy what we believe to be the contract obligation of the Ketchikan Pulp Company as well as provide about 100 million board feet for the independent operators.

The CHAIRMAN. The gentleman from Oregon, out of a little respect, Mr. Lyons has to leave. And he is excused.

Mr. MILLER. Mr. Chairman, if we just might reserve to send some questions in writing to Mr. Lyons.

The CHAIRMAN. And then—but you have Mr. Janik. He is the regional forester.

Mr. LYONS. Thank you very much, Mr. Chairman.

Mr. COOLEY. Can you provide for the committee what is the requirement of the contract right now by KPC?

Mr. JANIK. As Under Secretary Lyons stated, that number is actually in dispute. It is in litigation, but our contracting officer, who is Mr. Walk to my far left, has calculated that to be 154 million board feet as the minimum obligation to the Ketchikan Pulp Company. There is a maximum harvest limit identified in the contract for the Ketchikan Pulp Company of 192 million board feet. And the dispute, sir, is between those two numbers.

Mr. COOLEY. OK, but under your new marvelous harvest under the alternative program, the Tongass land—plan revision—you're telling me now that you want to get 300 to 357 million board feet?

Mr. JANIK. Even though that is not yet a decision, it is out for public review. The preferred alternative says that we are confident we can economically deliver right at about 300 million board feet a year. And that is the total for the obligation to Ketchikan Pulp Company and for the independent operators. The portion of that highlighted for the independents, and we do have a formal small business association agreement, is 100 million.

Mr. COOLEY. But you are presently harvesting between 320 and 330 board feet?

Mr. JANIK. We are offering out about that much per year to the timber industry, yes. That is what they've been able to do over about the past three or four years.

Mr. COOLEY. OK, any higher than that?

Mr. JANIK. This year with the prices having gone down, there are a couple of sales that have been offered up that have not been bid on, but prior to that, yes, that timber has been purchased or accepted by KPC in case of the contract and the release to them.

Mr. COOLEY. That is all the questions I have, Mr. Chairman.

The CHAIRMAN. The gentleman from California. Let me make an interruption here. Did you—Phil, you are not going to make a statement, are you? You are just open for questions?

Mr. JANIK. I have no statement to make, if that——

The CHAIRMAN. No, that is fine.

Mr. JANIK. Thank you.

The CHAIRMAN. But you are on the witness panel as one to testify. So go ahead, Mr. Miller.

Mr. MILLER. Following onto Mr. Cooley's question, the 154 and the 192, this legislation would do what to those figures?

Mr. JANIK. As I understand the legislation, it would establish the 192 as the required minimum.

Mr. MILLER. And that is a matter that is being currently litigated?

Mr. JANIK. That is correct, sir.

Mr. MILLER. As part of the litigation brought by the manufacturers of——

Mr. JANIK. That is correct.

Mr. MILLER. That is one of the determinations as to what is the requirement, whether it is 154 or 192.

Mr. JANIK. That is correct, sir.

Mr. MILLER. As I have had this problem somewhat described to me, and we go back to what Mr. Cooley said, Secretary Lyons'

statement was that the Secretary has the full intent to comply with the existing contract over the, you know, the remaining term of that contract. And your figures suggest that you are in compliance with that contract, but representatives of the other side—I hope I am framing this correctly. Obviously somebody can correct me in later panels. That is that it is really not happening because you are making it more difficult or more expensive to get the timber, your requirements on roads and other requirements—I don't know if I could enumerate, but roads seem to stand out as strong—that in fact you are simply making it impossible to extract and to bid on these sales, so the actual number is below that. How do you respond to that? I hope I've framed it.

Mr. JANIK. I will attempt to do that. And if I may, sir, I may ask Brad Powell, the forest supervisor, to elaborate further. But as I understand what went on during the Tongass Timber Reform Act with regard to the changes that occurred there, it was in fact to look at those long-term contracts, two existing at that time, and make that situation more competitive with the independent operator kind of situation. So therefore, if one does ask if it is more difficult or costly for the folks involved in the long-term contract to operate their timber program, I would say yes, as compared to prior to TTRA.

Mr. MILLER. Is there any way to quantify what that has meant?

Mr. JANIK. I think we have some stumpage rate figures and those kinds of things which do identify that. For instance, and please help me here, Brad or Fred, prior to TTRA, I believe, the rates were about two to two and a half dollars a thousand board feet. Now Ketchikan Pulp, I believe, is paying closer to about $48 per thousand board feet. Is that a correct comparison?

Mr. MILLER. That was the parenthetically accurate. It was also the intent of the legislation.

Mr. JANIK. As I understood it, yes.

Mr. MILLER. Widespread concern in the Congress that this resource was simply being essentially given away.

Mr. JANIK. And the further comparison then is I believe that $48, as we calculate the rates, is attempting to make those rates comparable to what our independent operators would be looking at in terms of bid offerings. Is that also correct?

Mr. MILLER. And that is why and how. You do comparable bids or sales to arrive at that?

Mr. JANIK. May I defer that to Mr. Walk?

Mr. MILLER. Sure.

Mr. JANIK. Fred, would you please take that question.

Mr. WALK. Congressman——

Mr. ALLARD. Fred, would you identify your name for the record, please.

Mr. WALK. My name is Fred Walk. I am the Director of Forest Management in the Alaska Region. The process that was implemented as part of the Tongass Timber Reform Act to meet the requirement that prices paid by the long-term contract holders be comparable to the independent purchasers——

Mr. MILLER. That is the law.

Mr. WALK. Pardon me?

Mr. MILLER. That is the law, you are saying?

Mr. WALK. Yes.

Mr. MILLER. Yes, sir.

Mr. WALK. The process that was implemented is to calculate an average of the prices paid by independent purchasers and then make periodic adjustments to the rates being paid by the long-term contract to become more comparable to independent prices. And those comparable price adjustments are made as we do the calculations periodically through the course of the year.

Mr. MILLER. What would be the impact of the legislation under consideration? Have you had a chance to review that?

Mr. WALK. We have looked at that. It is our view that the terminology in the proposed legislation would remove the periodic—the comparable price adjustment from the process. There would be no comparable price adjustments.

Mr. MILLER. There is language that is on page 8 that says the rate shall be designated at a level that places the purchaser at a competitive disadvantage with similar enterprise in the Pacific Northwest and those rates should be the sole charges the purchaser shall be required to pay for timber provided. Do we know what that means?

Mr. JANIK. We have examined that section very thoroughly. Again, if I may defer, I think Mr. Perry from the Office of General Counsel, in that we have received major advice from them on this particular section—Jim, would you please respond.

Mr. PERRY. James Perry, Associate General Counsel. We have some real concerns regarding the comparison between the Pacific Northwest stumpage rates and those of Alaska. While we understand the purpose of the clause is to develop some equitability, we believe the clause would result in extensive litigation because the only way to determine some equitability would be to establish some panel of experts and then attempt—have to use a most equitable rate. So based on the past history of similar clauses in the current contract, we view that language as being a guarantee of litigation.

Mr. MILLER. What—well, let us assume—do you have any indication or have you looked at this if you could meet the requirements of the language on page 8, would that take us closer to $2 or closer to $48?

Mr. PERRY. I don't think I can evaluate that. There would be a number of variables in trying to measure equitability between the market in the Pacific Northwest and the Tongass, the type of timber, the type of product that was derived and then the market in which the product would be sold. So I am unable to give a prognostication about what the effect on price would be, but the only effect it could have would be a downward adjustment.

Mr. MILLER. Mr. Chairman, if I just might—I know the light is on, but I just would like Mr. Walk to testify or to respond to that if he could, what the impact of that—have you looked at that to determine what the impact might be, approximately, on price and stumpage?

Mr. WALK. Well, as Mr. Perry indicated, it would be very difficult to identify precisely a number. We see three parts of that particular section. One is doing the normal appraisal. The second is a comparison with the Pacific Northwest, similar enterprises in the Pa-

cific Northwest. And that could have a dampening effect on the appraised rates. But the other part of that provision that would——

Mr. MILLER. Why would that be?

Mr. WALK. The other part is that the rates shall be—similar charges the purchaser shall be required to pay would be the part that would go to the comparable price adjustments, so if the comparable rates for the Pacific Northwest similar enterprise was less than our appraised rates, then the stumpage charge would be lower than would be normally indicated by Alaska Region appraisals.

Mr. MILLER. So you wouldn't be factoring in the cost of doing business in Alaska, is that what you are saying? Am I wrong? Why would that bring down that comparable price when you compare the Pacific Northwest?

Mr. WALK. If the analysis between the similar enterprises in the Pacific Northwest indicated that the prices generated in Alaska would place the contract broker at a competitive disadvantage, we would have to reduce the rates to where that competitive disadvantage was——

Mr. MILLER. That clause says—I am sorry for belaboring the point, Mr. Chairman, but that clause says you take the cost of doing business in Alaska, you compare that to the cost of doing business in some facility in the Pacific Northwest. If that would place that facility at a disadvantage against others in the Pacific Northwest, you would have to reduce that price?

Mr. WALK. You would reduce the price——

Mr. MILLER. Neither firm is doing business in Alaska?

Mr. WALK. That is correct.

Mr. MILLER. Or possibly getting the logs? OK.

Mr. WALK. Delivered log price.

Mr. MILLER. OK.

The CHAIRMAN. Thank you, gentleman. I just have one question. Why in the world—all we are seeking in this legislation is to extend the contract. It was written up the things that you object to. You have legal counsel. I heard some questions not quite answered here. Can you give us language back so we can get the years we need? Why can't you do that?

Mr. JANIK. I believe our Under Secretary was asked that very question in yesterday's hearing in terms of——

The CHAIRMAN. Well, it is not yesterday's hearing. I am asking you now. Why can't that be done?

Mr. JANIK. And I am going to respond, Mr. Chairman. The problematic parts of this bill as we understand it deal with the provisions of the Tongass Timber Reform Act. And the Under Secretary and I myself will answer right here, sir, that if once we get past the completion of TLMP provision so we understand how big the woodpile is and how much flexibility we have to talk about any contractual relationship that might go beyond 2004, as well as any other conditions or provisions, we have stated already that we would be willing to entertain those considerations.

The CHAIRMAN. Entertaining does not allow this company to invest. It goes back to the independent sales that you just said a moment ago, if this company shuts down, you will not have any independent sales unless you're high-grading.

Mr. JANIK. Well, sir, we're——

The CHAIRMAN. Congress tried to avoid that. What we are doing is set up a high-grade system.

Mr. JANIK. Well, sir, we are doing a complete Tongass revision in September. That is the target for signing a record of decision. And again, it has been stated clearly that the bill as written is unacceptable.

The CHAIRMAN. Well, let me interrupt you a minute, though, because you said how big the TLMP pile of wood is going to be. You stated it is going to be 297 million board feet.

Mr. JANIK. That is currently what is under public review. That is not yet a decision.

The CHAIRMAN. Are the woods going to grow smaller or larger?

Mr. JANIK. I have no idea, sir. That was——

The CHAIRMAN. Who makes that decision?

Mr. JANIK. I will make the ultimate decision.

The CHAIRMAN. You will make that?

Mr. JANIK. With recommendations from the forest supervisors after we review public comment.

The CHAIRMAN. It gives you an awful lot of God power, doesn't it?

Mr. JANIK. It gives me power I take seriously, sir.

The CHAIRMAN. OK, the second thing is who—you control the cost of sales, do you not, the Forest Service?

Mr. JANIK. Within certain parameters, sir. We have our appraisal system that we must comply with. Mr. Walk can address that.

The CHAIRMAN. The company has nothing to do with it.

Mr. JANIK. I am sorry?

The CHAIRMAN. The company has nothing to do with it.

Mr. JANIK. Fred, do you want to address that, or Brad?

The CHAIRMAN. The company has nothing to do with it. You set the price. That is it.

Mr. WALK. We determine the advertised price of the timber sale. On the independent program it is put out for competitive bidding and then the bidders determine the final price. We establish the minimum accepted bid. All of our timber sale appraisals in the Alaska region are developed using the residual value process whereby we collect costs and selling value data from participating industries, including the Ketchikan Pulp Company, and do analysis of their records.

The CHAIRMAN. What I am trying to stress here is the companies and those biddings do not set the price. They bid or in the contract you set the price for the timber, is that correct?

Mr. WALK. We set the price using data we collect from——

The CHAIRMAN. Now under the present contract, the price can only be adjusted upward, but not downward, is that correct?

Mr. WALK. The long-term contract provides for an upward or downward emergency rate determination.

The CHAIRMAN. Has it ever gone downward?

Mr. WALK. Yes, sir.

The CHAIRMAN. It has?

Mr. WALK. Yes, sir.

The CHAIRMAN. All right, what I am suggesting to you, Mr. Janik, is that you ought to be offering some suggestions to this leg-

islation, not just criticism, as I told Mr. Lyons, suggestions on how to improve. The same thing for the gentleman from California. If there is a way we can improve this act, because all I am trying to do is keep the city alive—the company, with all due respects, as they did in Sitka—Mr. Miller, your friend George, you know quite well, Ishiama walked away. It didn't cost him a nickel. The company didn't—they just walked away from the town. Now it is slowly becoming an old city.

Mr. MILLER. Would the Chairman yield?

The CHAIRMAN. That is right. I will even give you a minute. I know you won't admit it.

Mr. MILLER. Well, I just—on this point, because I think maybe it goes to the crux of the problem, and I think the reason that the Administration is having a problem responding here is, as I think Secretary Lyons pointed out, what are the ground rules. If the ground rules are that you are going to have consideration or entertainment, or whatever the words are you want to use, of contract extension, if the ground rules are it is going to be done within the Tongass Reform Act, that is one thing. If it is going to be done in the context of this legislation, it then starts providing rather substantial rewrites of the Tongass, that is a different thing.

And that, as I understand it, the Administration is opposed to. And the question at some point, I think, that maybe will not be resolved at this hearing, but has to be resolved. The point is what are those ground rules. Is KPC prepared to live within the Tongass Reform Act? And does the Tongass Reform Act allow you to meet your contractual obligations? The fact that the cost is somewhat higher may or may not be relevant. It may or may not be, because it may go to the issue of whether we can operate in that business environment.

But by the same token, we have some obligation as the trustees here not to simply give away the public's resources when in fact at one time or another—it may not be in this volume, but including the market from time to time generates a substantial amount of revenues from these very same resources. That is the problem we are grappling with here.

I think what is suggested by Mr. Lyons and what is suggested by myself and some others that are concerned is that this bill isn't about a simple extension of that contract so you could amortize your investment over some known period. It is more than that. And if those are crucial to the extension, then I don't know that the extension can be had from the testimony of Mr. Lyons or from what I understand the position is of the Administration. And that is the—at some point it has got to be sorted out.

The CHAIRMAN. Mr. Miller, I can say one thing. If I thought for a moment this Administration was serious, really would consider and offer me some advice, I would be greatly pleased. Very frankly, my bill was started as any piece of legislature. You see something wrong with it, but I have yet to hear from the Administration what will make this work to keep that city alive. Now if they want to kill the city, tell me. That is all I am saying. If you want that city to go down, if you want the timber—don't tell me, Mr. Janik—I watched Sitka go down and it is down.

Now, which reminds me, what are you going to tell the Sitka sales that were canceled by the Forest Service? Is that ever going to be put up again?

Mr. JANIK. Those sales, sir, have been retrofitted and offered up to the independent operators. And some of that buy has also gone to Ketchikan Pulp Company.

The CHAIRMAN. But without the pulp mill, independent operators cannot exist.

Mr. JANIK. We have always acknowledged the importance of a secondary facility in Southeast Alaska.

The CHAIRMAN. That is where the pulp——

Mr. JANIK. That is something—it could be the existing pulp mill. Yes, sir.

The CHAIRMAN. No, what I am——

Mr. JANIK. And we recognize that importance, the Ketchikan Pulp Company.

The CHAIRMAN. We agree it supports jobs. You know, I can take 37 people and ship all the timber that is going to be cut under 297 base board feet. I could ship that with 37 people and ship it to Japan. That is not a value-added. Or I could ship it to the Northwest, which they have lost it because of the spotted owl. I can do that, but that isn't board feet.

Mr. MILLER. If the gentleman would yield one second, I think maybe we are establishing some parameters.

The CHAIRMAN. They didn't deny a ten-year contract with Sea Alaska. That is one thing I didn't understand.

Mr. MILLER. You know, when we did the negotiations on this forest and we were living in the midst of the storm that was brewing around the administration of this forest under the contract, the reason those negotiations worked was because we sort of rejected the extremes. You can keep talking about people who want to kill this town or what have you, but the history of these negotiations and our participation is that we have rejected that notion.

The CHAIRMAN. You and I have a——

Mr. MILLER. And that is how you got the Tongass reform, but I don't—I am not prepared to accept that you have got to gut the Tongass reform to get at viable profits on this forest that is both sustainable and economically viable to the mill.

The CHAIRMAN. And you can——

Mr. MILLER. And I haven't seen the show-me yet that that is the case. And that is all I point out, because, you know, you and I have been around this both privately and publicly, that I believe that the Reform Act also didn't apply to the commitment that we would provide the timber. That was the dual part of this arrangement. Otherwise, we could have just gone off and canceled the contracts or had you had the most votes, whatever, you could have just said we want to do business the way we were doing it in 1950. That didn't survive the Congressional process.

This was a deliberate process and this was an intentional decision that the practices would be different and with the full knowledge that in many instances they would be more extensive but they would hopefully lead to this evaluation process and we would determine what in fact this would sustain.

The CHAIRMAN. Will the gentleman yield? We agree on that. One thing, remember, in my bill I do nothing about the Tongass Reform Act that you put in there.

Mr. MILLER. Well, page 8——

The CHAIRMAN. Now I——

Mr. MILLER. [continuing]—if that is not the old comparable sale——

The CHAIRMAN. I am not talking about that. I am talking about the buffer zones and all the rest of the stuff. We didn't change that. We didn't change any of the wilderness areas. We did not touch any of that. Now I am suggesting where you see what is wrong with the bill, give me some ideas to keep my town alive, you know.

Mr. MILLER. And we will.

The CHAIRMAN. Does anybody else have any questions?

Mr. BALDACCI. If I had any time, I was going to yield it.

The CHAIRMAN. No, I have already done that. Anybody on this side? I want to—Mr. Janik.

Mr. JANIK. I just want to reemphasize, Mr. Chairman, that the Administration is willing to sit down and talk options. We say that here today. We said it yesterday. And the opposition is strongly based on the bill as written.

The CHAIRMAN. My bill—what I am telling you is I want—you've got to live with high prices, not high prices, you work for the government I'll tell you that right now. Give us some ideas as quick as possible. Just don't snowball us on this. If you can get it today, I would love it today. If you can get it tomorrow, that would be better, but as far as I am concerned, that is about as long as we have got on this, because we have to have some suggestions.

I want to say one thing. As I told Brad, you know, you have got a good man there.

Mr. JANIK. He is a good man.

The CHAIRMAN. At least he shows up at the hearings. It was a nice arrow in your back, but I will tell you up front the Forest Service this last week were sued by the environmental community again over the Tongass Reform Act. I mean, you guys are caught betwixt and between. We are upset because I want to keep my people employed. They are upset because you are keeping too many people employed. I am upset because we don't have a viable economy. They have got their economy and it is—you know, you are caught right between, and I have great sympathy.

You heard me say the other day if I had my way, Mr. Janik would make all the decisions in Alaska, then we could really hammer him. Not by Dean Woods, not by Mr. Lyons, not by Jack Ward Thomas, not by Katie McGinty or Leon Panetta or Mr. Glickman, it would be made by you, but that is maybe yesteryear. But someday that is going to change and we are going to fix it so you will make the decisions. Then we can discuss it as we did in the past. You are excused.

Mr. JANIK. Thank you, Mr. Chairman.

The CHAIRMAN. Panel two: Mr. Leonard, George Leonard, United States Forest Service, retired; and Mr. Scott Horngren, the law firm of Haglund and Kirtley in Portland, Oregon, you two are up. George, you are up first.

## STATEMENT OF GEORGE LEONARD, UNITED STATES FOREST SERVICE [RETIRED], VIRGINIA

Mr. LEONARD. Thank you, Mr. Chairman. I am pleased to be before this committee once again to talk about the Tongass Forest. I would like to make just a few simple background statements with regard to the Tongass and then respond to any questions you or other members of the committee may have.

I think it is important for this committee to be aware of the fact that the Tongass contains some of the most productive timberland in the world. The area of productive timberland planned for timber harvest on the Tongass is relatively small, only about five percent of the forest, 1.2 million acres, but that portion of the Tongass is particularly well suited for sustained-yield management of the timber and related resources. And for those members of the Agriculture Committee that are here, you know that if you are going to manage agricultural lands, you manage your best lands for agriculture, not your poorest. In this case, we ought to be managing the best land for timber production, and they are represented well on that 1.2 million acres on the Tongass.

The productive nature of the Tongass has been recognized for a long time and the fact that there needs to be a market for that portion of the timber on the Tongass that is not suitable for the manufacture of lumber. In fact, there were proposals dating clear back to the '20's and '30's for the development of pulp mills. A major rationale for the timber sales that were made in the '50's, the two long-term timber sales that we are talking about here today, was employment. In the depression years of the '30's the mines in those small towns closed and also by the end of the late '30's there was a significant decline in the salmon fishery. Many of the small canneries had closed and there was substantial concern about the fate of the small towns in Southeast Alaska.

The use of the available timber resource was the obvious answer. You had a very rich, productive timber resource. In fact, studies showed that you had a timber resource capable of supporting about five pulp mills at the time. In fact, four large pulp sales were offered over the years in the early '50's, and ultimately two pulp mills, the Ketchikan Pulp Mill at Ward Cove, just outside of Ketchikan, and the Alaska Lumber and Pulp Mill at Sitka.

One other contractor was unable to build a pulp mill and that sale was substantially modified and reduced and was operated by Alaska Lumber and Pulp Company. And the fourth contract got tied up almost endlessly in environmental litigation and ultimately the purchaser concluded that it was not economical to go ahead, so that contract was canceled.

Operations of the two pulp mills in Alaska did contribute significantly to the economy and stability of Ketchikan and Sitka and many of the other smaller towns in Southeast Alaska where logging camps or other subsidiary facilities were built. The operation of a pulp mill in Southeast Alaska is still essential to the economic stability of those communities. It is true, as Mr. Lyons said in his statement, that the recreation developments in Southeast have increased substantially. And fortunately the salmon fishery has recovered.

In fact, over the last decade we have had record harvests of salmon in Southeast, but both recreation and the salmon fishery are very much seasonal industries. You have two and a half to three months of employment in the summer season from those two industries. The only long-term, year-round employment, has been offered by the timber industry and particularly by the pulp mills; and I think that stability and continued operation of the pulp mills is essential.

Mr. Chairman, I have several suggestions to make about changes that I believe should be made in this legislation to improve it, to be made more workable from a technical standpoint, but I strongly believe it should be done.

The CHAIRMAN. George, I am going to tell you, you are about ready to run out of time. And I was going to ask you that first question, what would you suggest. And when I come back to you, be ready for me.

Mr. LEONARD. Yes, sir.

The CHAIRMAN. If you don't mind. Scott, you are up next.

**STATEMENT OF SCOTT W. HORNGREN, LAW FIRM OF HAGLUND AND KIRTLEY, PORTLAND, OREGON**

Mr. HORNGREN. OK, my name is Scott Horngren. I am a partner in the law firm of Haglund and Kirtley in Portland, Oregon. I am testifying on behalf of the Northwest Forest Resource Council, a coalition of timber trade associations in the Pacific Northwest. Our firm has represented timber sale contractors in Federal contract claims cases.

I am here today to discuss the implications of a recent Supreme Court decision decided July 1 entitled the *United States* versus *Winstar Corporation* as it relates to Forest Service contracts and the issues here. The Winstar case is a culmination of over half a decade of litigation over government contract liability for statutory and regulatory changes to minimum capital requirements for savings and loans. The Winstar decision has implications for contracts throughout the Federal Government and particularly for timber sale contracts.

Federal timber purchasers are being bombarded by regulatory and policy changes like those that were at issue in Winstar, and these changes include adoption of the President's Forest Plan, adoption of PACFISH, INFISH, California spotted owl, Mexican spotted owl and Northern goshawk protection standards.

The Winstar decision should leave little doubt that the government will be contractually liable to the timber purchasers for reduction or elimination of timber sold under the contract. I would first like to summarize the Supreme Court's decision in Winstar and then apply those principles to timber sale contracts.

The Winstar Decision: During the savings and loan crisis in the mid-'80's, Congress enacted the Financial Institution Reform Recovery and Enforcement Act, FIRREA. The Act forbid thrifts from counting goodwill capital—good will as capital credits in computing the required minimum capital reserves. The plaintiffs in the case were three Federal thrifts, two of which were seized and liquidated by the Federal regulators for failing to meet the new capital requirements. The thrifts sued the Federal Government contending

that the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation had breached their contract, promising that the thrifts could count this supervisory good will toward the regulatory capital requirements.

The government raised many defenses, but the one I would like to focus on this afternoon is that the regulatory change was merely a public and general act that was a sovereign act, insulating the government from liability. The court rejected the sovereign act defense. Under the sovereign acts doctrine, so long as the government's legislative or executive acts are public and general, they cannot be deemed to violate contracts between the government and private parties. The government maintained that the imposition of more stringent regulatory requirements under FIRREA was a public and general act and that the changes couldn't be considered a breach of the government's contract.

However, the Supreme Court found it significant that the regulatory legislation was motivated by government self interest and that it was impossible to attribute a public and general character to FIRREA when the legislation had the substantial effect of helping the government out of improvident agreements. The court emphasized that the government may not force some people alone to bear the public burdens which should be born by the public as a whole.

I believe the sovereign acts defense also does not apply to timber sale regulation. The actions of the Forest Service in screening existing timber sales and imposing these additional wildlife standards cannot occur as public and general acts, specifically the Winstar decision—given the Winstar decision, any past statements by Congress to assert the sovereign acts doctrine to avoid contract damages in timber sale cases is likely to fail.

For example, regarding the Alaska Pulp and Ketchikan Pulp contracts, the House Committee on Insular Affairs wrote, "the committee considers termination of the long-term contracts to be an appropriate exercise of the Federal Government's power to protect the public interests and that, pursuant to sovereign act immunity, no damages will be paid to APC or KPC."

Well, ultimately the contracts were unilaterally modified rather than terminated. The assertion of the sovereign acts doctrine is likewise ineffective. This is particularly true when the statute is directed at individual contracts despite self-serving legislative pronouncements to the contrary that the legislation is public and general.

The Winstar decision holds that unless contracts explicitly provide otherwise, the government bears the risk of statutory and regulatory changes that preclude completion of the contract. This is the case with the majority of timber sale contracts in the West and will strengthen timber purchasers' arguments in their contract claims against the government.

And I am not alone in my analysis of Winstar and how it relates to Federal contracts. The Forest Service's own analysis of the contract, the National Forest Management Act, and some contract cases dealing with timber sales support this conclusion. In an April 27, '92, memo to the regional foresters, the Forest Service Chief interpreted the agency's timber sale contract to require compensation

for the difference between the contract price of timber and the market value regardless of whether the contract is modified, canceled or partially canceled for environmental reasons.

The Chief's interpretation is consistent with the regulation governing compensation for cancellation of contracts. And although later contract clauses have attempted to limit the compensation, those clauses aren't consistent with the governing regulation, so the Department of Agriculture has attempted to change the regulation. And, several years ago they proposed to change the regulation governing the compensation of timber purchasers for protection of threatened, endangered species and the environment. The U.S.D.A wrote that the difference between the government's liability under the current regulation and its liability calculated using the method in their proposed regulation is approximately $300 million.

Consistent with the regulation——

The CHAIRMAN. Scott, how much more time do you need?

Mr. HORNGREN. I am—I can wrap up here. All Ineed——

The CHAIRMAN. Wrap it up and then Mr. Crapo is going to ask some questions.

Mr. HORNGREN. OK. Just to summarize, there has been Claims Court and Board of Contract appeals cases that are consistent with those regulations. And in conclusion, Federal timber purchasers will successfully rely on this new Supreme Court Winstar case in their claims against the government for breach of contract when the government's regulatory actions reduce or eliminate timber from their sales. And I would be happy to answer any questions.

[Statement of Scott Horngren may be found at end of hearing.]

The CHAIRMAN. Mr. Crapo, you are up to ask him a question. I will be right back.

Mr. CRAPO. Thank you, Mr. Chairman. Mr. Horngren, can you first tell me, have you ever worked for the Alaska Pulp Corporation?

Mr. HORNGREN. No, I have not.

Mr. CRAPO. Have you ever worked for the Ketchikan Pulp Corporation?

Mr. HORNGREN. No, I have not.

Mr. CRAPO. And I assume that means you are not working for either of them now?

Mr. HORNGREN. That is correct.

Mr. CRAPO. And I know that you have gotten through with us what you think the Winstar case held. How is that applicable to the contract changes ordered by the Tongass Timber Reform Act?

Mr. HORNGREN. I think it is applicable here because the Supreme Court held that an act will not be a public and general sovereign act if it has the substantial effect of releasing the government from its contractual obligations. And we heard testimony and discussion earlier today at this hearing that one of the major motivations and effects of the Act was to get the government out of a contract that they thought wasn't financially attractive. And if that in fact is the substantial effect of the legislation, which is clearly what TTRA was designed to do, then it will not survive the sovereign acts defense.

Mr. CRAPO. I assume, then, you agree that the Winstar precedent would apply to timber sale contracts as well as other types of government contracts?

Mr. HORNGREN. That is correct.

Mr. CRAPO. And does the case distinguish whether the claim of the sovereign act has to be an act by Congress or an act by the Administration, the Executive Branch or otherwise?

Mr. HORNGREN. It doesn't matter. As long as it is in the legislation or the regulation, the effect is the same.

Mr. CRAPO. Now C clause provisions are contained in most timber sales contracts, and these are provisions that justify the cancellation of the contract and certain prescribed damages to the replacement value of the timber and certain other facts, is that fair?

Mr. HORNGREN. That is correct.

Mr. CRAPO. And given the Winstar decision, if Congress or the Executive Branch terminates or unilaterally changes the terms of the contract outside the terms of the C clause provisions, do I understand correctly that the government would then, in your opinion, be in violation of the contract as held in Winstar?

Mr. HORNGREN. Well, it would be more than that, because they would be acting outside the contract and some of the timber cases, most notably the Davidson case recently, have held that if the action occurs outside the contract, then the purchaser wouldn't be just limited to the contract remedies and would be entitled to all common law remedies for breach.

Mr. CRAPO. And again, I realize that you have addressed this, but does Winstar speak to whether the government can breach the contract or whether it would simply pay for breaches in contract?

Mr. HORNGREN. It does not preclude the government from enacting new regulations and enacting laws, but it does require that the government pay for those changes.

Mr. CRAPO. So how would a breach outside the C clause by the government affect the damages that—the assessment of damages that the courts would impose following the Winstar case?

Mr. HORNGREN. I think it would increase the exposure to the government for damages by millions of dollars.

Mr. CRAPO. And you mentioned the unilateral contract changes made in the TTRA, 1990 TTRA, and you cite the claim of sovereign act authority in the House committee report as a legal rationale offered as justification for termination of the contracts based upon a case called the Hedstrom case. What are the differences between Hedstrom, Winstar and TTRA contract payments?

Mr. HORNGREN. I think the Hedstrom case was the basis for the conclusion in TTRA that they could unilaterally modify or cancel the contracts without any contract liability. And the Supreme Court in the Winstar case doesn't discuss the Hedstrom case, but it is unlikely that Hedstrom is still good law following the Winstar decision.

Mr. CRAPO. Hedstrom was preceding Winstar?

Mr. HORNGREN. Yes, it was a 1984 case, significantly a District Court case not a Federal Circuit case, and certainly not a Supreme Court case. Like Winstar, Hedstrom involved numerous contracts and parties and the substantial effect of the boundary waters canoe legislation in that case was to abrogate the contract. So it is very

possible that Hedstrom would not be good law after the Supreme Court. But even if Hedstrom still is good law, there are several significant distinctions between the TTRA and the Hedstrom case that make Hedstrom inapplicable, we believe.

And that would concern first—in Hedstrom it involved creation of the boundary waters canoe area, and it was a wilderness act, general, didn't specifically cite any of the contracts. In contrast, TTRA singled out the APC and KPC contracts and were the basic—those contracts were the basic motivation for the TTRA, and directed—the legislation was directed at those contracts.

And under Winstar, the sovereign acts defense wouldn't be applicable.

Mr. CRAPO. Are you familiar with the CRS report on which the analysis of the House report that I referred to earlier was made?

Mr. HORNGREN. Yes.

Mr. CRAPO. And how would the Courts holding in Winstar affect the CRS report's analysis?

Mr. HORNGREN. I think it invalidates it. And I think it does that because particularly the CRS assumption was based in part on the Hedstrom case. And the underlying assumption was just an act that had a public and general purpose could—you know, the government could invoke the sovereign acts doctrine and avoid contract liability. But the Winstar case changes that and says the act will not be public and general if it has a substantial effect on the contracts. And that is the case with TTRA.

Mr. CRAPO. Thank you. Mr. Chairman, if I could ask just one more quick question of Mr. Leonard.

The CHAIRMAN. You have got all the time you want.

Mr. CRAPO. Thank you. Mr. Leonard, I am just curious. I come from Idaho and I know how long it takes to grow a tree to harvestable size in Idaho. How long does it take to grow a tree to a harvestable size in the Tongass area, if you know, and I am talking about on a sustainable yield basis where the cut levels will not exceed the ability of the forest to continue to grow and be managed properly.

Mr. LEONARD. We have historically used rotation ages in Alaska, which is the time it takes to grow a marketable tree, in the neighborhood of 80 to 100 years.

Mr. CRAPO. Thank you.

Mr. LEONARD. But those are large trees.

Mr. CRAPO. Thank you very much.

The CHAIRMAN. Thank you. I thank the gentleman. I appreciate it. I know you may have another appointment, but don't leave until you have to because you'll just get a phone call. I see Mr. LaHood is trying to go; on behalf of the committee we deeply appreciate it. I may ask you to take the chair a little while, if you don't mind.

Mr. LAHOOD. I would be honored to do whatever you guys want.

The CHAIRMAN. All right, thank you. Mr. Leonard, going to the specifics of the bill, and that is what I want to say, can you give me some of your recommendations. I know you said you had some and they were sure orally but also give them to me in writing.

Mr. LEONARD. I will be pleased to do that, Mr. Chairman. Let me just go down some of the sections. Section 2(a)(1) is a definition, and it applies the scribner log rule to utility log. The scribner log

rule was developed to indicate the portion of a log that is suitable for the manufacture of lumber. And it is just not really applicable to utility logs, which by definition are not suitable for lumber. A better approach would be to define the volume requirements of the section in Section 2(c)(3) and 2(e) as 192.5 million board feet. That is the scribner per year. And this would make it clear that the Forest Service could then use whatever log rule or method was appropriate for charging them for the utility logs. Historically they have been charged on a gross basis.

The CHAIRMAN. The Forest Service charge isn't here, but the Forest Service shouldn't object to that suggestion, would they?

Mr. LEONARD. I would hope not, because it clearly gives them authority to charge for the utility logs.

The CHAIRMAN. OK, go ahead.

Mr. LEONARD. Section 2(a)(4) confuses the concept of mid-market test with timber appraisal. In Alaska the mid-market test was developed to try to define that portion of the timber that is economically available and should be charged to the company. It is a test of economic feasibility.

The question of appraisal is a separate issue when you appraise to most current market where the mid-market test looks back over a longer period of time. I think that the language in this section should be clarified so that you apply the mid-market test to determine what timber may be released to the company and then you separately apply a normal appraisal to appraising and establishing the value that the company will pay—the price that the company will pay for that timber.

As written, Section 2(c)(4) does not permit the Forest Service to recognize the unique requirements associated with this long-term sale. The requirement that they maintain and operate that pulp mill has some implications that aren't applicable to an independent sale. And I think the appraiser on that sale ought to be able to recognize those unique requirements. But also, it is important that the language there be rewritten so that the Forest Service can continue to collect KV, Knudsen-Vandenburg Act, funds to do any necessary reforestation work in the area or collect coop scaling deposits advise-its if that is requested by the government. Both these funds contribute significantly to the acceptability of operations under the contract and I believe they need to be maintained.

And finally, Section 2(c)(6) authorizes the company to replace the existing pulp mill or convert it to other uses. I believe this is a desirable section, but I think experience has shown that the law and ultimately the contract need to be clear on what that process is. How long does the company have to replace that mill? They can't simply close the mill and say sometime 15 years from now we will replace it. And the contract needs to be clear as to what obligations, what contractual operations are acceptable during the period when the mill is being replaced. Is it permissible for them to continue logging? What happens to the utility logs?

And then finally, there has been several references to the claims that are pending, potential claims coming out of the Tongass Timber Reform Act. In my judgment, most of the claims associated with the Tongass Timber Reform Act are claims that will be proved in the future sometime. I believe that there should be language re-

quiring Ketchikan—assuming that this bill is passed—that would require Ketchikan Pulp to waive claims arising out of future operations or the future Tongass Timber Reform Act claims that haven't already been perfected.

The CHAIRMAN. You heard testimony of the Forest Service. They oppose the contract extension. It does not allow them to preserve management options. Are you familiar with those terms? What do they mean?

Mr. LEONARD. The concept of maintaining options is an important concept. I think when we do things, we want to preserve the option—as many options as we can. We can't, however, maintain options to the extent that you don't do anything. For too many people maintaining options has become a code word for don't do anything, leave the world like it is. And I think it is important that we go ahead and take the actions necessary to maintain these pulp mills.

It is important to understand that if these pulp mills close, we lose some major options, major alternative actions in Alaska, the economics of operation, the employment that is associated with the pulp mills. If they are lost, then we lose some important options in Alaska that we shouldn't lose.

The CHAIRMAN. Referring to the history of the long-term contracts, a lot of people don't understand it, but the reason for granting them in the first place—why was there a long-term contract?

Mr. LEONARD. The major purpose in long-term contracts was recognition that if you are going to provide a facility that is equipped to produce pulp, that we are talking about major investments. We were talking about $100 million investments then. We are probably talking about $500 million investments today. And there must simply be stability of supply in order for that to happen.

I think it is well to look at history elsewhere in the country. All of the pulp mills that have been built in this country outside of Alaska, with only one exception that I am aware of, have been built on the basis of a private timber supply or with an extremely diverse supply tied to the operation. The two timber sales based on long-term contracts in Alaska resulted in construction of both pulp mills, and one pulp mill at Snowflake in Arizona was built based on a relatively long, 25-year contract with the Forest Service in Arizona. All of the rest have been based on private timber supply.

But private timber supplies don't exist in Alaska. At the time the long-term sales were made, all of the timber supply belonged to the public. There was a substantial transfer of some of that timber to the natives, but virtually all of that has gone into the export market and has not contributed to the economy there.

The CHAIRMAN. George, they have stated—Mr. Miller may be aware of this, but most other people—and he and I don't agree on it necessarily, but most other people don't understand that if we hadn't had the long-term contracts, there would have been no pulp mills. Is that correct?

Mr. LEONARD. I am certain of that.

The CHAIRMAN. OK, if we hadn't had the pulp mills, none of those trees that are on saw logs would ever have been brought out of the woods; they would have been left laying on the ground like

we did in the past. In fact, they probably wouldn't have harvested an area like that, would they?

Mr. LEONARD. I think that what you would have seen is what you had prior to those long-term sales pulp mills. Some small high-grade operations that went out for the very high quality spruce. And I think you probably could still have a little, but you are not going to see a general timber sale program. You are not going to see maintenance of the small, independent mills in Alaska without that big mill.

The CHAIRMAN. Realistically, George, as you have been a Forest Service retiree, how can the Forest Service even think about having a sale now if there isn't a processing plant? How could anyone bid on a project or on a sale without using the pulp wood trees, too? I mean, would they just go in and take out the good trees?

Mr. LEONARD. Well, in theory you could require that they be removed and they could go into the chip market, but putting those into the chip market not only doesn't meet your employment objectives, but it is going to return less value to the stump in that area and therefore make much of the area uneconomical.

The CHAIRMAN. OK, I am bidding. I am the bidder. I am an independent entrepreneur. I'll hear later on from this group; I want to have an entrepreneur in the—logging investor. I am bidding on a stand of relatively good timber. The stumpage rate goes up, but I also have to take out the pulp wood trees to have them chipped. I don't get any money for that, so that means I have to bid awfully high and it makes it uneconomical, would that be correct?

Mr. LEONARD. Well, you will get some revenue from the sale of the chips.

The CHAIRMAN. But very little, not to pay the cost of——

Mr. LEONARD. Historically chips have not paid for removal from those remote market locations.

The CHAIRMAN. I just—one last question and then I want to ask you if you have any questions. One of the things—they'll say—I want for the record. Do you think the long-term contract is good for the government?

Mr. LEONARD. I think so. I think so. It permits utilization of a very valuable resource in Alaska. It meets the needs of those communities for year-round employment which is not supplied by the recreation or the fisheries industry. I think the two long-term sales did provide and have provided stability to those communities in Alaska and I think that is the public interest.

The CHAIRMAN. The gentleman from California. He has no questions. The gentleman—Mr. LaHood. I want to thank—Scott, I want to thank you for bringing up the legal aspect of it. Mr. Crapo did cover it pretty well. I still don't think Congress recognizes the liability that was imposed upon it by the Tongass Reform Act, regardless of the language written in there.

Mr. HORNGREN. Let me put it this way. After the Winstar case a week and a half ago, I now take those cases on a contingency because I think the company is going to——

The CHAIRMAN. And believe me, if lawyers take it on a contingency, there is a pretty good chance of winning.

Mr. HORNGREN. Yes.

The CHAIRMAN. All right, I want to thank both of you for being here today.

The next panel, panel three: Mr. Lewis, Ralph Lewis, Ketchikan Pulp Company; Mr. Owen Graham, Timberlands Manager, Ketchikan Pulp Company; Ernesta Ballard, Environmental Consultant, please take the stand. We will go right down the line. Mr. Lewis, you are up first.

**STATEMENT OF RALPH LEWIS, PRESIDENT, KETCHIKAN PULP COMPANY**

Mr. LEWIS. Very good. Thank you. I want to thank the Chairman and the committee members for the opportunity to present our case. I would like to start off a little bit just by introducing myself. My name is Ralph D. Lewis. I have resided and worked for Ketchikan Pulp Company for the last 30 years. I started down in the labor pool and worked my way up and was made president of the corporation two years ago. I am one that believes in safety of the environment and doing the absolute very best you can and looking forward and trying to—and in trying to look forward, trying to anticipate what the next turns are and try to meet them.

The contract, as just stated before, was basically started up there to put some stability in Southeast Alaska. It has done—it has performed that job. It is still needed to continue that stability. It is the only year-round job, basically, that Ketchikan has. Also it would be helpful throughout Southeast Alaska on Prince of Wales Island and certainly Annette, where we have the only year-round employment on Annette Island, which is the only Indian reserve in Alaska. We have a lease with them. We lease that sawmill.

We believe in the renewable resource that trees are that; that if properly managed, that you can be there forever and it's sustainable. We have seen the fish at an all-time high. The tourism has grown substantially, even with the lobbying that has gone on. A lot of people have said the tourism would be destroyed. It has not. It has grown. It will continue to grow. We fit together very well and always have. We have the local tourist groups and everybody else support us right along with the fishing groups. Unlike what was said back in the late '80's, that it was going to devastate that area, it has not done that. It hadn't done it at that time. I think that time has proven that it is a good fit. And we hope that the committee and the Chairman can see that, can see that we do have a place and would like to continue.

I guess the main reason is to talk about the contract extension and those corrections. We are not contending nor have we intended to change any of the land use designations. We haven't changed any of the wilderness that was put in the TTRA. We haven't touched any of the other items. What had happened was after the TTRA was put into place, the Forest Service made unilateral contract changes. Those changes have already put APC out, who decided they could not operate under that contract change. It has done the same thing to us. Since 1991 we basically are a breakeven operation.

I do not believe that that was the intention of the committee back in 1990, was to put us out of business, but they need to understand that those changes that were made is in fact putting us

out of business. We have come forth to try to have this operation continue. Part of that request is the 15-year extension which will allow us to make the capital and expenditures necessary to stay up with the marketplace. Our competitors are doing that. We must also do that. And, you know, other than saying that we have support of the governor and the rest of the town and the committee, that we hope the committee is listening to us and will help us continue, because we want it to operate. I want it to operate and we want the town to have some year-round employment. It will devastate it if we are gone.

The CHAIRMAN. Are you through?

Mr. LEWIS. I am through, sir.

[Statement of Ralph Lewis may be found at end of hearing.]

The CHAIRMAN. Thank you, Ralph.

Mr. LEWIS. I am here for questions.

The CHAIRMAN. Thank you for keeping within your time. I am going to go through the other witnesses. Then we will ask questions. Owen, you are up.

**STATEMENT OF OWEN GRAHAM, TIMBERLANDS MANAGER, KETCHIKAN PULP COMPANY**

Mr. GRAHAM. Thank you. I am Owen Graham, the Timber Division Manager for Ketchikan Pulp Company. I have got a brief statement. I came primarily to answer questions.

We have been short of timber volume since TTRA was enacted. And as a result, our mills have operated intermittently. This uneven, inadequate supply delivery of timber volumes harms the government also. The cost of preparing timber sales and administering those sales is higher because of the contract changes that were imposed. The Forest Service also has admitted that to me recently. Further, the cost of producing lumber and pulp in the mills has risen dramatically as a result of this intermittent operation. And as a consequence stumpage rates are down more than they would have been otherwise.

I can't quite reach this.

The CHAIRMAN. We can hear you.

Mr. GRAHAM. You can hear me all right? The volume issues that we would like to see corrected include the amount of timber, the volume itself, the timing of that volume and the criteria for selecting that timber. For the first 40 years, the Forest Service agreed with us that the volume on our contract was 8–1/4 billion board feet overall and 192 million board feet per year. Only in the last two years has the Forest Service developed a new position that the contract volume is only 154. In addition, prior to the Tongass Timber Reform Act, we received fixed volumes at fixed dates, certain dates that we could rely on. Since then, the Forest Service has provided timber at random times and at random volumes, ranging anywhere from around 40 million per year to over 200 million per year.

In addition, since the long-term sale was not marked on the ground ahead of time as is normally done for independent sales, the contract has selection criteria to assure that KPC receives economically viable timber. That is not a guarantee of profit, but a guarantee of an opportunity for profit. Similarly, the pricing of the

timber was intended to ensure an opportunity for profit. Since KPC's long-term sale contract has an upward rate redetermination clause that's not in any other contracts, any profit potential above the level allowed by the Forest Service becomes stumpage for the government.

These changes we have asked for are going to benefit the government as well as allow KPC to continue. Thank you.

The CHAIRMAN. Thank you, Owen. Ernesta. By the way, you used to sit at that table and testify many, many years ago.

Ms. BALLARD. That was under a different name.

The CHAIRMAN. Under a different name but welcome.

## STATEMENT OF ERNESTA BALLARD, ENVIRONMENTAL CONSULTANT, BARNES AND ASSOCIATES

Ms. BALLARD. Thank you, Mr. Chairman. My name is Ernesta Ballard. I am an environmental consultant and the former administrator of Region 10 of the Environmental Protection Agency.

Mr. Chairman, passage of this bill will allow KPC to continue to make improvements that are already underway to protect the environment. The public/private partnership which will be achieved by contract extension will enable KPC to continue building an improved outflow infuser, a chlorine-free bleaching process, a rebuilt power plant, which reduces the use of fuel and burns waste more efficiently, computer controls to conserve resources and chemicals, and increased waste water treatment.

I would like to use the rest of my time this morning to address some of the allegations that have been made by opponents of this bill.

The Superfund allegation: This is not true. KPC is not under Superfund review and does not appear on any Superfund list. Suggestions that KPC has applied political pressure in this regard are preposterous.

The RCRA allegation, this is not true. Since the law's passage in 1980, KPC has had no RCRA enforcement actions.

The TSCA allegation, this is not true. KPC has properly managed and disposed of all PCB materials and as of this year will have no remaining PCBs on-site.

The water quality allegations, these are not true. They are the contention of adversaries and are vigorously disputed by KPC. They have not been substantiated by regulators or the courts.

The fish kill allegations; these are not true. The only fish kill for which KPC was responsible occurred 15 years ago, and it resulted from an accidental release of cleaning chemicals downstream of the water reservoir at Krile Lake and not at the pulp processing facility.

The allegation that KPC is on the top of the Alaska Hazard Ranking Model, this is not true. The State recently concluded that KPC should probably be excluded from the ranked list because permits and review programs already in place adequately manage pollution control.

The allegation that KPC has failed to properly study the health effect of air emissions on local residents, this is not true. KPC completed a comprehensive study of dozens of chemicals including

dioxin and showed that all were below the State's regulatory risk level. I will explain the boxes in a minute.

The allegation that KPC is the worst polluter of the Northwest, this is not true. The allegation is based on KPC's response to the toxic release inventory, which quantifies discharges in a simplified chemical report. Adversaries have taken data out of context to make this comparison. EPA does not use the report in this way.

The allegation that there is a dangerous buildup of dioxin in animals in Ward Cove, this is not true. KPC monitors for dioxin as well as metals and many organic compounds. Almost all are at levels below action thresholds and sediment standards. Dioxin is 20 times below the low risk level.

The alarm raised by KPC's opponents is unsupported and unwarranted. State and Federal regulators are knowledgeable of the most minute details of KPC's operations. Those operations are conformed to 75 permits, emergency response plans and procedures. I have a copy here in the boxes on the table for the committee's review. In addition to these boxes are a dozen studies that are underway, including pollution preventions, silver mask balance, standard operating procedures and a Ward Cove settlement remediation plan. Further discussion of these materials is in the written testimony which is supplementary to Mr. Lewis' testimony and further support for the rebuttal of the allegations appears in Mr. Allyn Hayes' testimony, which we are submitting today.

Thank you for this opportunity, Mr. Chairman.

[Statement of Ernesta Ballard may be found at end of hearing.]

The CHAIRMAN. Thank you, Ernesta. Those boxes are what?

Ms. BALLARD. In the boxes are the 75 permits, operating procedures, emergency response plans which govern the operations of Ketchikan Pulp and the additional documents describing pollution prevention measures, spill response, spill retainment and Ward Cove remediation.

The CHAIRMAN. And these are all government documents?

Ms. BALLARD. They are already in the public domain.

The CHAIRMAN. Public domain, so that refutes a lot of the accusations, a lot of—I call them rhetoric that comes from certain groups I have heard in the last three or four meetings on different legislative packages. These have already been reviewed. They have been submitted by the government and all parties concerned know they exist?

Ms. BALLARD. That is true.

The CHAIRMAN. OK, which reminds me. Let us see, you are five foot tall and weigh about 120 pounds. Those boxes, if you put them all together, are about five foot tall and weigh 520 pounds, you know. I would say this. In all due respects, you are probably more effective than they are with your testimony. I want you to know that, because you did work for EPA. You have been dealing with this project for many years, have you not?

Ms. BALLARD. Some of those documents have my name on them

The CHAIRMAN. It might be better later—I will probably be calling on you after some of the testimony given to maybe respond to some of those comments.

Ralph, what happens if we don't get the extension through—legislate——

Mr. LEWIS. If we can't get this bill passed and the way things have gone on and the way things are continuing, we will probably in the very, very near future have to announce some kind of shutdown, permanent closure.

The CHAIRMAN. OK, what would it take—and I am going to follow this through, be a manager. Let us say we don't change anything, but just adopt the present contract language that you are operating under till the year 2000—how long is the present contract?

Mr. LEWIS. 2004.

The CHAIRMAN. 2004. If we were extending existing language, what would be your position?

Mr. LEWIS. The problem with the existing language is, as I have stated before, basically we have made zero money since TTRA. The changes that were put into that contract have severely damaged our ability to be able to make a just small return. We have not done that. And that is why we are here and trying to get that corrected. We are trying to put back the contract and the words that were in the contract, not everything, but those that gave us the ability of being able to survive and make a small profit.

That has never been a large profit-making facility. A steady one, but not a large one. You know, I think it has averaged ten percent or less than ten percent from the very beginning. That goes on high and low years, so from something that you would have built in 1954, that is not a large, huge money maker. It never has been.

It wasn't produced to do that. It wasn't made to do that.

The CHAIRMAN. What about the management changes in your parent company? I heard the testimony from Ernesta talking about chlorine-free pulp process. You have been operating without that and now you have decided to put that—is that a requirement of the government or is that something that you need to be competitive or what is the reason behind it?

Mr. LEWIS. No, I think it is—number one, it is the direction the United States and following the whole of Eastern Europe is to go chlorine free. I think that our parent company our Samoa mill went chlorine free. They did that not having to do that, but knowing that that is the direction they wanted to do. We are the other mill and that was also a direction. We do have the new NPDS permits and the new permitting and the items are ahead of us that are telling us that we need to be chlorine free or somewhere at least certainly to be elementary chlorine free.

The CHAIRMAN. Well, you have been under attack, your company, for a long time, especially by the Daily News and a few other newspapers that report on how dastardly you are. How does—what happens to the community when these attacks occur?

Mr. LEWIS. Well, it is devastating. I mean, going back to the late '80's, you know, you have to be living on a small island. You have no other way off the island except by air. There are no road systems. You do have the ferry. Everything takes time. And to have in the halls of Congress bills passed to cancel your contract and to virtually put you out of business, when that starts, I guess the fear of all of that starts, the anxieties. You start wondering whether you should stay there or you should leave, whether you should make investments in your house, whether you should put a fence on, whether your kids are going to be able to go to college. And that

has been going on for a very, very long time and it is tough to live with.

The CHAIRMAN. But I see four boxes of permits issued there and you have met most all of those requirements, have you not?

Mr. LEWIS. Yes, and——

The CHAIRMAN. At what cost?

Mr. LEWIS. Hundreds of thousands, millions of dollars.

The CHAIRMAN. That might help. I have one more question. Owen, you said something I didn't ask the Forest Service about, supply of timber and how short you have been since TTRA.

Mr. GRAHAM. Yeah.

The CHAIRMAN. Are we—you are not receiving what was really intended in there? What is the problem?

Mr. GRAHAM. No, we have been short, I don't know, an average of—it would depend on how far back you go, anywhere from 30 to 50 million board feet per year from what our contract volume is. We have been getting 80 percent of the volume, but that other 20 percent we need to operate those mills. And as a result of not having it, the mills have been forced to operate intermittently. We have had pulp mill closures and sawmill closures both.

The CHAIRMAN. I keep hearing from the Forest Service they are putting it up, they are offering it. Why isn't it getting to the mill?

Mr. GRAHAM. Well, they have been offering quite a bit less than what the contract allows for. 30 to 50 million feet, that is how much below the contract level their offer has been. In addition, because of changes the courts are making in the way they design their timber sales, it takes two to three years to harvest a timber sale. When they release timber to us, all we get is a piece of paper that says you can go into some remote area and move men and equipment in and build a campsite, place for the men to live, and then build roads and then harvest timber. All that takes two to three years.

Consequently, we can only harvest each year about half of whatever our pipeline of timber is. Right now we have just under 300 million feet of timber, but 250 of that 300 we received in less than a year, and so we can't harvest it at a rate greater than about 150 million a year, which is 40 million below our contract level. The Forest Service——

The CHAIRMAN. What about lawsuits?

Mr. GRAHAM. Pardon? Lawsuits are another concern. That is part of the reason why the Forest Service is unable to provide us with our full contract volume. Of the 300 million in the pipeline there is 105 million, I think, right now that is under a pending injunction. We are waiting to see what happens later this month.

The CHAIRMAN. It is my—Mr. Miller, I am going to suggest that we are going to recess and go on with these three witnesses—when we come back, we will still be on the panel and Mr. Miller will be asking questions. We will recess now until approximately five minutes after three.

[Recess.]

The CHAIRMAN. The meeting will come back to order. Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Lewis, in your testimony on page 2 you say that this legislation is crucial to the long-term survival of KPC. The first one is allow you to invest up to

$200 million in environmental, energy efficient and operational upgrades. How does that break down? Some of the environmental work you are already undertaking, is that correct, pursuant to the court decisions——

Mr. LEWIS. That is correct.

Mr. MILLER. [continuing]—and your agreements with the Justice Department and others?

Mr. LEWIS. Yes, that is correct. That is a small part of the dollar part of this, but those are some of them that we are doing.

Mr. MILLER. And that is——

Mr. LEWIS. The spill containment.

Mr. MILLER. That is financed how?

Mr. LEWIS. That is financed through Louisiana Pacific Corporation, who is our parent.

Mr. MILLER. In your 10Q file that you refer to, Exhibit C refers to the pollution control related measures estimated costs up to $20 million. That is encompassing possible cleanup at Ward Cove and compliance with Justice Department and what else?

Mr. LEWIS. Yeah, that was the spill containment and basically taking all of our tanks that we have and building and lifting them all up and putting concrete foundations under them and putting concrete barriers around all of them in case there would be an earthquake and one of those tanks would split, that they would have been totally contained.

Mr. MILLER. But that $20 million is a——

Mr. LEWIS. Combination economics.

Mr MILLER. That is the environmental package?

Mr. LEWIS. No. No, that is just the small part that we kind of call a consent decree. Some of those items we were doing already when we went through those negotiations. We were doing some of those and upon negotiations and with the Justice Department that we finish and complete those packages. But the rest of the environmental is doing the ECF, which is elementary chlorine free. That is not part of the consent decree. That project we are probably maybe 75 percent completed on, not tied together. We have outfall that is yet to be approved by the State. We have—and there is also a mixing zone. We have a lot of some of the other small items. We have—what we need to do is to upgrade all of our computerization for the ECF, which is——

Mr. MILLER. Just let me—I don't mean to cut you off, but there is——

Mr. LEWIS. Sure.

Mr. MILLER. In terms of, like, chlorine free, the decision to do that was made some time ago, right? That part you sent away.

Mr. LEWIS. Yeah, that part——

Mr. MILLER. '93?

Mr. LEWIS. That was started—the project was started, I believe, in '94, late '94, and being spent during '95. It will be kind of set aside. And that is a part——

Mr. MILLER. I guess the question I sort of have is if the figure is $200 million, and I assume that is the environmental and the modernization.

Mr. LEWIS. Uh-huh.

Mr. MILLER. And the boilers and so forth. But in accordance—you made those decisions in '93, '92/'93, engineered them and started to make miniatures in '94/'95, I guess. What is the change here?

Mr. LEWIS. The managing, I guess, of our long-term contract and the unilateral clauses that were changed and the, you know, promises that we thought that were made to be able to have a wood supply in front of us to be able to manage the timber base and to be able to go forward. That has not worked. And with that not working, has just made it more and more difficult to operate. And that is why we are in here. Number one, to secure the completion of all that money to go forward and also get a correction to the contract clauses.

Mr. MILLER. But that—this $200 million would be financed how?

Mr. LEWIS. How will it be financed? Well, basically it will be financed through banks through LP, who will have to go out and borrow the money. We still have to stand alone as an operation and be profitable or there will be no financing. You know, it is like any segment of a business, you have got to be able to stand on your own and pay your way or there is no financing.

Mr. MILLER. Have you asked the State of Alaska for help?

Mr. LEWIS. Yes, we have, and we have been working with the State through ADA and what we really got down to was the amount of money that we were needing. I think jointly we recognized that we needed an extension to that contract to be able to borrow those funds from the State.

Mr. MILLER. So you will borrow what part of the——

Mr. LEWIS. There was about 50 million. About 50 million from the State, I think, was identified that the State could loan to us.

Mr. MILLER. Have you gone to the legislature to get it to——

Mr. LEWIS. Oh, yeah, we have done that.

Mr. MILLER. What happened?

Mr. LEWIS. Well, number one, the period of time in which to pay it back and with the other expenditures, we needed more than the eight years. ADA was extremely uncomfortable with that eight years. It didn't look like we had the ability of being able to pay that money back.

Mr. MILLER. Have you gone to Ketchikan?

Mr. LEWIS. I am sorry?

Mr. MILLER. Have you gone to the city for help in this financing or other packages?

Mr. LEWIS. We haven't gone to the city at this time or anyone else. Again, you have to have the ability to be able to pay it back. I mean, they are not going to loan you money if you don't have the ability to pay it back.

Mr. MILLER. Well, here is—I guess I am maybe not following this correctly, though, but apparently at some point, I haven't seen the date of it, at some point you penciled these transactions out over the remainder of this contract and said this doesn't work?

Mr. LEWIS. Correct.

Mr. MILLER. And I am just trying to figure out how we apportioned a lease. I mean, I want to know, kind of, what the State of Alaska is prepared to do, what would they be prepared to do beyond what they are currently authorized to do. Ketchikan just got $25 million of Federal money . If this is an important resource,

why isn't Ketchikan trying to pony up some money to help an employer and receive—you know, the state of Baltimore spent $200 million to try to attract 400 jobs in the baseball park. Why is this a Federal problem? I mean, because this bill goes beyond an extension. It goes to—the suggestion is that we have got to provide cheaper timber. We have got to provide other relief in this operation and we have got to take it out of the Federal treasury, if you will, however that translates into the Federal treasury. I want to know what the other beneficiaries are seeking to do here.

Mr. LEWIS. Well, it's——

Mr. YOUNG. Will the gentleman yield?

Mr. MILLER. One of the things—I think the Interior Department wouldn't force it because they can't commit to a local big city or even the State. I am surprised you got it out of either in a period of eight years. That is just not good business.

Mr. LEWIS. We don't have——

Mr. MILLER. Well, nobody can, but you want us to commit to a 23-year-old contract.

The CHAIRMAN. We want an extension of 15 years so that they can go out and raise some money.

Mr. MILLER. Well, I think—but I think that also brings the question as to what are others prepared to do. Why is all of a sudden a Federal——

Mr. LEWIS. It is the timber supply that is the problem.

Mr. MILLER. Well, that is your contention, but that is based upon the fact that you have to go out and go to market rates and you have to borrow all this money from the bank. I am saying there are some rich cousins here. You have got $19 billion in the State fund. You have got $25 million grant. Mind you, $110 million to Southeast Alaska that was given when the original clause language changes were given and the bill—the consolation part of it Senator Stevens got $110 million a region. Does the region think this is important?

The CHAIRMAN. We don't get into this argument——

Mr. MILLER. No, it is on my time and I want a better reason——

The CHAIRMAN. The Federal Government owns the timber.

Mr. MILLER. I understand that.

The CHAIRMAN. The Federal Government owns the timber and no one can participate until they know the Federal Government is willing to participate in the process. You can't go out and simply make wood. It is impossible. And by the way, I just got handed a little Associated Press deal, Jack Ward Thomas, that famous forester, says that the Federal Government at the minimum will be probably liable for $1.41 billion in Alaska because of negated timber contracts. That is the Chief of the Forest Service talking about the obligation of this government thanks to the Thomas Reform Act that you and I worked on.

Mr. MILLER. Well, the response would be then to cut our losses rather than extend it 15 years. We got to cut our losses and let this contract run out and be on our merry little way.

The CHAIRMAN. But you cut your losses and the company does all that, but you do not maintain the employment in that city, and I thought that is——

Mr. MILLER. You know, if the threat of 1.4 billion or whatever the threat is, you know, that that is somehow going to drive this legislation or the threat to go out of business, I think the first thing we have to know as policymakers is kind of why is this taking place. You said it is a difference in the volume of timber being offered and what you could have previously had. The Secretary was here saying we are going to meet our contractual commitments under the contract. You are suing suggesting they are not. Somebody else is suing suggesting they are going too far. And so in the middle of all this, we are told that but for this legislation, this mill is going to close down. I say, well, how can that be if there are other people who have a vital interest, supposedly, in this city of Ketchikan, the region of Southeast Alaska and the State of Alaska? Where are they?

Mr. LEWIS. And I guess the answer to that would be with the extension and having a timber base, they would be more than willing to probably loan us that money.

Mr. MILLER. And that is what the Secretary is telling you, you are going to have the timber base. They just sat here an hour and a half——

Mr. LEWIS. No, they—what has happened is, you know, you have got to know one thing. There really wasn't any claims and there wasn't any filings in the court. This 1.4 billion came about through the contract changes that were unilaterally made to the contracts. That is where the 1.4 billion came from. It was from the arbitrary change in those contracts. And that is why we are in court. What we are trying to do here is to stop that. We only—all we have tried to do with this language is to put back those changes that were made in the unilateral contract, only on our contract, not on the lands, to stop those claims and at the same time show that what we need is a 15-year extension to be able to become modern, to be able to go forward.

Mr. MILLER. With all due respect, that contract was reprehensible to the—repugnant to the American people. That is what I am saying. That is the only terms and conditions under which this bill can operate. As you saw in previous Congresses, the decision was that price was too high. Now maybe if there is a case here about unilateral alteration of the contract, maybe we have to just let this contract run out in 2004 and cut our losses in terms of public resource.

Mr. LEWIS. You know, that doesn't help the people that are up there. That doesn't help anything else. The return to the government is in the hands of the Forest Service. The return in the government dictates the type of operation, sale operation that they are going to have, what the costs are going to be in removing that timber. Their choice has been——

Mr. MILLER. But you are pitting that against what you say is required in terms of your investment. If you have to make this investment, you cannot do so under the current rules and regulations.

Mr. LEWIS. Under the——

Mr. MILLER. And the suggestion that—and all I am asking is are there other people that can chip into this in terms of the State, the region or the city, that can allow that to take place?

Mr. LEWIS. I mean, I don't know of anybody that is going to give you money without asking for it to be returned. I mean, who thinks——

Mr. MILLER. The government——

Mr. LEWIS. No, they get a return. They get $7 billion out of——

Mr. MILLER. Not——

The CHAIRMAN. The gentleman's time has run out.

Mr. MILLER. That is not sound economics.

The CHAIRMAN. I am not going to discuss that economics right now, because that has been argued over and over and over.

Mr. LEWIS. That is the basis of——

Mr. MILLER. It's not that I'm going to demand you raise——

The CHAIRMAN. The public's own demand with all due respect is to extend the contract so in fact the city can survive. And the company, very frankly, with their stockholders chose to pick up and walk away now, they could do so. I have said this time and time again, but what we are trying to do is figure a way out where we can extend the contract.

Mr. MILLER. With all due respect, that is what the owner of the Cleveland Browns said.

The CHAIRMAN. Well——

Mr. MILLER. What I am saying is so then I want to know if this is so vital to the city of Ketchikan, they get $25 million from the Federal Government, the first thing they do is hire a consultant. Why don't they come to Louisiana Pacific and say is there something we can do in terms of community development, in terms of economic development, to help you?

Mr. LEWIS. The contract——

Mr. MILLER. If they give you Federal money they'll have no options.

The CHAIRMAN. I am going to tell you one thing right off the bat. I don't care what they did with that money. I was never excited about that. I mean, that's welfare money. That is not work money. Everybody tells us we are going to start new businesses; we're going to go out and diversify the economy. And I keep saying where are you going to diversify? Unless there's timber there is no diversification. I don't care what they say. Unless you let us mine and they are not going to let us mine it. There is no other economic base in those communities. It does not exist today. You talk about fishing. Fishing cannot expand; it's exactly stable. That is State law and Federal law. You can't expand in any other arena. They talk about tourism. Right now tried it in Ketchikan we have seven boats and there during the summertime you can hardly walk the streets. You can't expand that. You have got a point here, but somewhere along the line we have to recognize that timber plays a vital role and we have to figure—if we can extend this contract, keep that town viable, that is what we are trying to do.

And by the way, all due respect, you are a lawyer. You would never come to me and expect me to lend you money. I know you would never do that, but lend me money without some guarantee you are able to pay me back. You can't do it. You can't ask—the city of Ketchikan would do it in a second if——

Mr. MILLER. Mr. Chairman, with all due respect, I don't want to lend you the forest unless I know it is absolutely necessary. And

I have a company here that has a lower debt ratio than most of the people in their industry. I appreciate that this bill may be marginal, but the question is are there other concessions that can be made by others to increase the marginal capability of this bill. And if in fact there is a problem within the Tongass reform, that will be discussed too. But what we are stating—what we are being told here is it is a full rewrite of the Tongass, but I appreciate the buffer zones and not emasculating the fish. I mean, you have to try to keep some local base. It is this rewrite—we have to go back to $2 timber or you guys can't play. Well, then we have got to ask ourselves is that a subsidy that the people of the United States desire to engage in. The answer may be yes from your perspective, and I don't know what my perspective is. It sounds a little rich to me when there are other people that can divvy up. This is how you end up with Federal deficits. It somehow becomes our problem.

The CHAIRMAN. Well, you have got my bill. It will solve the whole problem.

Mr. LEWIS. One thing, the 300 million that Mr. Janik had talked about earlier as being available or potential on the Tongass Land Management Plan, that produces and should produce approximately a minimum of maybe $70 million into the Federal coffers. That is through income tax of the workers. That is through other taxes. That doesn't take the product and take it on and on and on in through the system. That just takes your very first vendors. That more than pays for the Forest Service's budget on handling the timber. Any stumpage that comes after that is a bonus.

And the Forest Service can manage that number to the point that they want to. They can manage at the base rates. They can manage it to $100. They can manage it to $200. That is their choice. Their choice has been in the past to manage it to base rates, to management to minimums, because they have put as much protection into the environment as they can, as much protection out there as they can. They would rather take the stumpage money and put it back into the land. And all of us thought that was the way to go. We thought that is the way it should be managed. But instead, all of a sudden we get groups that came up that said that is not the way it should be managed. And it has confused all of us. It has confused every one of us, not to understand exactly what's wanted or needed.

Mr. MILLER. And that is why we have gone through the process to determine.

Mr. LEWIS. Yeah, but what you guys did was turn around and assume that the $2 at base rate was something that we had something to do with, that we chose to do that, and turned around and unilaterally changed our contract. And that was wrong, because that is not what was happening. It was not in our power to do that. That wasn't something that we were doing. It was what the Forest Service was doing. And so we got blamed for it and we got turned around and you took away any profit that—any chance for us to make a dollar and have a return. And all we have asked to do so that we can continue to operate is to come forward and make those changes back so we can survive and have an industry. And right now the way it is going, it is very difficult. We can't survive with-

out these changes. That is why we are here. We have no place else to go.

Congress is the one that interfered with our contract, not us. The Forest Service and us had agreements. We made contracts. We made changes. We did this all along and it was only Congress that came in and made that change.

Mr. MILLER. The bottom line, then, is that you cannot do business unless we give you 1951 prices 23 years from now?

Mr. LEWIS. That is what you say 1951. I will go back and say the Forest Service can make that $50 or $100.

Mr. MILLER. And there was an end to that contract.

Mr. LEWIS. But they can go back and make that rate. They can make whatever rate they want. It is not a '54 contract. Those changes—we made, I don't know, 20 changes or something like that to the life of that contract.George Leonard was one that we used to go in and negotiate changes. And he was a tough negotiator. He would sit in there and say we need this and this and this changed and we would sit down and negotiate those changes. We need to meet NFDA. We would go down and meet those. We would make those changes all along.

Somewhere along the line this thing got blown out of hand. We were told we never did this. We were told that all these things didn't happen. And all of a sudden, the next thing that you knew, we were in trouble. And we are back here asking for help. That is exactly what we are doing, because we need it. We have got our backs against the wall. And I want the people to work. I want them to have jobs and I want it to continue. That is my town. I have been there 30 years. My family were born and raised there. That is all we are trying to do. We are not trying to get any sweetheart deal. We are not trying to cut a deal or anything. We are trying to survive.

Mr. MILLER. Well, I just—you know, it is like all the discussion earlier in the panel about what a wonderful environmental record you have, except, well, you know, the expenditures pursuant to consent decrees and guilty pleas. Let us just understand something here, that the question originally arose because people found, as I said, the contract unacceptable. And we made those changes. You can litigate those changes, but if what you are telling me is that this is the only place that there is relief is to go back to those forest practices and to go back to those prices, that that is the only place there is relief, then the question may be whether or not you just play this contract out in 2004. I mean, I don't understand that, but I guess that is the case.

This is important to the town. This is important to everyone else who can stand around with their hands in their pockets saying what is the Federal Government going to do.

Mr. LEWIS. I am saying we are not going to make it to 2004 under the contract changes you made. We are not even going to make it. We are not going to make it there. That is why we are here. We are not going to make it.

The CHAIRMAN. You know, and I might say to the gentleman from California, Ketchikan is doing everything in its power so that they can divest and get this $25 million they get a substantial economy, but they can't—there is nothing they can do until the

supplier of the timber can say listen, we can extend this contract and give you some stipulation, we are telling you what is wrong with this bill and say all right, can you live with this, this and this. That is all I am asking you. This is the starting point and I have yet to find out any—other than the fact that it can't work. Tell me what will work and then let us sit down and negotiate with Ketchikan Pulp and see if there is something that can work unless you want to kill the industry.

Those of you who want to kill the industry—I don't, and I wish—and frankly, I wish people would tell me and I would be glad to—we could save a lot of time, but this gentleman, these gentlemen and this lady has a problem and that is to keep those people working, to keep the town viable.

I could ask another question but we're about—afraid we'll run out of time here.

Mr. MILLER. Well, I just—let me just ask you, in terms of the production of this facility over the last—go back a year from today, this quarter. What has been the production at the facility?

Mr. LEWIS. Our production? About 480, 490.

Mr. MILLER. But in terms of your capacity, mill capacity, that is what that translates to?

Mr. LEWIS. We believe our mill——

Mr. MILLER. Fifty percent, 90 percent?

Mr. LEWIS. Probably about 85, 90 percent.

The CHAIRMAN. And that is in pulp?

Mr. LEWIS. That is in pulp. Our sawmill, KSM, was down, I think, almost all of last year. Hemlock, our sawmill, was running, I think it was, one shift not all of last year. We—I think that has been the same for a couple years. In 1993 we were down almost 100 days for lack of wood. And we would have been down another 50 or 60 days except that APC went down and we bought wood from them. And basically that all came from the change in the wood supply and how we got our wood and where it was released.

The CHAIRMAN. And these are added value projects you are talking about? This is your sawmill?

Mr. LEWIS. Yeah, these are the sawmills that take the higher value. KSM produces lumber.

Mr. MILLER. The sawmill was down 100 days?

Mr. LEWIS. Down, if I remember—the pulp mill was down 100 days, and I believe that when APC went down, the whole area was short of wood. APC went down and we bought some of their pulp logs. It kept us running or we would have been down another 60 days or something like that, except the wood that we bought allowed us to work. And that is——

Mr. MILLER. And then how many other days due to reasons not——

Mr. LEWIS. Lack of wood? Well, the sawmills have been down—I bet you the sawmills have only run—I am just guessing, but probably 40 percent, 50 percent of the time in the last three years. They never literally with wood, out of wood. Right now KSM just got started back up and went back down. It has been pretty rough on everybody.

Mr. MILLER. The mill—how much of the time has the pulp been down due to lack of material and/or maintenance?

Mr. LEWIS. OK, the lack of material was what I just talked about. And maintenance, I would say, we usually average anywhere from 15 to 25 days, so I would say we were somewhere in that area.

Mr. MILLER. They are your scheduled——

Mr. LEWIS. That is a year, yeah. That is scheduled maintenance.

Mr. MILLER. Scheduled. Were you down more than you were scheduled for?

Mr. LEWIS. Yes. We have had some upsets where we went down. We had some areas that we went down for four or five days and started back up. I mean, things like that.

The CHAIRMAN. I want to thank the panel. You know, this is a hard nut to crack here, and I hope we can get some suggestions, as I told the Forest Service and even yourselves, so we can come to some solution to this problem. I happen to agree with you. I would not invest if I didn't have a supply in a chicken picking plant or any other kind of plant—if I knew they were short of a supply. If there was some private timber there, we wouldn't have a problem. We would have timber, not as convenient as—by the way, the mills in New York—if you want to have some fun sometime, go visit those 37 mills in New York and see what kind of contract they have, what kind of environmental qualities they have, too. This mill is ten times cleaner than that because we are a clean area. That is unfortunate.

You are excused. I want to thank each one of you for traveling so far to testify to the committee.

The next panel up is panel four: Mr. Scott Estey, Vice President of Corporate and Investment Analysis; Mr. David Roets, Southeast Regional Sales Manager from Arkansas; Mr. Al Knapp, The Industrial Company, Steamboat Springs, Colorado; and Mr. Samuel Mabry, Vice President of Government Affairs, Hercules, Incorporated, Washington, D.C. Would you gentlemen please take the witness stand.

Mr. Scott Estey, you are up. I apologize for the long wait, by the way, but this is one of the problems we have when we have these hearings. It takes a long period of time.

## STATEMENT OF J. SCOTT ESTEY, VICE PRESIDENT OF CORPORATE AND INVESTMENT ANALYSIS, JAAKKO POYRY CONSULTING, TARRYTOWN, NEW YORK

Mr. ESTEY. Thank you, Mr. Chairman. My name is Scott Estey. I am Vice President of Corporate and Investment Analysis with Jaakko Poyry Consulting North America. Jaakko Poyry provides management consulting and investment advisory services to the pulp and paper and forest products industry, as well to suppliers of equipment, raw materials, or capital to the industry.

I have been retained by Ketchikan Pulp Company to provide testimony regarding typical financial return and project life requirements for capital expenditure within the pulp and paper industry. This testimony is made in light of KPC's request for an extension of its timber supply contract with the U.S. Forest Service, stating that the extension is required in order to ensure that fiber supply is available for a sufficient period of time to allow KPC to earn an adequate return on capital expenditures at its mill in Ketchikan.

As general background on the industry, pulp and paper is a capital intensive industry which requires not only large initial investments, but also significant on-going investments for the purposes of maintenance, environmental compliance and facility improvements. Additionally, the pulp and paper industry is commodity oriented, highly cyclical and typically realizes relatively low profit margins as a result of this.

Expected rate of return, and the life of an investment project that is required in order for a company to earn that return, can vary significantly within the industry. In my experience, it is not uncommon to observe project returns ranging from negative to positive 30 or so percent and project life requirements ranging from five to 25 to 30 years. These are wide ranges, I know, and of the many factors that can potentially influence these measures, those having the most significant impact include; the timing of the expenditure relative to the industry cycle, the magnitude of the expenditure in terms of dollar volume, and the purpose or nature of the expenditure.

Within my written testimony I have provided a rough categorization of investments within the industry based on the purpose of expenditure, and I have also provided ranges for expected rate of return, as well as for required project life or investment term that are typically experienced within the industry. I have used this as a reference in formulating my opinion as to the reasonableness of KPC's request.

My knowledge of the capital program being considered by KPC is limited to the estimated aggregate value of the expenditure, approximately $200 million, the estimated completion of the expenditure, which is five to eight years hence, and a general description as provided by the company which described the expenditure as including bleach plant modifications necessary to allow the facility to produce elemental chlorine-free pulp, environmental equipment and facilities modifications, an upgrade of the power generation facilities and improvements in the mill's chemical recovery systems.

Given the general description and magnitude of the investment project, it appears that the majority of the investment could be classified best as a major replacement and environmental expenditure. Based on my review of rate of return and project life requirements in the industry, it is within the range of expectations to require 15 to 25 years to allow for an adequate return on an investment program of this nature and magnitude.

That concludes my testimony. Thank you.

[Statement of Mr. Estey may be found at end of hearing.]

The CHAIRMAN. Thank you, Jay. And I will move to David at this time, and I see the other two gentlemen probably will say we were going too late and they probably left or they'd be here.

**STATEMENT OF DAVID L. ROETS, SOUTHEAST REGIONAL SALES MANAGER, GRASEBY STI, WALDRON, ARKANSAS; AL KNAPP, THE INDUSTRIAL COMPANY, STEAMBOAT SPRINGS, COLORADO; AND SAMUEL A. MABRY, VICE PRESIDENT OF GOVERNMENT AFFAIRS, HERCULES, INCORPORATED, WASHINGTON, DC**

Mr. ROETS. Thank you, sir. My name is David Roets. I am the Southeast Regional Sales Manager for Graseby STI. Graseby STI is an Arkansas based company. We manufacture continuous emissions monitoring systems for the various industries which require them. The largest industry which we serve or play a major role in is the pulp and paper industry. We have a business relationship with the Ketchikan Pulp Company and its parent company, Louisiana Pacific Corporation.

The pulp and paper industry represents 85 percent of our company's income per year. With the down turn in the paper prices, it has been a very difficult past few years for the paper industry. This in turn has resulted in a reduced business flow for Graseby STI.

Over the past three years, we turned our focus on the utility market, which resulted in a lot of work with very little return on investment.

There are approximately seven major suppliers of CEMS in the United States. This represents a variable of approximately $100 million a year industry which is very little known. With the delays of the enhanced monitoring rules and other environmental regulations, there is just not enough business left to keep these companies afloat.

Every CEM which we sell makes a difference to our bottom line. The effects of a paper mill closing down are felt not just by the direct employees of that facility, but also by families all over the United States.

Recently, Graseby STI has been exploring the possibilities in the Asian countries. What we discovered is that the rest of the world is beginning to follow the environmental standards that were set in the United States. This means that the environmental issues which are put forth in situations such as the one presented before you today can and will be stepping stones to the way future issues of similar nature are addressed.

The importance of continuing to improve on the control of our environment is vital to our future and therefore should be pursued. Environmental regulations need to be implemented when necessary. However, they do not have to be so strenuous on the facility that it will cause them to virtually close down.

The Ketchikan Pulp Company, to my company's knowledge, has always been an environmentally aware company and has taken measures to meet or exceed the environmental regulations governing their facility. I believe that the request for an extension of the Tongass timber contract by KPC should be granted for the 15-year period in order to allow them the financial resources necessary to bring their mill up to the environmental standards which we as a nation have set and continue to set. I further believe that in doing so, our government will make a statement to the rest of the world that they are willing to work with industry to meet the future environmental goals.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, David. If you have any connections, I have a gentleman from Arkansas that'll help us out. I will tell you that right now, because he is the one that is always saying he is going to veto things. It makes it very, very—an unlevel playing field.

Scott, in your testimony now your investment—you have been asked to be—you were hired by Ketchikan Pulp. How many years do you think—15 years, is that unusual for an amortization of a loan such as $200 million? Is that short, long or in between?

Mr. ESTEY. Again, it depends on where and how the funds have been invested, but it is not atypical at all. As I mentioned, I think, 15 to 25 years, given the general description that I have of this project, is more than reasonable in terms of expectations of time required to not only repay, pay back, recoup investment, but also to earn an adequate return on that investment.

The CHAIRMAN. That is—does that gear in the rates of borrowed money or is it usually borrowed at a fixed rate?

Mr. ESTEY. Excuse me?

The CHAIRMAN. Do they borrow at a fixed rate for that $200 million so that's geared into it so they have to pay the interest?

Mr. ESTEY. Correct, yes, including your total cost of capital whether it is debt or equity.

The CHAIRMAN. Is it usual for a pulp company to seek long-term contracts for investments?

Mr. ESTEY. I would say it is usual—from the standpoint of fiber supplies, this is a particularly, you know, fairly unusual case from the standpoint that it is government lands that all or most of the timber would be coming off of. Fiber supply is a critical issue when companies are attempting to finance large projects, and it is typical that they need to show or prove security of that resource.

The CHAIRMAN. How many new pulp mills are you aware that have been built in the last ten years?

Mr. ESTEY. Pulp mills built? If we are talking about wood-based Kraft pulp mills, none in the United States.

The CHAIRMAN. Most of our fiber—if these pulp mills continue to shut down it goes to David's company, they continue to shut down, most of our paper and fiber products will be coming from overseas such as our aut——

Mr. ESTEY. I missed the first part of the question.

The CHAIRMAN. I am saying if there is no new plants being built.

Mr. ESTEY. Correct.

The CHAIRMAN. There are plants being shut down, according to David, is that correct?

Mr. ROETS. That is correct.

The CHAIRMAN. If we continue to shut those plants down, it means we become more dependent on our overseas fiber.

Mr. ESTEY. That is correct. And I think what you are seeing is large pulp mills being built in places like Indonesia. Asia Pacific in general is a huge growth region, and they are beginning to become a dominant player in the world industry.

The CHAIRMAN. Are they meeting the same standards required of Ketchikan Pulp?

Mr. ESTEY. I cannot speak in specifics on that, but generally no, the environmental restrictions and conditions they need to meet are not as stringent as in the U.S.

The CHAIRMAN. I see David shaking his head. Is that correct?

Mr. ROETS. That is correct. They are about 15 years behind us on environmental issues.

The CHAIRMAN. So what we are saying in reality, because we have become more dependent, is we can pollute the rest of the world.

Mr. ROETS. That is correct.

The CHAIRMAN. But we can't improve upon our own, because my understanding is the mill is looking to put in over $200 million to upgrade the mill to make it viable. And $200 million at, let us say ten percent interest, that is a large interest payment. And yet we're backing this industry—for the oil industry, everybody supports the oil industry, too, you know. They want to send it overseas where we have to be dependent upon it and they can pollute everything out there before we can have the requirements here. But we know what will happen, just—maybe tell them we do things about that.

David, how many plants do you serve?

Mr. ROETS. We serve about 365 mills.

The CHAIRMAN. Where are they mostly?

Mr. ROETS. Most of them are in the Southeast.

The CHAIRMAN. Southeast.

Mr. ROETS. The majority of the mills, probably 70 percent, are in the Southeast part of the United States. There is probably—the remaining portion, basically, is on the West Coast, along the West Coast, and then the remaining mill in Alaska.

The CHAIRMAN. One thing I just think I should ask you, both of you men. When I go into Arkansas and Georgia and Alabama, why do I smell that mill 24 miles away but Ketchikan I can't smell it down the street?

Mr. ROETS. Because they haven't made all the environmental changes yet that Ketchikan has made. Ketchikan is a very environmentally aware mill. They strive very hard to keep a clean environment and not be emitting everything that some of the other mills typically emit. I mean, most of these mills are meeting the standards that are set forth for their State.

The CHAIRMAN. For their State.

Mr. ROETS. For their State. State of limitations——

The CHAIRMAN. And our mill is meeting the standards of the State and the Federal Government, is that correct?

Mr. ROETS. That is correct, sir.

The CHAIRMAN. And that means really this mill up here—to judge this mill compared to any other mill, like I have heard testimony about the mills in Canada, are much better. How would you rate the Ketchikan mill?

Mr. ROETS. I would say the Ketchikan mill is far more advanced environmentally than the mills in Canada. The regulations in Canada are not as stringent as the regulations in the United States.

The CHAIRMAN. What would—Scott, you are a lender now?

Mr. ESTEY. I am not a lender, actually. We consult.

The CHAIRMAN. I am putting the lender's hat on your head.

Mr. ESTEY. All right.

The CHAIRMAN. It makes you feel good and now you are lending man too, but is there any way at all for—you heard Mr. Miller talk about the city being involved, the State being involved, is there any way as an investor you would invest without an extension of contract?

Mr. ESTEY. I guess no. To me the security of that resource is valuable to the long-term viability of the mill, and therefore the ability to pay back loans.

The CHAIRMAN. If you were advising the State permanent fund, for instance, you wouldn't advise to take that any of that money. In fact, there would probably be a lawsuit. I am surprised ADA got away with it. By a stockholder in the State fund, saying this is not a viable option here because there is no collateral.

Mr. ESTEY. Right, I would advise no, essentially since there is no other source of fiber.

The CHAIRMAN. OK. Anything you want to add?

Mr. ROETS. No.

The CHAIRMAN. I want to thank both of you for waiting very patiently. I do appreciate it. These things take a long time, but it is very, very valuable. Thank you, David. Thank you, Scott.

Next we have panel four. Take your seats and I will be back in a minute. We have Robert, Wayne, Gershon, Mary and Brian. Robert, you are up first.

## STATEMENT OF ROBERT LINDEKUGEL, SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, ALASKA

Mr. LINDEKUGEL. Thank you. My name is Buck Lindekugel and I am the Conservation Director for the Southeast Alaska Conservation Council. Dave Katz, our Forest Plan Coordinator, is behind me to answer some—help answer some questions.

I fell in love with Southeast Alaska when I was a commercial fisherman in 1980. I have been a grassroots conservation lawyer working on Tongass issues since 1988.

SEACC strongly opposes this latest assault on the 1990 Tongass Timber Reform Act. Since the fall of '94, and counting this month's scheduled hearings, the Alaska delegation has held an incredible 14 hearings and pushed 11 separate pieces of legislation on the Tongass, all of them aimed at rolling back the Tongass Timber Reform Act and other conservation laws.

Chairman Young, your footprints are over the bill to give away the Tongass and begin dismantling our national forest. You also want to hand over 200,000 acres of the Tongass to five new native corporations.

The CHAIRMAN. Robert, I am going to stop you there. Now we are talking about extension of the contract. Let us talk about extension of the contract. This is not about the Landless people or anything else but the extension of the contract. If you don't want to stick to that script, I want to take questions.

Mr. LINDEKUGEL. Well, sir, you know, I—if I may, sir, I respectfully disagree. Earlier in your statement you mentioned that——

The CHAIRMAN. We never talked about the Landless.

Mr. LINDEKUGEL. No, you didn't talk about the Lan——

The CHAIRMAN. And that's what you——

Mr. LINDEKUGEL. You talked about——

The CHAIRMAN.This bill—well, we'll leave it at that. Just continue, but you leave the Landless out. That is a separate piece of legislation. Is that agreed?

Mr. LINDEKUGEL. I will go on, sir. This KPC extension bill is one of the most outrageous pieces of special interest, corporate welfare legislation we have ever seen and one of the most damaging pieces of legislation ever proposed on the Tongass. This bill embodies the attitudes and arrogance of the land skinners and robber barons that Teddy Roosevelt fought so well. This bill is also opposed by many Southeast Alaskans.

I have got some resolutions from different organizations, communities and businesses opposing this bill that I would like to introduce into the record.

[The information may be found at end of hearing.]

Mr. LINDEKUGEL. You claim that Governor Knowles supports this bill, but the Governor is not supporting this bill. This bill does not even come close to fulfilling the conditions the Governor laid down for supporting a KPC contract extension.

Your bill would reward a major corporate polluter for violating pollution laws. KPC has a long history of violating laws, clean air, clean water, labor, health, antitrust, you name it, they violate it. They've pocketed years of profits from breaking the law and now they want the American people to pay to clean up their act.

Your bill would hammer away at the Tongass. It mandates 4.4 billion board feet of new KPC clearcuts or a line of football-field-sized clearcuts from Juneau, Alaska, to Washington, D.C., and back. This includes such places like Cleveland Peninsula, Honker Divide, Port Houghton, Ushk Bay. This cutting would occur regardless of the impacts to hunting, fishing, tourism, subsistence and other resources.

This bill would place Louisiana Pacific's corporate needs above the needs of any other forest user; it will give L-P rights that it never had before; and, threaten jobs in other Tongass-dependent industries.

Your bill would guarantee KPC 23 years of timber worth nearly $1–1/4 billion and price that timber at a fraction of its real value. It would hamstring the Forest Service's ability to protect the public interest by removing its authority to terminate this new contract because of environmental damage, and the contract would override the Tongass planning process.

You said this bill is necessary to allow KPC to obtain financing, clean up its pulp mill. But after KPC gets the contract, your bill allows them to walk away from this albatross and replace it with a facility that provides fewer jobs.

You said that KPC needs this contract because the Forest Service hasn't given them enough timber. The Forest Service has released plenty of timber to KPC. You have blamed the Tongass Timber Reform Act for the volatile business cycles that have driven timber employment down since 1990. What you haven't said is that L-P lost $22 million on pulp in the first quarter of 1996. L-P's pulp division lost money three out of the last four years. L-P's real problem is very weak international pulp markets. That is what L-P told its

shareholders. That is why L-P wants a new deal, and that is why it is holding Ketchikan hostage.

You said the Ketchikan region is economically dependent on KPC and timber, but this isn't the 1950's. Today KPC directly provides just three percent of the region's jobs and less than eight percent of Ketchikan's jobs. Ketchikan is far less dependent on this pulp mill than Sitka was on the APC mill before it closed. Yet today, Sitka is doing fine.

Southeast Alaska needs a new deal and a new direction, not L-P. Our region needs a modern, high-value added timber industry that cuts less but produces more jobs for Southeast Alaska. Steve Seley's newly proposed remanufacturing plant and dry kiln on Prince of Wales Island is one of the kinds of businesses that we would like to see thrive.

Finally, your bill is a misguided and heavy-handed government subsidized program. It deprives us of one of this country's greatest strengths, the free enterprise system. Instead of proposing policies that would bring the Tongass into the 21st century, you want to take us back to the 1950's. We urge you to stop this bill right here and right now.

I have finished my statement.

[Statement of Robert Lindekugel may be found at end of hearing.]

The CHAIRMAN. Wayne, you are up.

## STATEMENT OF WAYNE WEIHING, TONGASS CONSERVATION SOCIETY, KETCHIKAN, ALASKA

Mr. WEIHING. Thank you. My name is Wayne Weihing. I am President of the Tongass Conservation Society of Ketchikan. I am a 28-year resident of Alaska and a former 21-year employee of Ketchikan Pulp Company. During my employment at Ketchikan Pulp Company, I was union representative—union president representing approximately 300 members.

On Monday, July 1, Ketchikan Gateway Borough Assembly passed a motion to earmark $1 million from its Southeast Alaska Economic Disaster Fund to be used for efforts to extend Ketchikan Pulp Company's timber contract for 15 years and to influence the TLMP process and to send people to testify at hearings here in D.C. to support Ketchikan Pulp Company and to allow the radical so-called wise use movement in Ketchikan a free hand to use whatever tactics necessary to obtain those goals.

It is amazing to me to see those tax dollars from this economic fund now ricocheting back to Congress to be used to support a corporation, Ketchikan Pulp Company. Ketchikan Pulp Company wants a contract extension. Meanwhile, the pulp workers at the pulp mill have not had a labor agreement with a contract since 1984, that is 12 years ago, and are currently working for less wages than they made in the spring of 1984.

Once again, Ketchikan Pulp Company is threatening to shut down their mill if they don't get their way. There have been a series of threats—of shutting down and leaving Ketchikan high and dry from KPC over the last 20 years. I really feel bad for the current employees to have that same threat held over their heads now as in years past. I will give you some examples.

In 1973, following the first attempts to implement basic environmental impact statement requirements, C.L. Cloudy of Alaska Loggers Association warned that the requirements would cause complete pulp mill shutdowns and shutdowns of the remaining sawmills in Southeastern Alaska. That was Ketchikan Daily News, April 19, 1973.

On May 4, 1976 the Ketchikan Daily News headline screamed KPC will close July 1, 1977. But as the paper explained the next day, the announcement wasn't news, it was part of a publicity stunt. The paper then criticized the pulp mill for issuing false alarms one week before EPA pollution hearings and shortly before employee negotiations were due to start. One editorial concluded Ketchikan Pulp Company is crying wolf and playing with the faith of thousands of people. God help it. That was Ketchikan Daily News, May 5, 1976.

During the 1983 EPA hearings, officials from KPC said the cost of installing water pollution control equipment would force them to shut down. KPC said it would consider both legal recourse and mill closure if the variance requests were denied. That was Southeastern Log, December 1983.

In 1984, KPC's comptroller, later president Martin Pihl, claimed that if Forest Service didn't reduce the price of timber and allow larger clearcuts, we are all going to pack up and leave. That was reported in the Juneau Empire,March 29, 1984.

In 1992, EPA proposed tighter pollution controls for KPC's pulp mill. KPC's president, Martin Pihl, claimed the new pollution controls would seriously threaten the survival of the mill or any pulp mill anywhere. That is Ketchikan Daily News, April 17, '92.

On March 12, 1996, Ketchikan Daily News reported KPC would close its sawmills in Ketchikan and Metlakatla from late March until after Memorial Day because of a shortage of timber. In the same article, the Ketchikan area forest supervisor expressed his personal opinion that the current shutdown had more to do with market conditions than supply of logs.

Ketchikan Pulp Company has a track record of not being a good corporate citizen. Their latest effort and threats to get a 15-year extension or else they will shut down and leave town, this is the latest in a long line of abusive actions on KPC's part. And the extension of KPC's monopoly would continue the chronic environmental problems in my home area and prohibit any real possibility of having a viable secondary processing and manufacturing of finished wood products, which could be sustainable over the long run. It would also result in the heavy-handed clearcutting of important hunting and fishing areas that I depend on, like the Cleveland Peninsula.

In closing, I strongly oppose your legislation.

The CHAIRMAN. Thank you, Wayne, for keeping within the five minutes. Mr. Cohen, you are next.

## STATEMENT OF GERSHON COHEN, ALASKA CLEAN WATER ALLIANCE, HAINES, ALASKA

Mr. COHEN. My name is Gershon Cohen. I am the Executive Director of the Alaska Clean Water Alliance. The Alaska Clean Water Alliance is a statewide nonprofit organization dedicated to the con-

servation of Alaska's waters. ACWA works to ensure that activities in Alaska's rivers, lakes, estuaries, and marine waters protect public health, support the use of the ecosystem for food harvesting, and foster environmental and economic stability. ACWA tracks NPDES permits in Alaska to assure that discharges comply with State, Federal, and legal requirements and works to build alliances with fishing, subsistence, tourism, public health, and native groups across the State.

Sir, you have my written testimony, and I will provide that for the record. I would like to instead use my time to respond to comments that were made by earlier testifiers.

Mr. Chairman, I am not an attorney and I wouldn't want to at this time——

The CHAIRMAN. May I say that is probably the best thing you have got going for you.

Mr. COHEN. Thank you, sir. I wouldn't want to testify as to what permit compliance means, but I am looking at the four bankers' boxes here of permits. And we have been told that Ketchikan Pulp Company has always operated in compliance with their permits. I am not sure how that statement can be made. There are many notices of violation, fines, consent decrees that they are operating under that in plain language, sir, to a non-attorney would say that they have not indeed operated within their permits.

The CHAIRMAN. Could I ask you a question?

Mr. COHEN. Yes, sir.

The CHAIRMAN. Within the permits limits or in fact as a change took place, how much was the results of Federal regulations and other stipulations put into place that they were to be in compliance?

Mr. COHEN. Sir, do you mean changes in law after the——

The CHAIRMAN. As a result of regulation.

Mr. COHEN. Well, in the four years that I have been working for ACWA, the water quality standards for the State have in fact, in my estimation, become less tight, not more tight.

The CHAIRMAN. Not State, Federal.

Mr. COHEN. Well, sir, there have been changes to the Clean Water Act since that permit came into being for the mill. And they are in violation now of Clean Water Act requirements that everyone else in the country is having to follow.

The CHAIRMAN. What type of mill—can I ask you this now? If we did a testimony—have you been around any pulp mills?

Mr. COHEN. Pardon me?

The CHAIRMAN. Have you been around any pulp mills?

Mr COHEN. Yes.

The CHAIRMAN. Now if this mill compared to the one in Georgia, of the many that they have, compared to that, do they—is it cleaner or dirtier?

Mr. COHEN. I couldn't answer that.

The CHAIRMAN. I think we ought to find that out. Go ahead.

Mr. COHEN. To directly——

The CHAIRMAN. Go on with your testimony now, because you are supposed to be on open time. Go ahead.

Mr. COHEN. OK. To directly address some of those comments made earlier, sir, with respect to Superfund, it is true that KPC

is not a Superfund facility at this time. However, the survey that was done in 1991 showed that they had a high enough ranking to be considered for Superfund. At the point when the numerical ranking is completed, it becomes a question that is brought to a committee that brings in other factors, some of them political, as to whether or not a site will actually be listed as a Superfund site.

With respect to the talks of Substance Control Act, there were two PCB inspections in 1988 and in 1993. EPA complaints were issued as a result of each inspection.

With regard to the Resource Conservation Recovery Act, there have been four State inspections in the past ten years, in '88, '91, '93 and '94. All have documented numerous violations.

With respect to the State solid waste regulations, there have been four State inspections in '87, '90, '95 and '96. Three resulted in notices of violations.

According to the Rivers and Harbors Act, in 1993 the Army Corps of Engineers issued a notice of noncompliance. They found that KPC knowingly violated the permit conditions by significantly exceeding authorized dredge amounts and failing to submit water quality reports.

With regards to State water quality standards, they have been exceeded at least 94 times in the last year for color, chronic toxicity, manganese, copper, sulphur, residual chlorine and oil and grease. For the Clean Water Act, in 1994 there were unpermitted discharges of pollutants that occurred 19 times, totaling over a million gallons. Requirements for pH, fecal coliform, biological oxygen demand and total suspended solids are exceeded regularly. Ward Cove is on the State's list of impaired water bodies for accumulation of sediment, dissolved oxygen violations, color violations and elevated levels of toxic compounds.

With regards to the Clean Air Act, there was a statement made in the hearing in Juneau a month ago; Senator Murkowski asked Mr. Sowyn, the CEO for Louisiana Pacific, to try to identify the contents of a vapor from some photographs, not unlike this photograph here, sir, that were taken of the mill site. And his reply was that the air emissions were steam. Well, in 1995 Ketchikan Pulp Company admitted emitting 25 million pounds of air pollutants. This included the following: sulfur dioxide, 8,100,000 pounds; sulfuric acid, 120,800 pounds; sulfur trioxide, 210,000 pounds; total reduced sulfur, 9 million pounds; formaldehyde, 11,000 pounds; hydrochloric acid, 569,000 pounds; chloroform, 68,000 pounds.

The CHAIRMAN. Mr. Cohen.

Mr. COHEN. And I could go on, sir.

The CHAIRMAN. That's already in the record as part of your testimony. I've read it.

Mr. COHEN. OK.

The CHAIRMAN. You are out of time.

Mr. COHEN. Can I make a closing statement, sir?

The CHAIRMAN. You can make a closing statement.

Mr. COHEN. Thank you. I would like to say that ACWA does not work, sir, on timber allocation issues, and we would defer to other individuals or organizations on such matters. However, we could not begin to consider supporting extensions to the timber contract unless four conditions were met. Number one, suspension of KPC's

opposition to the 1994 EPA permit; two, a complete cessation of KPC's discharge of toxic materials to the waters of Southeast Alaska; three, the timely completion and implementation of a site remediation plan for Ward Cove; and four, an immediate initiation of the refitting of the facility to allow the company to operate in compliance with all State and Federal pollution laws.

Thank you for this opportunity.

[Statement of Gershon Cohen may be found at end of hearing.]

The CHAIRMAN. Would you—you are the one that first offered a suggestion on how to solve the problem. If we met all those requirements, then you would support it?

Mr. COHEN. Well, I would consider supporting, sir. I would have to see.

The CHAIRMAN. You know, that is sort of like, you know, kind of walking to the door. The truth of the matter is you would have no problem with the allegation if we met all those requirements. You shouldn't have.

Mr. COHEN. Well, sir, that is true. If they were ready to meet all water quality standards, State and Federal, at the end of pipe——

The CHAIRMAN. So what if we wrote into this law all the standards and gave them 15 years so they could borrow the money to do it?

Mr. COHEN. Well, unfortunately, sir, what I have heard so far is that——

The CHAIRMAN. I am not saying what you have heard. I am saying we have the authority to do that. We have the capability of doing that.

Mr. COHEN. Sir, would they be meeting these standards immediately or would they be meeting these standards three years down the line, five years down the line, ten years down the line? Would they be able to get consent decrees that would allow them to——

The CHAIRMAN. I would grant them three years. You can't do it overnight. It would take a tremendous amount of money. It would take a tremendous amount of time. You just don't do it all overnight. You know, it took them awhile to get that plant——

Mr. COHEN. Yes.

The CHAIRMAN. [continuing]—if you check the record. So I am just curious. You would support it, then, if we had met your requirements for the extension of the contract? I am going to ask the rest of them the same question, you know, because that solves the environmental problem, does it not?

Mr. COHEN. Well, yes, sir. Please keep in mind that my—that number two is a complete cessation of KPC's discharge of toxic materials to the waters of Southeast Alaska. And we don't mean three years in the future or we don't mean with consent decrees that will allow it to continue.

The CHAIRMAN. Oh, I understand.

Mr. COHEN. OK.

The CHAIRMAN. OK.

Mr. COHEN. If they stop polluting the water, we would—you know, that is our concern, sir, is pollution of the waters of the State.

The CHAIRMAN. Mary, you are up.

**STATEMENT OF MARY MUNSON, PUBLIC LANDS ASSOCIATE, DEFENDERS OF WILDLIFE, WASHINGTON, D.C.**

Ms. MUNSON. Thank you. My name is Mary Munson, Public Lands Associate for Defenders of Wildlife. We are a national organization with over 150,000 members nationwide. I thank you for the opportunity to comment, and in the interest of time I will summarize my comments and ask that my full testimony be——

The CHAIRMAN. Without objection.

[Statement of Mary Munson may be found at end of hearing.]

Ms. MUNSON. The Tongass is owned not only by Alaskans but by all Americans, and the issues involved with Ketchikan Pulp Company's performance are of national significance and not simply parochial economic or jobs issues. The Tongass is one of the world's largest intact temperate rainforest, home to over 300 wildlife species, many of which depend on old-growth forests. All Americans have an interest in ensuring that present and future generations will benefit from recreation, beauty, and resources there. Congress has a duty to oversee its management by allowing only sustainable logging consistent with habitat protection. Extending the KPC contract on the terms of H.R. 3659 would be a violation of that duty.

The National Forest Management Act requires that the Forest Service provide for the diversity of plant and animal communities. The Tongass Land Management Plan, which is now undergoing revision, is an attempt to create a blueprint for ensuring that logging activities in the Tongass are consistent with those legal requirements.

Activities taking place under the KPC contract, including the annual volume of timber to be supplied, should be covered by a forest plan. So why isn't this proposed contract renewal taking place within the context of the TLMP provision? This bill would ride roughshod over the TLMP process and force the Forest Service to provide a high volume of trees regardless of the environmental, economic, recreational, social, and ecological costs.

We believe the Forest Service simply cannot guarantee KPC the contractual volume, provide timber for independent contractors and still meet the requirements of NFMA to maintain viable populations. Significantly the definition of viable populations means only that there are enough individuals for that population to exist. It does not mean there will be enough individuals that will be left for subsistence, hunting, viewing, and other types of uses on which Alaskans and the rest of the country depend. As long as the KPC contract is in existence, timber will be the first priority and wildlife, along with the other forest resources, will take a back seat.

The area yielding much of KPC's supply is the Prince of Wales Island. One of the last remaining unprotected wildlife habitats on the island is the region of Honker Divide. Pressure to fulfill the high-volume requirements of the extended contract would surely open these areas up to KPC logging. This would require building many roads into it to reach the denser, more economically worthwhile stands. Examples of wildlife whose viability could be affected include the Alexander Archipelago wolf, river otter, Franklin's spruce grouse, flying squirrel, and Vancouver Canada goose. I could go on.

The wolf provides a good example of how the contract threatens viability. Although hunting and trapping occurs in the Tongass, logging and road building provide major threats. The wolf survives by eating deer, which in turn depend on the diverse plant community of old-growth forests. Stands with large trees are critical in hard winters because the crowns intercept snow, making travel and feeding easier. Clearcuts not only hinder deer movement in the winter, but also eventually destroys the forage because even aged trees grow completely shading the forest floor. It takes 200 to 250 years for old-growth forests to reestablish themselves, and in the interim the deer slowly disappear, and so does its predator, the wolf.

Defenders has sympathy for anyone whose livelihood would be affected by the non-extension of the KPC contract, but there are thousands of employers throughout the country which also depend on timber supplies that don't get this special deal. And many of these employers are dependent upon resources that don't have a fraction of the ecological importance and national significance that the Tongass has. As discussed by the panelists, there are alternatives which would be much less resource-intensive and run by companies without abysmal records of pollution and contract violations.

The argument that the company needs this contract in order to make necessary improvements to comply with environmental laws is outrageous. KPC has had years to make the necessary changes and declined to do so. So for this they shouldn't be rewarded by a bail-out, as represented by this bill.

Logging in one of the American people's most important and valuable forests is a privilege, and it is important that it be done through the accepted forest planning and management process. The KPC contract must be considered as part of TLMP, not as a separate initiative which ignores the scientific analysis, ecological effects, and years of public input. For that reason, as well as the incalculable adverse effects on wildlife and wildlife habitat, we strongly oppose H.R. 3659.

Thank you.

The CHAIRMAN. Brian, you are up.

**STATEMENT OF BRIAN O'DONNELL, EXECUTIVE DIRECTOR, ALASKA WILDERNESS LEAGUE, WASHINGTON, D.C.**

Mr. O'DONNELL. Hello, my name is Brian O'Donnell. I am the Executive Director of the Alaska Wilderness League. Mr. Chairman, thank you for the opportunity to share the views of the Alaska Wilderness League regarding the proposed extension of the contract between Ketchikan Pulp Company and the U.S. Forest Service.

The Alaska Wilderness League is a nonprofit organization founded in 1993 to further the protection of Alaska's incomparable natural endowment. One of our primary concerns is the sustainable future of Alaska's rainforest.

The current legislation is of great concern to the Alaska Wilderness League. We believe that H.R. 3659 will cause irreparable damage to the wilderness values of the Tongass National Forest. Congress should not only refuse to grant a 15-year contract exten-

sion, it should seriously consider immediately terminating the current 50-year contract.

The future of the Tongass National Forest is of national importance. All Americans have a stake in its sound management. This national treasure, established in 1907 by President Teddy Roosevelt, contains some of the last expanses of pristine temperate rainforest in North America. As you know, the Tongass is home to the world's largest concentration of grizzly bears, bald eagles, and Sitka black-tailed deer. The Tongass is our nation's largest, wettest and wildest national forest.

As some have stated here today, KPC has demonstrated little respect for the environment in Southeast Alaska. The Environmental Protection Agency's 1991 and 1992 Toxic Release Inventory Report ranked the Ketchikan Pulp mill as the number one toxic water polluter in the entire Pacific Northwest. KPC has chronically violated State and Federal environmental laws, and is violating these laws today.

H.R. 3659 is of great concern to every American taxpayer. Over the past few decades, Tongass clearcutting has cost the American taxpayers hundreds of millions of dollars in subsidies. Extending KPC's monopoly contract for 15 years could dramatically increase the amount of taxpayer money being spent to subsidize the clearcutting of this national treasure.

KPC's dismal environmental record and the cost to the American taxpayers are reasons enough to oppose H.R. 3659, however, the Alaska Wilderness League is most deeply concerned with the permanent loss of some magnificent, truly wild areas that would be sacrificed by fulfilling the existing KPC contract and by the possible extension by virtue of this bill. Several of these unprotected areas were designated as wilderness in the version of the Tongass Timber Reform Act which passed the House of Representatives in 1989. These areas will be clearcut either during the remainder of the KPC 50-year contract or during the proposed 15-year extension.

Ketchikan Pulp Company's bulldozers and chainsaws directly threaten the following areas. These special places deserve to be permanently protected. They include the Cleveland Peninsula, which supports highly productive populations of deer, brown bear, mountain goats and other wildlife. It is a favorite area for Ketchikan hunters and recreational users.

East Kuiu, an area important to wilderness tourism operators as well as the communities of Kake, Point Baker, and Port Protection.

Honker Divide, this critical wildlife area is the largest block of old-growth left on North Prince of Wales Island. Its canoe route offers spectacular recreational opportunities and is important to hunting and sport fishermen.

Port Houghton, this bay located on the mainland north of Petersburg is of great importance to local commercial fishermen. One of its drainages, Sanborn Creek, produces large amounts of pink salmon. The undeveloped character of this area is essential to the livelihoods of local tourism operators.

Ushk Bay, Deep Bay and Poison Cove, these bays contain important brown bear habitat and are visible to ferry travelers in Peril Strait. They are important to local hunters and recreational users.

Chicken Creek, this watershed near Hoonah is highly visible to cruise ship passengers and wilderness tourists who watch whales off Point Adolphus. It is also important to local subsistence users.

And finally, Upper Tenakee Inlet, this area is important to local subsistence hunters as well as kayakers and other recreational users. It is also important brown bear habitat.

The recreation, subsistence, wildlife, and wilderness values of these areas far outweigh their value as a short-lived source of pulp for KPC. AWL's Honorary Chairman, Former President Jimmy Carter, recently said this is a critical time for Alaska's wild lands and the American people must reaffirm our commitment to their protection.

With this firmly in mind, AWL strongly opposes H.R. 3659. Thank you.

The CHAIRMAN. Brian, in your testimony you mentioned Jimmy Carter. Just out of curiosity, Mary, have you been to the Tongass?

Ms. MUNSON. Yes, I have.

The CHAIRMAN. How long did you spend there?

Ms. MUNSON. I spent several days there. I was——

The CHAIRMAN. Days. When?

Ms. MUNSON. Well, actually it was a couple weeks.

The CHAIRMAN. When?

Ms. MUNSON. Eight years ago.

The CHAIRMAN. Eight years ago.

Ms. MUNSON. Yes, it was being clear cut then.

The CHAIRMAN. Do you——

Ms. MUNSON. I was taken by the Forest Service out——

The CHAIRMAN. Have you read the TLMP proposal?

Ms. MUNSON. Yes, I have—well, I have—it is quite thick, but I looked through it.

The CHAIRMAN. Have you read it, though? Both times I heard about Honker Divide. Do you know that is in the TLMP proposal? Does that mean that you are going to file lawsuits against the Forest Service under TLMP?

Ms. MUNSON. No, the TLMP—that is just a proposal right now. It is not——

The CHAIRMAN. Under TLMP, that is part of the timber base which they are recommending.

Ms. MUNSON. Right, recommending. We are still able to submit our comments about it. That is——

The CHAIRMAN. If they make the decision, what are you going to do?

Ms. MUNSON. Well, when they make the decision, hopefully they will incorporate our comments in it.

The CHAIRMAN. Oh, comments?

Ms. MUNSON. Yes, our comments will suggest——

The CHAIRMAN. Comments don't mean a thing because——

Ms. MUNSON. Comments can make changes——

The CHAIRMAN. [continuing]—they could cut that—if they make a decision to cut the area, what are you going to do?

Ms. MUNSON. Well, hopefully we are going to be asking in our comments for them to change the preferred alternative, so it is——

The CHAIRMAN. If they haven't changed it and they put it in, now what are you going to do?

Ms. MUNSON. Well, then I would deal with it if it happens.

The CHAIRMAN. How would you deal with it? Just like you dealt with Poison Cove, Brian?

Mr. O'DONNELL. I am sorry?

The CHAIRMAN. Just like you dealt with Poison Cove?

Mr. O'DONNELL. We have not—our organization has not filed any lawsuits on the Tongass.

The CHAIRMAN. But someone has filed a lawsuit on the Poison Cove.

Mr. O'DONNELL. That is another organization.

The CHAIRMAN. That organization—how many organizations do you think would file lawsuits in Southeast Alaska?

Mr. O'DONNELL. I can only speak for our organization, and we haven't filed any lawsuits.

The CHAIRMAN. Poison Cove has already had a lawsuit filed last week against them.

Mr. O'DONNELL. But not by our organization.

The CHAIRMAN. OK, but what if your organization did file that lawsuit——

Mr. LINDEKUGEL. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. LINDEKUGEL. For the record, that lawsuit was filed by residents from Sitka.

The CHAIRMAN. Oh, the—then it was organized.

Mr. LINDEKUGEL. Friends of——

The CHAIRMAN. Robert, don't kid me. I know who it's filed by, but it's filed. That means that it can go forward. What I am concerned with is that every time the Forest Service comes up with a proposal, Defenders of Wildlife, Wilderness—Brian, you have been to Tongass, haven't you?

Mr. O'DONNELL. Yes, I have.

The CHAIRMAN. Do you live there?

Mr. O'DONNELL. No, I don't.

The CHAIRMAN. When did you go there?

Mr. O'DONNELL. I was there in August.

The CHAIRMAN. August, last August?

Mr. O'DONNELL. Last August.

The CHAIRMAN. For how long?

Mr. O'DONNELL. For about a week or so.

The CHAIRMAN. A week or so. OK, just—I like to find out if these expert witnesses have been there or not. One thing about it, Robert, you said the governor doesn't support this bill.

Mr. LINDEKUGEL. Correct.

The CHAIRMAN. He doesn't even support the extension?

Mr. LINDEKUGEL. I didn't say that.

The CHAIRMAN. Oh, well, you said he didn't——

Mr. LINDEKUGEL. I said he——

The CHAIRMAN. It says here I have—it says I have sent a letter to Mark Splining CEO Blue Tip System regarding extension of KPC's contract. I support a contract extension subject to the five principles offered in this letter and lists all those principles. Would you support it if you had the Governor support it, if we adopt these five principles?

Mr. LINDEKUGEL. I am sorry, sir?

The CHAIRMAN. Would you support it if we adopt the five principles that——

Mr. LINDEKUGEL. No.

The CHAIRMAN. You wouldn't?

Mr. LINDEKUGEL. No.

The CHAIRMAN. Now does the Governor support it or not? I have got to get this in the record, because the Governor has gone to Ketchikan—wore this little yellow ribbon that said I am supporting this.

Mr. LINDEKUGEL. Well, if the Governor is supporting a bill, that is his job to come and tell you that.

The CHAIRMAN. Well, I mean——

Mr. LINDEKUGEL. I don't want to speak——

The CHAIRMAN. Are you speaking for him?

Mr. LINDEKUGEL. Certainly not.

The CHAIRMAN. Well, you said that the Governor didn't support——

Mr. LINDEKUGEL. No.

The CHAIRMAN. I have that letter signed on July 5 saying he supports it. It says in fact in line with these principles $700 million invested in KPC, I believe the sound and reasonable business principle is to provide an opportunity to amortize the investment, including the extension of contract to protect our area's water regional mills provide. So apparently he does support it. If he doesn't support it, I would just like to know it and I would like the people in Ketchikan to know that. So, I guess you're speaking—are you working for him now?

Mr. LINDEKUGEL. No, sir. All I can say is that that letter does not say he supports this bill.

The CHAIRMAN. It is as clear—if that is changed, why did he send it to the President? It says right here I'd support it. It says the Vice—Al Gore, Dan Wicksman, myself—where I got it. I mean, if he doesn't support it, I just want everybody to know that. I don't have any further questions. You guys are excused. And this hearing is adjourned.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

I

104TH CONGRESS
2D SESSION

# H. R. 3659

To amend the Tongass Timber Reform Act to ensure the proper stewardship of publicly owned assets in the Tongass National Forest in the State of Alaska, a fair return to the United States for public timber in the Tongass, and a proper balance among multiple use interests in the Tongass to enhance forest health, sustainable harvest, and the general economic health and growth in southeast Alaska and the United States.

---

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1996

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

# A BILL

To amend the Tongass Timber Reform Act to ensure the proper stewardship of publicly owned assets in the Tongass National Forest in the State of Alaska, a fair return to the United States for public timber in the Tongass, and a proper balance among multiple use interests in the Tongass to enhance forest health, sustainable harvest, and the general economic health and growth in southeast Alaska and the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Environmental Im-
3 provement Timber Contract Extension Act of 1996".

4 **SEC. 2. MODIFICATION OF LONG-TERM CONTRACT RE-**
5 **GARDING TONGASS NATIONAL FOREST.**

6 Title III of the Tongass Timber Reform Act (Public
7 Law 101–626; 104 Stat. 4430) is amended by adding at
8 the end the following new section:

9 **"SEC. 302. 1996 CONTRACT MODIFICATIONS.**

10 "(a) DEFINITIONS.—In this section:

11 "(1) The term 'board feet' means net scribner
12 long-log scale for all sawlogs and all hemlock and
13 spruce utility grade logs.

14 "(2) The term 'contract' means the timber sale
15 contract numbered A10fs–1042 between the United
16 States and the Ketchikan Pulp Company.

17 "(3) The term 'contracting officer' means the
18 Regional Forester of Region 10 of the United States
19 Forest Service.

20 "(4) The term 'mid-market criteria' means an
21 appraisal that ensures an average timber operator
22 will have a weighted average profit and risk margin
23 of at least 60 percent of normal in a mid-market sit-
24 uation, representative of the most recent 10 years of
25 actual market data.

"(5) The term 'proportionality' means the proportion of high volume stands (stands of 30,000 or more board feet per acre) to low volume stands (stands of 8,000 to 30,000 board feet per acre).

"(6) The term 'purchaser' means the Ketchikan Pulp Company.

"(b) FINDINGS.—Congress finds the following:

"(1) On July 26, 1951, the Forest Service, on behalf of the United States, and the purchaser entered into a contract to harvest 8,250,000,000 board feet of timber from the Tongass National Forest in the State of Alaska. While the contract is scheduled to end June 30, 2004, it acknowledges an intention on the part of the Forest Service to supply adequate timber thereafter for permanent operation of the purchaser's facilities on a commercially sound and permanently economical basis. This legislation is necessary to effectuate that intent.

"(2) A pulp mill or similar facility is necessary in southeast Alaska to optimize the level of year-round, high-paying jobs in the area, to provide high value added use of low-grade wood and by-product material from sawmilling operations, and to maintain a stable regional economy.

1 "(3) The purchaser plans to make environ-
2 mental and operational improvements to its pulp
3 mill, including conversion to an elementally chlorine
4 free bleaching process, expansion of wastewater
5 treatment facilities, relocation of the existing
6 wastewater outfall, and improvements to chemical
7 recovery and power generation equipment. Total
8 capital expenditures are estimated to be
9 $200,000,000, $25,000,000 of which the purchaser
10 has already invested.

11 "(4) Extension of the contract for 15 years is
12 the minimum reasonable extension period to allow
13 amortization of these environmental improvement
14 and energy efficiency projects.

15 "(5) Ketchikan is the fourth largest city in
16 Alaska. Its economic and job base are extremely de-
17 pendent upon the continuation of the contract, which
18 provides the principal source of year-round employ-
19 ment in the area. The purchaser has stated among
20 its goals and objectives the following:

21 "(A) Continuation of a long-term commit-
22 ment to Ketchikan and southeast Alaska, in-
23 cluding maintenance of a stable Alaskan
24 workforce, utilization of Alaskan contractors,

1 vendors, and suppliers to permit those busi-
2 nesses to hire and maintain Alaskan employees.
3 "(B) Participation in the Forest Service's
4 land management planning process with other
5 users so that the process may be completed ex-
6 peditiously with maximum information.
7 "(C) Adherence to sound principles of mul-
8 tiple-use and sustained yield of forest resources
9 providing for the production of sustainable con-
10 tract volumes for the purchaser and the other
11 timber operators in southeast Alaska and the
12 protection and promotion of other forest uses,
13 including tourism, fishing, subsistence, hunting,
14 mining, and recreation.
15 "(D) Protection of air, water, and land, in-
16 cluding fish and wildlife habitat, through com-
17 pliance with applicable Federal, State, and local
18 laws.
19 "(E) Commitment to continue to explore
20 new processes and technology to maximize the
21 use of timber harvested and increase the value
22 of products manufactured in southeast Alaska.
23 "(6) The national interest is served by a policy
24 that accomplishes the proper stewardship of publicly
25 owned assets in the Tongass National Forest, a fair

1 return to the United States for public timber in the
2 Tongass National Forest, and a proper balance
3 among multiple use interests in the Tongass Na-
4 tional Forest to enhance forest health, sustainable
5 harvest, and the general economic health and growth
6 in southeast Alaska and the United States in order
7 to improve national economic benefits. The national
8 interest is best achieved by fostering domestic forest
9 product markets and by modifying the terms of the
10 contract pursuant to subsection (c).
11 "(c) CONTRACT FAIRNESS CHANGES.—The contract
12 is hereby modified as follows:
13 "(1) EXTENSION.—The term of the contract is
14 extended by 15 years from June 30, 2004.
15 "(2) SALE OFFERING PLAN.—The contract
16 shall include a plan describing the amount of vol-
17 ume, location, and the schedule by which the pur-
18 chaser shall receive the timber required by para-
19 graph (3) for the remainder of the contract term.
20 The plan shall be coordinated with the Tongass
21 Land Management Plan.
22 "(3) VOLUME REQUIREMENTS.—The volume of
23 timber required under the contract shall be provided
24 in 5-year increments of 962,500,000 board feet,

1 which the purchaser shall be obligated to harvest in
2 an orderly manner, subject to the following:
3 "(A) Until March 1, 1999, when the next
4 5-year increment is provided to the purchaser,
5 the Forest Service shall provide the purchaser
6 with at least 192,500,000 board feet per year
7 of available timber at a date certain each year
8 and shall maintain a supply of timber adequate
9 to insure the purchaser can reasonably harvest
10 192,500,000 board feet each year.
11 "(B) To ensure harvest in an orderly man-
12 ner, the contracting officer shall provide for the
13 construction by the purchaser of roads in por-
14 tions of the 5-year increment area of timber in
15 advance of the 5-year operating period by in-
16 cluding such roads in the environmental impact
17 statement prepared for the 5-year operating pe-
18 riod.
19 "(C) Timber selected for inclusion in the
20 5-year increment shall meet the mid-market cri-
21 teria.
22 "(4) APPRAISALS AND RATES.—The contracting
23 officer shall perform appraisals using normal inde-
24 pendent national forest timber sale procedures and
25 designate rates for the increments of timber to be

1 provided. The rates shall not be designated at a level
2 that places the purchaser at a competitive disadvan-
3 tage to a similar enterprise in the Pacific Northwest
4 and those rates shall be the sole charges the pur-
5 chaser shall be required to pay for timber provided.
6 "(5) MEASUREMENT OF PROPORTIONALITY.—
7 The Forest Service shall measure proportionality
8 using the following criteria:
9 "(A) Measure for groups of all contiguous
10 management areas.
11 "(B) Measure proportionality by acres.
12 "(C) Measure proportionality over the en-
13 tire rotation age.
14 "(6) CONVERSION OR REPLACEMENT OF PULP
15 MILL.—The purchaser may convert or replace, in
16 part or in whole, its pulp mill with a facility the
17 manufactures any other value added product that
18 utilizes pulp logs as a raw material component.
19 "(7) UNILATERAL TERMINATION.—The unilat-
20 eral termination clause of the contract is eliminated.
21 "(8) SUBSEQUENT MODIFICATIONS.—Any
22 clause in the contract, as modified by this sub-
23 section, may be further modified only by mutual
24 agreement of the Forest Service and the purchaser

1 and may be so modified without further Act of Con-
2 gress.
3 "(d) EFFECTIVE DATE FOR CONTRACT MODIFICA-
4 TION.—
5 "(1) EFFECTIVE DATE.—The modifications
6 made by subsection (c) shall take effect 45 days
7 after the date of the enactment of the Environ-
8 mental Improvement Timber Contract Extension Act
9 of 1996.
10 "(2) MINISTERIAL DUTY TO MODIFY THE CON-
11 TRACT.—Not later than such effective date, the con-
12 tracting officer shall revise, as a ministerial function,
13 the text of the contract to conform with the modi-
14 fications made by subsection (c) and implement the
15 modified contract. The contracting officer shall
16 make conforming changes to provisions of the con-
17 tract that were not modified by subsection (c) in
18 order to ensure that the modifications made by such
19 subsection are implemented.
20 "(e) TRANSITION TIMBER SUPPLY.—Timber volume
21 available or scheduled to be offered to the purchaser under
22 the contract in effect on the day before the date of the
23 enactment of the Environmental Improvement Timber
24 Contract Extension Act of 1996 shall continue to be of-
25 fered and scheduled under the contract as modified by

1 subsection (c) along with such additional timber volume
2 as is necessary to satisfy the timber volume requirement
3 of 192,500,000 board feet per year.".

FINAL

STATEMENT OF
JAMES R. LYONS, UNDER SECRETARY
NATURAL RESOURCES AND THE ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Committee on Resources
and the
Subcommittee on Resource Conservation, Research and Forestry
Committee on Agriculture
United States House of Representatives

Concerning H.R. 3659, the Ketchikan Pulp Company
Timber Contract Extension Act

July 11, 1996

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to present the Administration's views on H.R. 3659, the Ketchikan Pulp Company Timber Contract Extension Act. I am accompanied today by: Phil Janik, Regional Forester of the Alaska Region; Jim Perry, Associate General Counsel of the Department of Agriculture; Brad Powell, Forest Supervisor of the Ketchikan Area of the Tongass National Forest; and Fred Walk, Alaska Region Timber Management Director and contracting officer for the Ketchikan Pulp Company contract.

The Administration strongly opposes H.R. 3659. The bill would amend the Tongass Timber Reform Act to unilaterally modify the provisions of the long-term timber sale contract with Ketchikan Pulp Company (KPC) and extend it for 15 years until 2019. In so

doing, the bill undermines the Secretary of Agriculture's authority to manage the resources of the Tongass National Forest; restricts the Secretary's ability to adapt to changing environmental information; provides special benefits to a private corporation; and conflicts with certain existing laws, including the National Forest Management Act and other provisions of the Tongass Timber Reform Act.

Secretary Glickman has committed the Department to maintaining a sustainable timber flow to Ketchikan Pulp Company in accordance with the terms of the existing contract, the Tongass Timber Reform Act, and other relevant statutes. If the United States decides to continue a contractual relationship beyond the year 2004 with KPC, we believe that the appropriate vehicle would be a new contract in accordance with the Tongass Timber Reform Act -- not the one provided in H.R. 3659.

While the Department would welcome a discussion of timber-related opportunities for southeast Alaska, we strongly object to legislating an extension of the current KPC contract as provided for in H.R. 3659. Should the bill come to the President for signature in its present form or as an amendment to other legislation, we would recommend that he veto it.

What the Bill Does

We object to the statutory modification of the existing long-term timber sale contract with Ketchikan Pulp Company in H.R. 3659. The

contract is almost 50 years old and is the subject of substantial litigation. In addition, a number of significant environmental laws have been enacted since the contract was signed.

Section 2(b)(1) of H.R. 3659 states that the "contract" acknowledges an intention on the part of the Forest Service to supply adequate timber after the completion of the contract "for permanent operation of the purchaser's facilities." However, neither the original 1951 contract nor the post-Tongass Timber Reform Act contract obligate the Forest Service to grant or approve an extension of the long-term contract.

Language in Section 2(b)(3) states that KPC plans to make "environmental and operational" improvements to its facility. Language in Section 2(b)(4) states that 15 years is the minimum reasonable contract extension period necessary to allow for the amortization of these improvements. H.R. 3659 requires that the Government continue a contractual relationship with KPC in order to assure that investments made by KPC may be amortized. An arrangement of this kind between the Government and a private corporation -- to substantially reduce business risk associated with improvements made to a private facility -- is unusual. We are concerned that this may create a precedent.

The bill contains provisions that are unclear, problematic, or the subject of ongoing litigation: Section 2(a) contains problematic definitions, such as definitions of the contract, mid-market criteria, and proportionality. Language in section 2(c)(2)

concerning the sale offering plan could effectively put the contract above the land management plan. Language in Section 2(c)(3) and 2(e) would put into law volume requirements currently disputed in litigation. Language in Section 2(c)(4) requiring that contract stumpage rates not place the purchases at a "competitive disadvantage to similar enterprises in the Pacific Northwest" is legally inexact and would likely generate extensive litigation. Language in Section 2(c)(7) would compromise the Chief's ability to terminate the contract to prevent "serious environmental damage, serious damage to cultural resources" or should the contract be "significantly inconsistent with land management plans adopted or revised."

Background

Several fifty-year timber sale contracts were used in Alaska to promote rural development and economic stability. We believe that the long-term contracts in Alaska accomplished their objectives in facilitating the establishment of a timber industry in Southeast Alaska and contributing to the early growth and development of Southeast Alaska's economy.

The economic climate has changed dramatically since Ketchikan Pulp Company's contract was signed in 1951. Recreation and tourism now draw over 600,000 visitors a year to Southeast Alaska -- more than double the visitation in the past 15 years. Sport and commercial fishing are also significant elements of the economy of Southeast Alaska and one of the top producers of jobs and revenues.

Statutory direction has also changed since Ketchikan Pulp Company's contract was signed in 1951: the Multiple-Use Sustained-Yield Act, the National Forest Management Act, the National Environmental Policy Act, the Alaska National Interest Lands Conservation Act, the Alaska Native Claims Settlement Act, and the Endangered Species Act, as well as specific legislative direction in the Tongass Timber Reform Act (TTRA) have been enacted. These laws have affected the way that we manage the Tongass and require the protection of certain resources and the sustainability of other resources and multiple uses of the forest.

In addition, Mr. Chairman, public concern about natural resources has grown since KPC's contract was signed in 1951. More people in Alaska and around the nation are concerned about the sustainability of resources of the Tongass National Forest. They expect timber, recreation, fish and wildlife, as well as the other commodity and non-commodity resources to flow from the Tongass National Forest.

Changes in the economy, in the law, and in public expectations make it increasingly difficult to reach consensus on how to manage the Tongass and find the balance between commodity and non-commodity uses. Committing resources through a legislated extension of the KPC contract as provided in H.R. 3659 would further limit management options on the Tongass and undermine our ability to balance these competing interests.

Through the revision of the land management plan, the Forest

Service has been working tirelessly over the last several years to build consensus on how to manage the Tongass National Forest. We are committed to completing the revision of the Tongass Land Management Plan in the near future. We believe that we will be better equipped to make decisions about future long-term commitments to timber-related industries in Southeast -- reflecting sound scientific information and extensive public input -- once the revision process is completed.

Mr. Chairman, let me provide you updated information about the Forest Service's ability to meet their timber volume commitment to Ketchikan Pulp Company's existing contract. From 1989 to 1994, the Forest Service offered KPC 935.6 MMBF of timber. In that same time period, KPC harvested 926.9 MMBF. In 1995 the Forest Service offered KPC 157 MMBF and we are targeting 217 MMBF for 1996. Most of the 1996 program for KPC has been offered already -- indicating Forest Service efforts to meet KPC's concerns about early delivery. Forest Service figures indicate KPC currently has 295 MMBF under contract, although as always, litigation may affect the availability of some of this timber volume to KPC.

One of the significant factors to be taken into consideration in any discussion with KPC is the pending litigation against the United States. KPC is currently pursuing four claims against the United States claiming hundreds of millions of dollars in damages. While KPC is suing the United States over the interpretation of the provisions of the original contract and the changes that the Tongass Timber Reform Act made to the contract in 1991, it is

difficult for the Administration to consider entering into any new arrangement with them.

Conclusion

Mr. Chairman, for the last half century, the Forest Service has worked with private companies in many ways to develop a stable economy in Southeast Alaska and to promote the long-term sustainability of natural resources. We believe that the mission of the contract -- developing an industry base and providing year-round employment to support socio-economic development -- has been accomplished.

We would welcome a broad-based discussion of future timber-industry opportunities in Southeast Alaska, but we object to H.R. 3659 that circumvents the planning process, conflicts with the Tongass Timber Reform Act, and obligates the resources of the nation to one company for one purpose only, without a thorough analysis and discussion of options.

This concludes my testimony. We would be pleased to answer any questions you may have.

# TESTIMONY OF

# SCOTT W. HORNGREN

## BEFORE A JOINT HEARING OF THE HOUSE COMMITTEE ON AGRICULTURE AND COMMITTEE OF RESOURCES

## REGARDING H.R. 3659

July 11, 1996

My name is Scott Horngren. I am a partner in the law firm of Haglund & Kirtley of Portland, Oregon. Our firm represents timber sale purchasers throughout the west who hold Forest Service timber sale contracts. I am testifying on behalf of the Northwest Forest Resource Council, a coalition of timber trade associations comprised of over 90% of federal timber purchasers in the Pacific Northwest. Our firm has represented timber sale contractors in the United States Court of Federal Claims, the Federal Circuit Court of Appeals, and the Agricultural Board of Contract Appeals.

I am here today to discuss the implications of the recent Supreme Court decision in United States v. Winstar Corporation, No. 95-865, 1996 U.S. LEXIS 4266 (July 1, 1996), as it relates to Forest Service timber sale contacts. The Winstar case is a culmination of over a half decade of litigation over government contract liability for statutory and regulatory changes to minimum capital standards for saving and loan associations. These changes effectively caused the demise of numerous savings and loan associations including two of the plaintiffs in Winstar. The Winstar decision has implications throughout the government contracting field, and for federal timber sale contracts in particular.

Federal timber purchasers are being bombarded by regulatory and policy changes. These changes include adoption of the President's Northwest Forest Plan that essentially prohibits harvest in late successional reserves, establishes vast buffer

zones along fish and non-fish bearing streams, and imposes severe restrictions on the seasons in which logging can occur. Similarly, the Forest Service in the inland west has adopted the Inland Native Fish Strategy (INFISH), and the Pacific Anadromous Fish Strategy (PACFISH). A screening process for timber sales has been adopted, as well as California spotted owl, Mexican spotted owl, and northern goshawk protection standards.

The Winstar decision should leave little doubt that the government will be contractually liable to the timber purchasers for the reduction or elimination of timber sold under the contract. I'd first like to summarize the Supreme Court's decision in Winstar and then apply those principles to federal timber sale contracts.

## I. THE WINSTAR DECISION.

During the savings and loan crisis in the mid-1980s, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The Act forbid thrifts from counting good will as capital credits in computing the required minimum capital reserves. The plaintiffs in the case were three federal thrifts, two of which were seized and liquidated by federal regulators for failing to meet the new capital requirements. The thrifts sued the government contending that the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation (FSLIC) had breached the contractual promise that the thrifts could count supervisory good will towards the regulatory capital requirements. The government

argued first that it was not liable because it had not "unmistakably" promised to refrain from regulatory changes on the face of its contracts with the thrifts. The government believed that to hold in favor of the thrifts would essentially exempt the thrifts from the regulatory authority. Second, the government maintained that the regulatory change was merely a public and general "sovereign act" insulating the government from liability. The Supreme Court rejected both these defenses.

First, the Court held that the "unmistakability doctrine" did not insulate the government from liability. Interpreting the government's contractual obligation to allow the thrifts to consider supervisory good will, essentially did not preclude the government's exercise of authority to modify its regulation. Awarding the thrifts' damages for breach would not amount to a limitation on the government's authority to regulate the institutions. The Supreme Court held that to apply the unmistakability doctrine to the thrifts would essentially compromise the government's capacity to make contracts.

Second, the Court held that the sovereign acts doctrine was not a valid defense. Under the sovereign acts doctrine, so long as the government's legislative or executive acts are public and general, they cannot be deemed to violate contracts between the government and private parties. The government maintained that the imposition of more stringent regulatory capital requirements under FIRREA was a "public and general act" and that the changes could not be considered a breach of the government's

contract. The Supreme Court disagreed and held that the particular facts did not even warrant the application of the doctrine and even if the doctrine did apply, it was not sufficient to absolve the government of liability in a contract that allocated risks of the regulatory change to the government in a highly regulated industry.

The Court rejected the government's distinction that its actions were regulatory rather than non-regulatory. The Court saw little clear distinction between the two and held that the government cannot avoid contractual liability merely by passing a "regulatory statute." The Court found it significant that the regulatory legislation was motivated by government self interest, and that it was impossible to attribute a "public and general" character to FIRREA when the legislation had the substantial affect of helping the government out of improvident agreements. The government was not permitted to shift the costs of meeting legitimate public responsibilities to private parties. The Court emphasized that the government may not force some people alone to bear public burdens which should be borne by the public as a whole.

II. **APPLICATION TO FEDERAL TIMBER SALE CONTRACTS.**

Like the thrift industry, the timber industry, particularly during the last two decades, has been a highly regulated industry. The Supreme Courts notes that thrift programs were a federally conceived and assisted system to provide citizens with affordable housing funds through savings

and loans. Similarly, the federal timber sale program was designed to supply the raw material for domestic housing needs through the timber purchasers.

While the Forest Service has not, to my knowledge, used the unmistakability doctrine as a defense in any pending timber sale contract dispute, the Winstar decision should dispel any thoughts of doing so. Clearly, compensating timber purchasers for the reduction or elimination of its contracted for timber would not preclude the government from exercising its authority to regulate activities on the national forests. Such regulation does not implicate the exercise of the taxing power or other unique governmental power. Rather, regulation of timber sales is more akin to supply contracts and as the Supreme Court stated, "no one would seriously contend that enforcement of humdrum supply contracts might be subject to the unmistakability doctrine." Id. at *71. As in Winstar, awarding damages for breach would not limit the government's regulatory power, albeit, it would require the government to pay for the consequences of its regulation.

Likewise, the sovereign acts doctrine also does not apply to timber sales regulation. The actions of the Forest Service in "screening" existing timber sales or imposing buffer strips in which harvest cannot occur are not "public and general" acts. Specifically, given the Winstar decision, any past statements by Congress to assert the sovereign acts doctrine to avoid contract damages in timber sale cases is likely to fail.

For example, regarding the Alaska Pulp and Ketchikan Pulp contracts, the House Committee on Interior and Insular Affairs wrote:

> The Committee considers termination of the long-term contracts to be an appropriate exercise of the federal government's power to protect the public interest and that, pursuant to 'sovereign act' immunity, no damages shall be paid to an PC or KPC.

H.R. Rep. No. 101-84, 101st Cong., Sess. at 24 (June 13, 1989). While ultimately the contracts were unilaterally modified by Congress rather than terminated, the assertion of the sovereign acts doctrine is likewise ineffective. This is particularly true when the statute is directed at an individual contract despite self-serving legislative pronouncements to the contrary that the legislation is "public and general."

The Winstar decision holds that unless contracts explicitly provide otherwise, the government bears the risk of statutory and regulatory changes that preclude completion of the contract. This is the case for the majority of timber sale contracts in the West and will strengthen timber purchaser's contract claims against the government.

I am not alone in concluding that the Winstar case will strengthen, rather than weaken the timber contractors' arguments that regulatory changes affecting its contracts amount to a breach. This position is supported by the Forest Service's own analysis of its contract, by the National Forest Management Act, and by Federal Court of Federal Claims and Board of Contract

Appeals decisions in timber contract cases which refused to apply the sovereign acts doctrine.

The Forest Service Chief has interpreted the agency's timber sale contract to require compensation for the difference between the contract price of the timber and its market value, regardless of whether a contract is modified, canceled, or partially canceled for environmental reasons. In an April 27, 1992 memorandum to Regional Foresters, the Chief noted that:

> Recently several Regions have had a need to modify, partially cancel, or cancel sales because of species listed under the Endangered Species Act or because of possible impacts to species considered sensitive within that Region. Questions have arisen concerning procedures in contract modification, cancellation, and the calculation of purchaser compensation. The following provides information and direction in these areas.

The Chief noted that:

> In determining compensation, the plain meaning of the WO-C(T)9.5 (10/77) timber sale contract provision must be followed. This provision provides, in part, damages for the difference between the contract value for the deleted/uncut volume of timber and the value of comparable timber sold within the six months preceding cancellation.

Id.

This government interpretation is consistent with the regulation at 36 C.F.R. § 223.116 governing compensation for cancellation of contracts. Although later contract clauses have attempted to limit compensation, those clauses are inconsistent with the governing regulation. Thus, more recently, the United States Department of Agriculture has requested a change to 36

C.F.R. § 223.116, which still is the regulation governing timber sale contract termination for cancellations of timber sales to protect threatened and endangered species and the environment. In the President's Unified Regulatory Agenda, the U.S.D.A explained:

> It is not the Department's policy to prepare and offer timber sales which would jeopardize the survival of threatened or endangered wildlife species or which would cause a sensitive species to be listed. However, as more scientific data is gathered, it is possible that some timber sales which were consistent with planning guidance at the time they were offered must be canceled in the light of new knowledge. During the 1993-1996 period, this may happen with timber sales located in the habitat of the Mexican spotted owl, the northern goshawk, the marbled murrelet, and northern spotted owl. In these situations, the difference between the Government's liability under the current regulation and its liability calculated using the method in the proposed regulation is approximately $300 million. 59 Fed. Reg. 57003, 57026 (Nov. 14, 1994).

Regulatory changes affecting the management of national forests must be incorporated through the land and resource management plans. Congress gave the Secretary of Agriculture authority to revise existing contracts to be consistent with such plans. 16 U.S.C. § 1604(i). However, "any revision in present or future permits, contracts, or other instruments made pursuant to this section shall be subject to valid existing rights." Id. Thus, even before Winstar, the Forest Service had a difficult argument that it was not liable for regulatory changes affecting timber sale contracts. After Winstar, the argument becomes extremely difficult, if not impossible.

Finally, the sovereign acts doctrine has had little success as a defense to timber contractor's breach of contract claims. Summit Contractors, AGBCA Nos. 81-252-1, 83-312-1, 86-1 BCA ¶ 18,632 held that deletion of timber to protect eagle and osprey nests required the government to compensate the purchaser and the sovereign acts doctrine did not apply. The board held that although "the Forest Service had the power to modify the contract to prevent harm to the osprey nest, [it] was the nevertheless obligated to pay the contractor for any damages occasioned by the modification". Summit at p. 93,629. Similarly, in Everett Plywood v. United States, 227 Ct. Cl. 425, 615 F.2d 723 (1981) the court held that:

> "[E]ven where the Forest Service decided to repudiate some of its contractual obligations in order to protect the environment, it is nevertheless liable to the contractor for damages caused as a result of such repudiation.

More recently, the Forest Service was held liable for a deletion of timber from a sale to protect the marbled murrelet following the regulatory change listing the murrelet as a threatened and endangered species. The court in Davidson Industries, AGBCA No. 95-166-1, 96-2, BCA ¶ 26.299 (1996) held that the government was liable to Davidson for a deletion of timber from its contract for the marbled murrelet on the Siuslaw National Forest.

**III. CONCLUSION.**

In conclusion, federal timber purchasers will successfully rely on the Winstar case in their claims against the

government for breach of contract when the government's regulatory actions reduce or eliminate timber from their sales.

The existing contracts, regulations, and court decisions already acknowledge the government's obligation to compensate the purchasers when their contracts are abrogated. The Winstar case only enhances the purchasers' position.

**TESTIMONY BY**

**Ralph D Lewis**
**President**
**Ketchikan Pulp Company**

**BEFORE**

**The House Resources Committee and**

**The House Agriculture Committee**

**CONCERNING**

**The Contract Extension and Environment Improvement Act of 1996**

**Washington, DC**

**July 11, 1996**

Mr. Chairman and members of the Committee:

Thank you for this opportunity to testify. My name is Ralph D Lewis, and I am the President of Ketchikan Pulp Company (KPC). I have lived in Ketchikan, Alaska, and have been a KPC employee for 30 years. KPC can employ over 1,000 workers in our timber facilities, our Annette and Ketchikan sawmills, and our Ward Cove pulp mill and administrative offices. These workers produce a number of value-added timber products, including sawn lumber and our high-quality Tongacell dissolving pulp. KPC is the largest private employer in southeast Alaska.

As a long-time, permanent resident of southeast Alaska, I am sincerely concerned about the economic health of the timber industry and the City of Ketchikan's socio-economic stability. Since 1990, Alaskans have lost over 42 percent of the forest products industry jobs in the Tongass National Forest. That is why we support passage of S. 1877 and H.R. 3659.

The currently robust Ketchikan economy was built, in large part, by KPC employees and long time Ketchikan residents. A strong KPC is absolutely critical to maintaining the region's economic health. KPC is committed to continuing to provide the well-paying, year-round employment it has supplied for over forty years. To succeed, we need a stable timber supply. We depend on our long- term contract to provide that stability. I come before you today to ask that you give favorable consideration to a 15-year extension of our contract, as well as to fairness modifications to our contract.

Accompanying me today are a number of key members of our management and environmental team. They include Troy Reinhart, Employee Affairs and Public Relations Manager; Owen Graham, Timber Manager; Allyn Hayes, Pulp Mill Operations Manager; Richard Leary, Controller; and Ernesta Ballard, an environmental consultant to KPC and former EPA Region 10 Administrator

**S. 1877 & H.R. 3659**

S. 1877 and H.R. 3659 are crucial to the long-term survival and competitiveness of KPC. This legislation will:

a. Allow us to invest up to $200 million in environmental, energy efficiency and operational upgrades;

b. Make fairness modifications in the unilateral contract changes the Forest Service implemented in 1991; and

c. Create a win - win situation where both the environment and jobs are protected.

What this bill does not do is:

a. Make changes in land designations, stream buffers, other on-the-ground management goals, or the management direction of the Tongass National Forest.

b. Change the amount of timber made available to KPC each year for harvest.

**A Short History of Ketchikan and KPC**

Consideration of this legislation requires an appreciation of the special circumstances that led to the KPC long-term contract. In 1947, when President Truman signed the Tongass Timber Act into law, Ketchikan, Alaska, had streets paved with wooden planks. In the years since the early 1950's when the *Ketchikan Chronicle* headline read "Pulp Contract Let," Ketchikan has changed a great deal. The vibrant, modern community we live and work in today is the direct result of an initial $54 million investment that Puget Sound Pulp and Timber (PSPT) and American Viscose

Corporation made to build the KPC pulp mill at Ward Cove. Since initial startup, KPC has made additional capital investments in excess of $325 million. These companies would not have made the investment were it not for the long-term contract signed with the U.S. Forest Service. That contract guaranteed KPC a stable, economic timber supply at sufficient quantities to recoup the necessary investment and envisioned perpetual operation of the facility on the basis of Tongass National Forest timber after the initial 50 year term.

As far back as 1920, the federal managers of the Tongass believed that pulp production represented the best use of southeast Alaska's extensive timber resources. Those forest managers recognized that a high percentage of Tongass timber consisted of overmature and decaying trees, material useful only for pulp. In 1928, the Chief of the U.S. Forest Service stated, "The establishment of new wood-using plants should be fostered energetically, as Alaska is badly in need of more industries."

As the Second World War wound down, the federal government ardently broadened its efforts to attract a timber industry to southeast Alaska, in order to provide stable, high-paying, year-round employment to an economically underdeveloped territory. Despite its abundant resources, southeast Alaska was at that time a land of boom and bust. Before the war, the economy depended on mining and fishing. After the war, fishing was in decline, and the mining base was depleted. In an effort to establish a stable economy and bring added population to America's "Northern Ramparts," the Forest Service offered long-term (50 year) timber harvest contracts to entice investors to the area. Regional Forester B. Frank Heintzelman wrote that the

Forest Service's "timber management policies provide that the timber resources of the Tongass National Forest shall be used for the upbuilding and the support of permanent, modern communities throughout Southeastern Alaska."

In 1948, in response to this federal effort, PSPT incorporated Ketchikan Pulp and Paper Company, which submitted a bid to the Forest Service for the Ketchikan Pulptimber Unit. The government accepted the bid. Under its terms, the Forest Service would provide a 50-year timber contract, and Ketchikan Pulp and Paper would be obligated to build a pulp mill at Ward Cove. In 1951, Ketchikan Pulp and Paper Company became Ketchikan Pulp Company, a joint venture between PSPT and American Viscose Corporation, and financing proceeded for the construction of a mill to produce dissolving pulp. The mill was the first of its kind to be designed and built in the United States. It used a state of the art pollution control and chemical recycling process.

This was a risky venture; one embarked upon only because of the guarantees provided by a long-term contract. The federal government requires primary domestic manufacturing of all but a very small part of the timber we harvest. Because of this and in order to support the financing necessary to build a pulp mill in an isolated region separated from the nearest state by 600 miles of foreign border (Canada), the Forest Service promised to supply KPC 8 1/4 billion board feet of economic timber over the 50-year term. Construction began in May 1952; logging began on Prince of Wales Island in July 1953; and the mill dedication took place on July 14, 1954. After 30

years of a concerted federal effort and an initial $54 million private investment, the modern Ketchikan economy began.

KPC has met its end of the bargain with the federal government to provide a stable job base for the Ketchikan area. We are now asking you to ensure that the government meets its part of the bargain, and makes available the economic timber supply necessary for us to continue to provide the employment which is the cornerstone of our economy.

**KPC Products and the Ketchikan Economy**

In the years since the pulp mill began operating, KPC has expanded its job base by operating sawmills in addition to the pulp operation. The original contract anticipated that sawmills would be added after the pulp mill was running. Sawmills allow better use of the resource by recovering high- quality logs for uses other than pulp. KPC currently operates two sawmills, Ketchikan Sawmill (KSM) at Ward Cove, and Annette Hemlock Mill (AHM) on Annette Island, which we run pursuant to a lease with the Metlakatla Indian Community. Assuming an adequate supply of raw materials, the sawmills have the capacity to process 130 million board feet of lumber annually on a two-shift basis. Both mills could run three-shift operations, if there existed a sufficient timber supply.

AHM produces rough-sawn spruce and hemlock cants and flitches which are sold and subsequently processed to form such items as decorative doors, window frames,

and staircases. KSM is a high speed log merchandizing facility which manufactures logs of smaller diameters into high-quality, metric-dimension, planed lumber products. Approximately 90 percent of KSM sawn products enter the worldwide structural lumber market as finished merchandise. The balance of the sawn material from KSM is used for tight-grain cut stock or studs, sold in domestic markets.

Throughout its history, the primary product of KPC's pulp mill has been ultra-pure dissolving sulfite "Tongacell" pulp, produced principally from hemlock fiber. Our customers process "Tongacell" into viscose and cellulose for use in the manufacture of a variety of products including rayon fabric, carpets, draperies, sponges, cellophane packaging, pharmaceutical goods, food additives, rope, brush and broom bristles, insulation, cosmetic products, rayon cord tires, paint, and furniture lacquers.

The pulp mill has an annual production capacity of over 190,000 tons of 90-plus percent pure cellulose pulp. Our pulp is sold both domestically and to foreign buyers. KPC is one of only eight stable suppliers of dissolving pulp worldwide.

When the Forest Service provides a dependable supply of raw materials, we employ over 1,000 people to harvest, transport and manufacture these lumber and pulp products. Throughout the Ketchikan-Metlakatla-Prince of Wales area of southeast Alaska, our pulp, sawmill, and timber operations directly support the employment of an additional 1,500 people outside our company: contract loggers, road builders, longshoremen, and tugboat operators, among others. Overall, approximately 25

percent of the region's payroll is involved, directly or indirectly, with KPC operations. The bulk of the service and support industry depends on KPC's continued viability.

In 1995, the average full-time KPC employee earned approximately $45,000 in wages, not including benefits. In that year, KPC paid wages totaling over $40,000,000, again, not including benefits. Benefits include full health coverage and retirement. We have enjoyed a very stable work force, with the average duration of an individual's employment being close to ten years. We hire over 90 percent of our employees locally, and the KPC work force reflects southeast Alaska's population diversity. Approximately one-third of our employees are Alaska Natives.

KPC puts more than $5,000,000 monthly into the Ketchikan-Metlakatla-Prince of Wales economy. Our operations are the cornerstone of southeast Alaska's timber industry in general, providing an assured outlet for residual chips and pulp-grade logs from independent sawmill and logging operations, when those companies themselves have sufficient timber to operate.

KPC's manufacturing operations are as essential, if not more so, to southeast Alaska's economy today as they were in the 1950s. Again, we have fulfilled our end of the bargain we made with the Forest Service to provide year-round employment and bring prosperity to the Ketchikan area. KPC is the foundation of our local economy. If KPC collapses, southern southeast Alaska collapses along with us.

The timber manufacturing facilities in Southeast Alaska face a unique set of circumstances that require unique solutions. First, the only major source of available timber for our facilities is federal timber from the Tongass National Forest. The Forest Service holds monopoly power over the timber supply. The small amount of private timber is normally exported as round logs to countries that have job protective pricing that favors raw materials over finished products. Timber harvested from Federal lands in Alaska, and in Alaska alone among the states, must receive primary manufacture in Alaska, and is subject to additional export restrictions. Second, the nearest domestic market for timber products is 600 miles away with a foreign country (Canada) in between. This puts Alaska manufacturing at an extreme competitive disadvantage to forest products manufacturers in the Pacific Northwest. Third, the cost of manufacturing in Alaska is much higher than in other parts of the world, in part because many of those other regions outside the United States have much less stringent environmental standards for manufacturing facilities. These economic circumstances are similar to those that existed in the 1940s when the Ketchikan long-term sale was first proposed.

**Unilateral Contract Changes**

The 1990 Tongass Timber Reform Act (TTRA) drastically and adversely affected the long-term agreement with the Forest Service which forms the basis for KPC operations. Not only did TTRA further reduce the available commercial timberland base which underpins the Forest Service's long-term volume commitment to KPC, it unilaterally altered a bilaterally agreed-to contract. The unilaterally modified timber

delivery system has resulted in a continuing failure of the Forest Service to meet its timber volume commitment to KPC. TTRA also irrationally altered the contract's pricing structure.

It is extremely costly to operate our pulp mill on an intermittent basis, which is why we require a steady, certain supply of raw material. Since the passage of TTRA, the Forest Service has repeatedly failed to meet its contractual requirement to make timber available in a timely fashion. Delays at every step of the timber-delivery process are now the rule rather than the exception. During calendar year 1993, the Forest Service released only 45 million board feet (MMBF) of new timber to KPC (147.5 MMBF below the contract standard). In calendar year 1994, the Forest Service released 176 MMBF to KPC, but 40 MMBF was held up by an injunction in litigation brought by the Sierra Club Legal Defense Fund. Shortly after the Forest Service canceled Alaska Pulp's contract in April 1994, it presented KPC with a revised timber release schedule. The Forest Service again revised the KPC timber offering schedule a year later. These changes are causing major problems for our operations. We have been forced from our Primary Sale Area, and the planned release volume has been substantially below that called for in the contract.

New harvest restrictions imposed since the passage of TTRA have slowed and disrupted our rate of harvest. It now takes us at least an additional year to build access roads and harvest the timber on a typical offering. The pipeline of timber made available has averaged far less than that mandated by the contract. As a result of this failure by the Forest Service to meet its contractual obligations, we have experienced

a cumulative shortfall in excess of 120 MMBF in the last two years, which has resulted in periodic shutdowns of the pulp mill and both sawmills. To make matters worse, these shutdowns have occurred during periods of high market demand for our products, and we were therefore unable to take advantage of high selling prices. We have been unable to make up the shortfall through independent Tongass National Forest sales or other timber purchases.

Prior to TTRA, the Forest Service presented us with specific 5-year timber offerings and with general plans outlining the location and volumes of the timber to be supplied throughout the remaining period of the long-term sale. We were able to formulate rational, efficient operating plans based on a predictable timber supply. Now, the Forest Service provides timber in small individual offerings, revises their offering schedule at least once a year, and consistently fails to meet its own deadlines set forth in the offering schedules. We cannot plan and operate efficiently under this erratic system.

We must relocate families, logging camps and related facilities much more frequently than in the past. These costly, time-consuming moves further delay timber harvest, and greatly increase its cost. This reduces the return to the federal treasury. Worse, this erratic system has a human cost. Many of our employees are no longer able to commute daily to work, but instead must live in remote bunkhouses separated from their families for extended periods.

Some of the most troublesome changes the Forest Service has implemented in response to TTRA involve unilateral modification of our pricing structure. First, the Forest Service excised from the contract all of the price mechanisms which formed the bargain under which KPC expended enormous sums of money to build its facilities as required by the long-term sale agreement. Again, all predictability and stability was eliminated. Second, the Forest Service imposed a system requiring a quarterly upward rate adjustment, purportedly based on rates paid on smaller independent timber sales in the Tongass National Forest, which is paid on top of the Forest Service's appraised value of the timber. Since its implementation, the Forest Service has frequently added this premium even at times when the market has collapsed as it did in 1991 and recently. This premium guarantees that our cost of timber will not be economic in relation to the market in which we must compete.

These changes run directly counter to the original bilateral contract. The government agreed to supply economically viable timber for the contract term. Based on this promise, we have spent, and continue to spend, vast sums of capital on our facilities. All of our capital investment decisions have relied on this contractual promise. Protections included in the contract (the "Puget Sound" clause and the test for equitable and competitive rates vis-á-vis other long-term pulpwood sales on the Tongass) were important to the original investors, and continue to be important.

The recent pricing changes not only violate our contract, they are irrational because, among other things, they compare KPC, with its enormous capital requirements, to small independent operators with far smaller capital requirements.

To meet its contractual obligations, KPC had to spend tremendous amounts of money to construct a pulp mill. SBA and independent operators have no such obligation.

This brings me to the specific terms of the legislation being considered. Why is this legislation needed? I will try to explain why.

**Why a 15-Year Extension?**

Fifteen years plus the remaining term of the contract is the minimum time required to recoup the planned investments alluded to earlier. KPC plans to invest up to $200 million over the next 5-8 years to continue to be environmental leaders and remain competitive in the world pulp market. To make these investments, the assurance of an adequate, economic supply of timber as well as a fifteen-year extension are needed. Changes necessary to enable the Forest Service to honor and extend the contract must come through the legislative process. Such changes need to be accomplished in 1996; otherwise investment plans must be reviewed and the viability of KPC may be threatened. Strong, state-wide bipartisan support exists to maintain KPC as the cornerstone of a responsibly managed and diversified Alaskan forest products industry.

KPC has begun an aggressive investment program that will total up to $200 million to upgrade its facilities to ensure not only that it meets evolving environmental requirements into the next century but that it remains competitive in the world pulp market. Specifically those investments include:

- construction and start up of an Elemental Chlorine Free (ECF) bleaching process to eliminate the use of elemental chlorine at the mill;

- equipment and process modifications to further reduce the toxicity level of the effluent and to relocate the discharge point to improve dispersion;

- expansion of wastewater treatment facilities;

- upgrade electrical power generation facilities to improve combustion efficiency and reduce costs; and

- modernize chemical recovery systems for greater efficiencies.

**Why Contract Fairness Modifications?**

Those who enacted TTRA, and the environmentalists who supported it, expressed the belief that a viable, healthy timber industry would continue following its enactment. They said there was no intent to harm or destabilize the timber industry dependent on the Tongass. (A summary of those remarks is included with this testimony as Attachment A.) However, as explained earlier, TTRA and the unilateral modifications to KPC's long-term sale agreement that followed in its wake have had a devastating impact. At a minimum a few contract fairness modifications are necessary to restore the basic economic underpinnings of the long-term sale. In addition, a reaffirmation of the Forest Services's timber supply commitment is needed. Together

these actions will lend stability to our operations by assuring timber supply at a fair and reasonable price which is readily determined and not subject to manipulation.

**Sale Offering Plan**

The sale offering plan will allow KPC to efficiently plan harvest operations (remote logging camp installations, road construction, etc.). Further, the plan will provide a framework for the Forest Service to plan and manage completion of the NEPA process in a timely manner. Section 2(c)(2) of the legislation will make these modifications.

**Volume Requirements**

KPC's current contract allows for the harvest of 962.5 million board feet (MMBF) every five years, which amount, on an annual basis, comes to 192.5 MMBF. S. 1877 and H.R. 3659 continue that same volume level for the term of the 15-year extension. The 192.5 MMBF volume level was intended to provide adequate supply for the pulpmill plus additional volume for associated sawmill operations. At the present time, the Forest Service appraises at least half of the volume supplied on the basis of processing at the sawmills. Section 2(c)(3) of this legislation maintains these volume supplies to KPC.

**Appraisals and Rates**

Prior to the Forest Service implementation of TTRA in 1991, the KPC long-term sale agreement provided for both upward and downward stumpage rate adjustments, whereas independent sales have only downward adjustments. The upward adjustment mechanism in the long-term sale contract put a ceiling on the amount of profit that KPC was allowed to make. Any excess profit margin was returned to the Forest Service as increased stumpage. Independent sales have no such ceiling.

After the Forest Service imposed changes to the long-term sale contract, the Forest Service began charging what was termed "Comparability Charges". These charges are derived from an inaccurate and inappropriate analysis of what the independent sales stumpage charges were from a prior time period (not the period during which KPC was harvesting or processing timber).

Further, the charges are greatly affected by speculation, skewed bidding, variations in the species mix the independents harvest from time to time, and differences between the actual species mix and the Forest Service appraised species mix for both the long term and independent sales. In addition, the Forest Service makes only upward charges. The stumpage rates are never lowered even when the peculiar "comparability" formula indicated a downward adjustment is warranted. These charges have greatly reduced KPC's profitability to a point where its future is now in jeopardy. Section 2(c)(4) of this legislation corrects these problems. It allows KPC to remain

profitable, gives the federal government a fair economic return, and creates a long-term sale more like an independent timber sale.

**Proportionality**

The proportionality provision of TTRA was intended to insure that a disproportionate harvest of high volume timber stands was not harvested over a rotation for any group of contiguous management areas. In other words, it was to address congressional concerns over potential highgrading. The Forest Service has chosen to disregard the "over the rotation" direction and the "contiguous management area" direction. Further, the 9th Circuit Court of Appeals has decided that proportionality must be measured by volume rather than by acre. Consequently, the Forest Service must now spend millions of dollars each year to satisfy their own internal procedures as well as the 9th Circuit's rule for a provision that applies to only a portion of the annual harvests and accomplishes nothing other than to "assure" that which the Forest Service testified during hearings preceding TTRA was being accomplished anyway. These new guidelines could cost the Forest Service up to $400,000 per timber sale to implement. Section 2(c)(5) of this legislation would correct this problem, ensure that the remaining 10% of the Tongass National Forest open to commercial harvest is managed using sound, state-of-the-art on-the-ground management tools, and save the federal government millions of dollars, while reducing litigation.

**Conversion or Replacement**

This provision is intended to clarify KPC's right to accomplish the pulpwood processing and related employment goals with a more competitive and sustainable facility should that opportunity present itself in the future. Section 2(c)(6) of this legislation would make a clear congressional statement in support of allowing full and state-of-the-art manufacturing processes on the Tongass National Forest.

**Unilateral Termination**

Our bilateral contract with the Forest Service contained no clause dealing with unilateral contract termination at the whim of the Forest Service. Any right to terminate was governed by federal common law and, if invoked, would be dependent on the particular facts and circumstances involved. TTRA did not direct the Forest Service to include a unilateral termination clause, but in drafting the Unilateral Terms the Forest Service included a unilateral termination clause (Section B0.7). Section 2(c)(7) of this legislation would correct this overreaching and return the contract to its original status while maintaining consistency with TTRA.

KPC's long-term sale is not a federal procurement contract; hence there is no need for a clause paralleling the familiar termination-for-convenience-of-the-government clause in typical government contracting. While the Forest Service since the 1970's has included language in standard timber sales reserving the right to cancel for environmental reasons, no such reservation is necessary here because of the particular

nature of this transaction. A standard Forest Service timber sale is a sale of specifically identified timber. The KPC long-term sale is not; instead, it is a sale of a quantity of timber, not yet specifically identified on the ground, which can be selected from a broad area. If environmental concerns arise in a particular location, selection can be steered away from that area or, if timber has already been selected in that area, substitutions can be made. Our mutually agreed-to contract provided ample authority and flexibility for the Forest Service to address the concerns which the unilateral termination clause purportedly seeks to meet. The unilateral termination clause is simply unnecessary. Were the Forest Service to invoke it, the practical effect of doing so would be a declaration that no timber whatsoever was to be sold from the Tongass National Forest. Needless to say, Section 2(c)(7) of the legislation is important to us because we are reluctant to expend $200 million only to then have the Forest Service invoke the unilateral termination clause of the Unilateral Terms.

**KPC and the Environment**

Our opponents have raised the subject of our environmental record. It is true we have had problems in the past and for those we apologize. However, KPC has new management and we are excited about the future and are ready to move forward.

I would be remiss if I did not address the many and exaggerated claims of the extreme environmentalists who have expounded repeatedly concerning KPC's environmental record. I have attached a detailed analysis of KPC's comprehensive environmental program (see Attachment B).

Ketchikan Pulp Company complies with Federal and State laws governing environmental protection. Our operations are fully regulated and covered by approximately 75 different permits, plans, response procedures and mandatory reports. A list of these is attached to my testimony as Attachment C, and a copy of each is available here for committee review. These documents cover everything from logging camp stormwater control, to air emissions permits for our boilers and pulp mill waste water disposal permits. Some of these are permits to operate -- without a permit there can be no production. Also available for the Committee to review are twelve studies and workplans which are underway right now. These new programs are the measures agreed to in an enforcement action taken by the EPA, and settled in 1995. Part of that settlement was our plea to one felony and thirteen misdemeanor violations of the Clean Water Act. The information contained in the plans and reports offered here today details our environmental compliance results and is available for your review.

The claims made by individuals and groups opposed to our continued operation are based on our own reported information. Their claims attack our performance, vilify our people, distort our record, and support their assault by presenting our own data out of the context in which it was originally reported. Our data is interpreted by our opponents without regard for the strict scientific methods which are mandated by regulation. Conclusions are reached which are based on the subjective values of the presenter instead of the objective measures which are established by law. Data are separated from regulatory reports, and rearranged without regard to the purpose for which they are collected. Information which is reported by KPC in the normal course of environmental compliance is manipulated and distorted by those who wish to shut

us down, in order to illustrate theories which are intentionally designed to raise public alarm.

I believe this Committee should have the opportunity to learn of the strict and comprehensive regulatory context in which resource protection is actually achieved at KPC. The supplemental testimony on Environmental Compliance at Ketchikan Pulp which is before you presents the full scope of regulatory control over our operations and waste management. You will see from reading the entire testimony that all containments of concern to State and Federal regulators are monitored, measured, and reported according to schedules set by the government. Reported quantities are regularly checked against the levels established by environmental law. Enforcement action is taken by regulatory agencies when appropriate. The reports which we provide, along with inspections by regulatory staff, provide the basis which demonstrates compliance, or, alternatively, on which enforcement action may be taken. Enforcement actions, too, are a matter of public record.

The alarm raised by our opponents is unwarranted. State and Federal regulators are knowledgeable of the smallest details of our operation. They have available, through law, a full array of compliance and enforcement measures. KPC works cooperatively with our regulators to achieve the results expected by law.

Our compliance and enforcement history is already a matter of public record. We are proud of our achievements, and accept responsibility for our shortcomings and

mistakes. We have nothing to hide from the regulators, this Committee, or our community.

**Conclusion**

A 15-year extension with the revisions outlined herein and at the current average annual offering level of 192.5 MMBF per year, should be sufficient for us to properly amortize our capital requirements and allow us to continue to provide a reasonable return on investment to our shareholders and to provide economic stability for the Ketchikan area. This extension period is well within industry norms for borrowing the $200 million we will need. The need for an extension was recognized in the terms of the original contract, which stated the Forest Service intention to establish "the operation of the industry on a commercially sound and permanently economical basis" and "to afford an opportunity to purchase supplies of timber for permanent operation . . ." The existing long-term contract, therefore, presupposes a perpetual arrangement between KPC and the Forest Service for timber supply.

The bottom line is: if S. 1877 and H.R. 3659 do not become law, KPC and its employees are at risk and face an uncertain future. We face decisions in 1996 that cannot be put off into the future. These decisions must be made this year.

KPC has met its contractual obligation to develop the economy and provide permanent, year-round employment for southern southeast Alaska. We want the government to meet its contractual obligation to provide a sufficient volume of

economically viable timber in a timely fashion. This is the only way that KPC can continue to operate its production facilities and continue to provide jobs and economic stability for the communities of this isolated region beyond 2004.

In summary, the KPC operations (pulp mill, sawmills and harvesting operations) are vital to the economic well-being of Ketchikan, the forest products industry in southeast Alaska, and the overall economy of Alaska. The manufacturing operations and the related jobs require an assured supply of economic timber. The contract extension and fairness modifications are needed to effectuate that timber supply assurance.

Thank you again for this opportunity to testify. I would be happy to answer any questions.

**ATTACHMENT A**

Excerpts from consideration of the Tongass Timber Reform Act and predecessor legislation (emphasis added):

- 136 Cong. Rec. S17, 995-999 (daily ed. October 24, 1990).

The conference agreement on H.R. 987 "protects key fisheries and wildlife habitat. And, importantly, the conference agreement retains a viable, healthy timber industry." S17, 996 (statement of Sen. Johnston).

- 136 Cong. Rec. S7729-S7819 (daily ed. June 12, 1990).

"On March 7, Mr. President, the Committee on Energy and Natural Resources came to a compromise solution for this, which I believe is fair to all interests, and serves well both the environment and the jobs left in Alaska." S7730 (statement of Sen. Johnston).

"This proposal sought to provide for a better balance between the commodity and noncommodity resources of the forest while protecting the local economy from economic disruption." S7730 (statement of Sen. Johnston).

"I think we reached a very reasonable compromise on this piece of legislation . . . One would not want it to appear that somehow this legislation runs counter to the economic needs or desires of Southeast Alaska." S7735 (statement of Sen. Wirth).

"I believe this is a balanced bill that will adequately protect this majestic national forest in Alaska while assuring a sustainable supply of timber for current and future needs." S7754 (statement of Sen. Bingaman).

- *Act to Amend the Alaska National Interest Land Conservation Act, to Designate Certain Lands in the Tongass National Forest as Wilderness, and for Other Purposes: Hearings on H. R. 987 Before the Subcomm. on Public Lands, National Parks and Forests of the Senate Comm. on Energy and Natural Resources* (pt. 3), 101st Cong., 2d Sess. (1990).

"I think it is important to state that H. R. 987 does not mean loss of Tongass timber jobs." Id. At 119 (statement of K. J. Metcalf, Southeast Alaska Conservation Council).

"No existing Tongass dependent timber jobs would be lost by comprehensive legislation." Id. at 119 (statement of K. J. Metcalf, Southeast Alaska Conservation Council).

"It has never been our intention to close the pulp mill through H. R. 987, and I do not think that they would be closed." Id. at 309 (statement of K. J. Metcalf, Southeast Alaska Conservation Council).

Based on Forest Service figures, "SEACC believes H. R. 987 would have no impact on existing Tongass dependent timber jobs." Id. at 348 (statement of Bart Koehler, Southeast Alaska Conservation Council).

- 135 Cong. Rec. H3689-H3705 (daily ed. July 13, 1989).

"The new wilderness areas will not affect the ability to meet industry demand in the Tongass." H3684 (statement Rep. Miller).

". . . certainly it is not the intention, my intention as the original sponsor of the Tongass Timber Reform Act, to drive the timber industry out of Southeast Alaska." H3684 (statement of Rep. Mrazek).

- House Rules Committee Transcript (undated excerpt)

"I am very much aware it is very easy to roll over the Representative from Alaska, because it is a throwaway vote for everybody else in the lower 48. This isn't about closing mills. This isn't about locking up the timber so they can't have it. This is simply saying we ought to engage in modern practices." Id. at 50 (statement of Rep. Miller).

- Senate Comm. on Energy and Natural Resources, Tongass Timber Reform Act, S. Rep. No. 261, 101st Cong., 2d Sess. (1990), reprinted in 1990 U.S.C.C.A.N 6232.

". . . the Committee has adopted an amendment in the nature of a substitute to H. R. 987, which seeks to improve management of the Tongass by balancing the commodity and noncommodity resources of the forest in a manner which will not harm nor destabilize the local economy." S. Rep. No. 261, at 31 (additional views of Senators Metzenbaum and Bradley).

- *Acts to Reform the Tongass Timber Supply Fund, and to Amend the Alaska National Interest Lands Conservation Act and for Other Purposes: Hearings on S.237 and S. 346 Before the Subcomm. on Public Lands, National Parks and Forests of the Senate Comm. on Energy and Natural Resources* (pt.2), 101st Cong. 1st Sess. (1989).

"It is not my intent to stop timber harvest on the Tongass National Forest, or to close the mills in Ketchikan and Sitka, nor do I think that will happen." Id. at 3 (statement of Sen. Wirth).

"Senate Bill 346 would not weaken the timber industry, but rather provides the best for all. The legislation provides protection for areas

valuable to the wilderness recreation and visitor industry but it still provides latitude for increased timber harvest." Id. at 131 (state of Dale Philman, Alaska Department of Fish and Game).

"I can say that the Tongass Timber Reform Act will not effect Tongass timber dependent employment." Id. at 208 (statement of Joseph R. Mehrken, Southeast Alaska Natural Resources Center).

"Senator Wirth's bill would remove fifty million board feet a year from the Tongass timber base for the protection of other forest values such as tourism, commercial fishing, and subsistence. The bill would also leave the forest products industry with 400 million board feet a year to harvest -- enough to preserve all current logging-related jobs based on past cutting levels." Id. at 410 (statement of Mark Kirchhoff, Port Alexander).

- *Act to Amend the Alaska National Interest Lands Conservation Act, to Designate Certain Lands in the Tongass National Forest as Wilderness, and for Other Purposes: Hearings on H. R. 987 Before the Subcomm. on Water, Power, and Offshore Energy Resources of the House Comm. on Interior and Insular Affairs*, 101st Cong., 1st Sess. (1989).

"If all 22 areas in H. R. 987 are permanently protected, the legislation would reduce the scheduled timber harvest by only 11 percent. That still

provides enough timber for the Tongass dependent timber industry to continue at current levels and even to expand." Id. at 23 (statement of Larry Edwards, Southeast Alaska Conservation Council).

"H.R. 987 IS JOB NEUTRAL. Passage of H. R. 987 will have no effect on the number of jobs in the Tongass dependent timber industry of Southeast Alaska." Id. at 56 (statement of Larry Edwards, Southeast Alaska Conservation Council).

Rep. Young: "What happens if the Sitka mill shuts down?"

Larry Edwards, "It's not going to. I mean, we're not going to affect the timber base." Id. at 77.

- *Acts to Reform the Tongass Timber Supply Fund, and to Amend the Alaska National Interest Lands Conservation Act and for Other Purposes: Hearings on S. 237 and S. 346 Before the Subcomm. on Public Lands, National Parks and Forests of the Senate Comm. on Energy and Natural Resources* (pt.1), 101st Cong., 1st Sess. (1989).

"S. 346 IS JOB NEUTRAL. Passage of S. 346 will have no effect on the number of jobs in the Tongass dependent timber industry in Southeast

Alaska." Id. at 150 (statement of Larry Edwards, Southeast Alaska Conservation Council).

- *Act to Require Annual Appropriations of Funds Necessary to Support Timber Management and Resource Conservation on the Tongass National Forest: Hearings on H. R. 1516 Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 100th Cong., 1st Sess. (1987).

"We believe that a reasonable timber harvest program on the Tongass, coupled with adequate investments in fish, wildlife and scenic resources, will build and support business ventures in Southeast Alaska that can maintain regional employment at current levels." Id. at 675 (statement of Lonnie L. Williamson, Wildlife Management Institute).

**ATTACHMENT B**

Supplementary Testimony of Ralph D Lewis
Environmental Compliance at Ketchikan Pulp Company
Senate Energy Committee, July 10, 1996
House Resources and Agriculture Committee, July 11, 1996

This testimony is offered to inform the Committee of environmental protection and compliance related programs, projects, activities and controls at the Ketchikan Pulp Company. While the testimony itself offers only a summary of each point raised, I am providing for the Committee copies of many documents which detail the compliance related activities at Ketchikan Pulp Company.

Ketchikan Pulp Company complies with Federal and State laws governing environmental protection. These laws require the company to secure, from Federal and State agencies, a number of operating permits. Each permit requires the company to submit periodic reports, monitoring and measurement results and inspection reports to the issuing agency. All of these reports and data are part of the environmental compliance record of Ketchikan Pulp Company and are available for public review.

Testimony has been offered in this and related proceedings by groups and individuals which is based on Ketchikan Pulp Company Company's reported information. Some of that testimony presents the information out of the context in which it was originally reported. Data have been interpreted without regard for scientific method, and conclusions have been reached based on subjective values rather than objective measures. Data have been separated from regulatory reports and rearranged without regard to the purpose for which they are collected. KPC's opponents have often manipulated and distorted data in order to illustrate theories which are designed to raise public alarm. Ketchikan Pulp Company and State and Federal regulators cannot similarly choose the method of interpretation that best accomplishes their goals. I believe that the Committee should have the opportunity to learn of the strict and comprehensive regulatory context in which resource protection is actually achieved at Ketchikan Pulp Company.

My testimony today presents an overview of the full scope of regulatory control over operations and waste management at Ketchikan Pulp Company. You will see from reading the entire testimony that all contaminants of concern to State and Federal regulators are monitored, measured, and reported according to guidelines and schedules set by the government. Reported quantities are regularly checked against the action levels established by environmental law. Action is taken when appropriate. These reports along with inspections by regulatory staff provide the basis which demonstrates compliance, or, alternatively, on which enforcement action may be taken. Enforcement actions, too , are a matter of public record.

I welcome the opportunity to offer this summary for the public record. The compliance and enforcement history of the Ketchikan Pulp Company is already a matter of that record. We are proud of our achievements, and accept responsibility for our shortcomings

and mistakes. We have nothing to hide from the regulators, this Committee, or our community.

**History**

Ketchikan Pulp Company (KPC) began operations in 1954 producing high quality dissolving pulp using a magnesium bisulfite pulping process that fully recovers cooking liquor chemicals. Most dissolving pulp mills of the era utilized the calcium based bisulfite process which did not allow recovery and reuse of cooking chemicals.

The magnesium base process was chosen to meet the pollution control requirements of KPC's Timber Sale Agreement with the US Forest Service. The initial stage of water pollution control at the Ward Cove mill was accomplished through spent cooking liquor capture, evaporation and incineration in specially designed chemical recovery boilers.

The mill was designed to operate continuously, twenty four hours per day, with shutdowns for scheduled and unscheduled maintenance.

Wood fiber is supplied from logs that are generally unsuitable for lumber production, purchased wood chips and sawmill residues. Logs are debarked, chipped and then screened together with purchased chips and sawmill residues.

Wood chips are cooked under pressure in nine batch digesters using cooking liquor made in the acid plant. Each cook takes about four hours. The cooked pulp is then processed in de-knotters and screening systems to remove uncooked chips and knots. The pulp fiber is separated from the spent inorganic pulping chemicals and dissolved organic material in a four-stage countercurrent rotary drum vacuum washing system.

Bleaching of the washed and screened pulp is accomplished in six different stages using chlorine, caustic, hypochlorite and sulfurous acid. Pulp is to be washed on rotary drum vacuum washers after each stage of bleaching. Bleach plant effluent streams that are not recycled are discharged either to a secondary treatment facility or an effluent neutralization system.

The fully bleached pulp receives final removal of fine dirt in centrifugal cleaners prior to dewatering and drying on a conventional pulp machine. The final product is cut and baled or wound into mini rolls and wrapped for shipment to customers worldwide.

Collected spent cooking liquor is fed to multiple effect evaporator systems where water is removed to a degree that allows the material to sustain combustion. Condensates from the evaporation process are sent to a secondary treatment facility and the concentrated cooking liquor is burned in four chemical recovery boilers.

Combustion of spent cooking liquor results in the generation of energy that is converted to steam, recovery of sulfur dioxide and magnesium oxide. Flue gases from the recovery

boilers first undergo particulate removal to collect magnesium from the fly ash in the form of magnesium oxide (MgO). A small percentage of makeup MgO is combined with recovered MgO and is used as a base to recover sulfur dioxide from cooled flue gas in a series of absorption towers

The recovered chemicals, which have been converted to magnesium bisulfite in this process, become a weak raw acid from which cooking liquor is made by fortification with sulfur dioxide. Primary fortification is accomplished by burning molten sulfur to produce sulfur dioxide and absorbing it into weak acid in a packed tower. Final strengthening of the cooking liquor is accomplished through absorption of sulfur dioxide under pressure in an accumulator system using relief gases from the digesters. The entire recovery process is essentially a closed loop system with only water and make up chemicals being added.

In addition to the steam produced by the recovery boilers, steam is supplied to the process by two multi-fuel power boilers and one oil fired boiler. Bark, sawdust, knots, primary and secondary sludges and oil are combusted in the multi-fuel boilers which are equipped with electrostatic precipitators to control air emissions. The oil-fired package boiler has a wet scrubber for sulfur dioxide removal and a low NOx combustion system.

Steam produced from the boilers is used throughout the manufacturing process and is also used to generate electricity for the operation. A peak total of 38 megawatts of electricity can be produced from three turbine generators. Which, typically generate 28 megawatts of electricity for process needs.

Dissolving-grade sulfite pulp is a very specialized, high value product. It is an extremely pure form of cellulose fiber that has special properties because of the wood species used and the purification provided by the processes employed at the mill. The product is used throughout the world to manufacture a wide variety of high-value products including the following.

Viscose Rayon--Clothing, upholstery, curtains, carpeting, cellophane/packaging and sponges.

Cuprammonium Rayon--Artificial kidneys, high-fashion clothing, women's undergarments, suit lining and non-wovens such as disposable protective clothing.

Nitro Cellulose--Dice, encapsulated electronic equipment and other moldable products, high-quality high-speed printing inks, explosives and high quality lacquers.

Microcrystalline Cellulose-- Pill and caplets, dietary bakery goods, emulsifiers such as sandwich spreads and salad dressings, low-calorie ice creams and cosmetics.

Carboxymethyl and Ethyl Cellulose--Emulsifiers for paints and coatings.

Specialties--Formica, artificial leathers, molded luggage and laminates, tissue and specialty papers.

**Wastewater Management**

Wastewater treatment facilities at Ketchikan Pulp Company Company's Ward Cove facility consist of the following:

(a) A 190 foot diameter primary clarifier that handles waste streams containing settleable solids.

(b) A secondary biological treatment system consisting of a 9 million gallon aeration basin and two secondary clarifiers of 90 and 160 foot diameters. This system treats high strength dissolved organic waste streams.

(c) A 5 chamber effluent neutralization system that neutralizes high and low pH waste streams.

(d) Two large steam injected screw presses that handle dewatering of combined primary and secondary waste sludges prior to burning in the multi-fuel power boilers.

**NPDES Permit**

Wastewater discharge at Ketchikan Pulp Company (KPC) is regulated under National Pollution Discharge Elimination System (NPDES) permit No. AK-000092-2 issued by the USEPA for industrial discharges to Ward Cove, Alaska. This permit, issued in August 1994, was issued for a period of 5 years and is due to expire August 6, 1999.

KPC's current permit regulates two separate industrial discharges, as well as intermittent stormwater outfalls originating from within the pulp mill complex, Ketchikan Sawmill, and the solid waste landfill.

This NPDES Permit contains monitoring requirements for the following parameters at the indicated frequency:

| Parameter | Frequency |
|---|---|
| Temperature | Continuous |
| Flow | Continuous |
| pH | Continuous |
| $BOD_5$ | Daily |
| Dissolved Oxygen | Daily |
| TSS | Daily |
| Manganese | Weekly |
| Copper | Weekly |

| | |
|---|---|
| Chlorine | Weekly |
| Color | Weekly |
| Cadmium | Weekly |
| Chromium | Weekly |
| Nickel | Weekly |
| Zinc | Weekly |
| Total Hydrocarbons | Weekly |
| Sulfide | Weekly |
| Mercury | Weekly |
| Manganese | Weekly |
| Chronic Toxicity | Monthly |
| Production | Monthly |
| AOX | Quarterly |
| 2,3,7,8,TCDF | Quarterly |
| 2,3,7,8,TCDD | Quarterly |
| Acute Toxicity | Quarterly |
| Resin Acids | Quarterly |
| Fatty Acids | Annually |
| Chlorophenols | Quarterly |
| Guaiacols | Quarterly |
| 6-chlorovanillin | Quarterly |
| a-terpineol | Quarterly |
| 5,6-dichlorovanillin | Quarterly |
| 2-methyl-2-cyclopenten-1-one | Quarterly |
| 3,4,5-trichlorosyringol | Quarterly |
| 3-methyl-2-cyclopenten-1-one | Quarterly |
| Chloroform | Quarterly |
| Acetone | Quarterly |
| Methyl Ethyl Ketone | Quarterly |
| Methylene Chloride | Quarterly |
| Annual chlorphenolic biocide nonuse certification | Annually |

In addition to the above , KPC is also required to monitor an internal sanitary waste stream on a biweekly basis for $BOD_5$, TSS, and Fecal coliform bacteria.

Compliance with the above NPDES requirements at KPC involves a number of monitoring programs specified in the permit. The Clean Water Act specifies that monitoring is to be

done by the permittee and reported to the regulatory agency. For all monitoring required by the NPDES permit, Ketchikan Pulp Company has developed Standard Operating Procedures (SOPs) which are in use and on file with EPA Region 10. The SOP's are developed from EPA approved testing and sampling protocols. EPA Region 10 conducts an annual inspection of the KPC facility, and adherence to these SOP's is evaluated by EPA at this time. The mill produces a chlorinated organics report on a quarterly basis as required by the NPDES permit. The first report was produced during the fourth quarter of 1994. The report provides test results for a specific list of chlorinated organics for eight sample locations. Sample locations include the combined outfall (001), chlorination stage effluent, caustic soak stage effluent, hot caustic extract effluent, combined hypochlorite stage effluent, sulfur dioxide stage effluent, bleached pulp from the bleach plant, and sludge from the rotary screen thickeners which are directly ahead of the sludge screw presses.

Annual stormwater reports are required by the mill NPDES permit. Samples from three stormwater events are collected and tested for polycyclic aromatic hydrocarbons (PAHs) and benzene, toluene, ethylbenzene, and xylene (BTEX) in addition to conventional pollutants. The results for all sampling locations are averaged and presented in a summary table.

The mill's NPDES permit, No. AK-000092-2, requires routine monitoring and monthly reporting for federally established standards on biochemical oxygen demand (BOD), total suspended solids (TSS), temperature, and pH. Many of the wastewater constituents, such as chronic and acute toxicity, AOX, chlorinated organics, metals, color, residual chlorine, sulfide, and total petroleum hydrocarbons, are routinely tested for and reported according to established frequencies. Other information such as production, effluent flow rate, and stormwater runoff information are also submitted.

For those parameters for which KPC is required to monitor continuously, appropriate monitoring equipment is installed and is operated according to the manufacturers' specifications with appropriate calibration. Backup apparatus are also installed to ensure continuous monitoring should the primary equipment fail.

For those parameters for which KPC is required to monitor daily, appropriate sampling is performed using a one time "grab" or 24 hour composites, and these samples are analyzed daily at KPC and/or contract laboratories for the required parameters. Some parameters are analyzed by KPC in-house following the approved Standard Procedures. For the majority of parameters, however, the analyses are performed by Columbia Analytical Services of Kelso, WA. These samples are collected on Monday mornings, and shipped for analysis to CAS under proper chain-of-custody control . The results are provided to KPC monthly for regulatory reporting purposes.

All quarterly required parameters are monitored during intensive quarterly sampling events as required by the NPDES permit. This includes sampling of various bleach plant waste streams, outfall 001, sludge, and fully bleached pulp. The purpose of this program is to

document current rates of formation of 2,3,7,8-TCDD and TCDF, AOX, and to characterize the final effluent in terms of TSS, and 2,3,7,8-TCDD and TCDF.

During this sampling, concurrent monitoring for both acute and chronic toxicity is also required. Acute testing is performed using a specified protocol for a 96 hour static renewal testing with inland silversides as the test species. This testing is performed for KPC by Northwestern Aquatic Sciences (NAS) of Newport, Oregon.

Chronic testing is required to be performed using either an echinoderm sperm cell fertilization test (Dinnel, 1987), or a bivalve embryo larval development test (ASTM E 724-89). KPC is actively pursuing measures to reduce the chronic toxicity of the mill effluents. For this reason, KPC typically conducts both tests on all effluent samples. All of this testing is performed for KPC by Telonicher Marine Laboratories of Trinidad California. To date for NPDES Permit No. AK000092-2, KPC has spent approximately $250,000 dollars for chronic toxicity testing.

In addition to permit specific monitoring and reporting, the National Pollutant Discharge Elimination System (NPDES) Form 2C provides a listing of conventional pollutants, metals, cyanide, phenols, volatiles, acid compounds, basic compounds, and other substances present in KPC's waste streams. The form is completed during the NPDES permit application period and is a matter of public record.

Finally, KPC is required to implement several other programs to demonstrate compliance with NPDES Permit No. AK-000092-2.

The first of these is the Best Management Practices (BMP) Plan. This was a new requirement for KPC and was made a requirement of the 1994 permit. The intended purpose of the plan is to minimize the generation and potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities. This plan is being implemented by KPC. Additional employees have been hired to assure that BMP incident reporting, follow-up analysis and appropriate action occur.

The second of these is KPC's stormwater monitoring program. Since KPC applied for federally required stormwater permits for all of its facilities, stormwater permits for both the KPC facility and the KSM facility are incorporated into NPDES Permit No. AK-000092-2. Under this program, KPC is required to monitor COD, TSS, pH, oil and grease, PAH's, total hydrocarbons, benzene, ethylbenzene, toluene, and xylene three times per year at each respective stormwater outfall. Also, during the summer months, KPC is required to monitor the BOD and dissolved oxygen content of each outfall twice per calendar month. Since the inception of NPDES Permit No. AK-000092-2 in 1994, KPC has installed a comprehensive stormwater collection system designed to both reduce the number of outfalls and to increase the quality of the discharge from the KPC facility. This system is nearly complete and 1996 will be the first year in which monitoring of these new outfalls is to occur.

The third of these programs is the receiving water monitoring program. The purpose of this program is to monitor the water quality of Ward Cove, which is the direct receiving water for KPC's two discharge pipes. This program is conducted every two weeks at twelve stations throughout Ward Cove and Tongass Narrows. Monitored parameters include sulfite waste liquor, dissolved oxygen, pH, salinity, temperature, Secchi disk depth, turbidity, and color. Dissolved oxygen, temperature , pH, salinity, and turbidity are monitored every meter for the first five meters from the surface of Ward Cove and then every five meters to the bottom. This profile is then repeated for each station from the bottom to the surface. For sulfite waste liquor and color, samples are collected from both 1 and 5 meters from the surface and analyzed. R&M Engineering of Ketchikan performs all of the sample collection and testing for KPC with the exception of the analysis of the color samples. This testing is performed by KPC's internal compliance laboratory utilizing SOP's developed under the guidance of Standard Methods 2120B.

The fourth of these programs is the annual sediment monitoring studies carried out at the same twelve stations throughout Ward Cove and Tongass Narrows. KPC is required to analyze appropriate sediment samples from each of these sites for all congeners of TCDD and TCDF, total organic carbon, PAH's, cadmium, arsenic, zinc, phenol, 4-methylphenol, benzoic acid, acid volatile sulfides, EOX, methyl mercury, and toxicity using marine amphipods, larval sanddollars and purple sea urchins. Procedures for this testing have been mandated by EPA guidance. Reports, which include thorough discussions of sampling and analytical methodologies and QA/QC procedures, are submitted to the EPA on an annual basis. To date, two such studies have been conducted and submitted as required to EPA.

The fifth of these programs is the annual bioaccumulation monitoring program conducted in the vicinity of the discharge. KPC's NPDES permit provides specific direction on how this sampling is to be done. Due to the absence of the specified organisms in Ward Cove, an alternative bioaccumulation monitoring program has been established by agreement between EPA and KPC. This involves the use of established protocols for bioaccumulation monitoring of both the sediment and the water column in the vicinity of the outfall. Reports, which include detailed presentation of sampling and analytical methodologies and QA/QC procedures, are submitted to the EPA on an annual basis. To date, two such studies have been conducted in Ward Cove and submitted to EPA.

The final program is a comprehensive study of solids deposition. This program is designed to provide information about the nature and extent of solids deposition in the receiving water originating from KPC's discharge. This study has been completed and has been accepted by the EPA. EPA advised Ketchikan Pulp Company that the report provides a level of effort and information far beyond that which was required by the permit. Through this study, KPC has shown that with respect to the company's current waste streams, very little deposition of solids occurs in Ward Cove. This is due to the effluent treatment systems installed in past years.

**Recent Enforcement**

Wastewater management at Ketchikan Pulp Company was the subject of a lengthy investigation by the United States Environmental Protection Agency which began in 1991. In the spring of 1995 Ketchikan Pulp Company and the United States of America reached agreement and settlement of issues that arose from this investigation and which concerned environmental compliance. The agreement resulted in criminal, civil and administrative proceedings, and defined projects and related undertakings that are now being accomplished by Ketchikan Pulp Company.

The Government charged Ketchikan Pulp Company with discharging pollutants in violation of the terms of its wastewater discharge permit and for discharging pollutants without a permit. Ketchikan Pulp Company entered a guilty plea to one felony and thirteen misdemeanor violations of the Clean Water Act.

The felony violation occurred in April 1990 when Ketchikan Pulp Company shut down for scheduled maintenance to its primary clarifier. During this shutdown, a portion of collected solids from the primary clarifier were discharged into Ward Cove. The wastewater system in place at that time could not effectively remove all collected solids from the wastewater. The discharge of water containing any collected solids from the clarifier is prohibited *per se*, even if the solids discharged do not exceed any applicable total suspended solids effluent limitations in the permit.

The misdemeanor violations occurred on thirteen days during a period from January, 1991 through December, 1993 when Ketchikan Pulp Company negligently allowed wastewater containing magnesium oxide to overflow from two sewer manholes. The overflows occurred because the sewer piping from the powerhouse to the main sewer was too small to handle the volume of powerhouse wastewater, particularly during periods when high tides exerted pressure on the sewer. The overflow flowed downhill into the waters of Ward Cove. Under normal operating conditions, effluent from the powerhouse is discharged through the permitted outfall "001".

The conditions that gave rise to both felony and misdemeanor charges have been changed with new designs, installations, and programs which KPC believes have eliminated the potential for reoccurrence.

Ketchikan Pulp Company was fined and placed on probation for five years with an opportunity for early termination after one year.

Ketchikan Pulp Company obligations under the criminal proceeding include:

- Implement a program to improve the quality of wastewater discharges.

  There are presently three components: elimination of the use of elemental chlorine in the pulp process; evaluation of toxicity parameters; and

improvement of the discharge characteristics of the Company's wastewater outfalls.

- Implement an environmental policy that sets forth the individual responsibilities of employees with respect to the environment.

  Ketchikan Pulp Company has instituted employee training that will provide employees at all levels with information about State and Federal environmental laws. More specific training in the monitoring, reporting and control required by law and permit will be provided for those with specific job responsibilities which include environmental compliance.

- Prevent unpermitted discharges and implement management practices to prevent spills.

  KPC has developed an unpermitted discharge program to minimize the potential for non routine discharges. These issues are also addressed by several of the elements of the civil Consent Decree described below.

- Implement components of the Consent Decree as it relates to wastewater.

  For a description of all Consent Decree components, see below.

- Implement the Environmental Compliance Program described in the pre-sentencing report.

  This document is titled "Corporate Responsibility Program" and is attached.

- Fine: $3 million; $1.75 million to be offset by expenditures for the projects described above.

- Provide quarterly reports to the Court, Office of Probation, and the Department of Justice on the status of the implementation of the Environmental Compliance Program.

The Company and the Government entered into a Consent Decree in order to settle the claims brought by the Government under the civil enforcement provisions of the Clean Air and Clean Water Acts. The Consent Decree provides for a substantial penalty, as well as the implementation of injunctive measures designed to remedy Ketchikan Pulp Company Company's noncompliance with the two Acts and to improve its compliance with State and Federal environmental laws.

Ketchikan Pulp Company obligations under the Consent Decree:

Develop and implement the following:

- Wastewater treatment operator certification: treatment plant operators must be State-certified, and documentation maintained.

- Spill containment program: study the potential for spills, and design systems for preventing and containing spills; evaluate the feasibility of recycling treatment and non-wastewater disposal of spilled materials. Containment of spills will reduce the toxicity of Ketchikan Pulp Company Company's effluent.

- Water treatment plant discharge elimination: define, describe and plan for the steps which are necessary to prevent the direct discharge of filter backwash or basin drawdowns to the filter plant outfall.

- Laboratory monitoring and improvement program: develop a standard operating procedure for testing BOD, and describe in detail the steps for laboratory analysis; identify a single seed source for conducting all BOD analyses; develop a standard operating procedure for data entry review.

- Ward Cove sediment project: develop a technical studies work plan to characterize sediments in Ward Cove; evaluate results; identify alternatives for remediation, if necessary; and implement a remediation plan. This project is not to exceed $6 million.

- Source test emissions from the recovery boilers: test for particulate matter and sulfur dioxide and take all steps necessary to correct if violations of the Clean Air Act are discovered by the testing.

- Mass balance study for sulfur: conduct a facility wide mass balance study in order to reduce the discharge and emission of sulfur.

- Environmental audit: retain an independent environmental audit firm to develop and conduct an audit that will focus on both compliance and effectiveness of compliance assurance systems and management structure.

- Operations and maintenance program: design a program of operations and maintenance procedures that will minimize pollution at the mill.

- Pollution prevention study: identify areas where discharges or emissions of pollutants, especially toxics, can be reduced including fugitive emissions, stormwater and plant processes.

- Civil Penalty: $3.111 million.

The Company entered into a Compliance Agreement with EPA which achieves a settlement of any potential suspension and debarment issues with respect to Federal procurement and non-procurement activities which could have resulted from the entry of a guilty plea to the felony and misdemeanor charges. The agreement reflects EPA's

determination that the conditions that gave rise to the criminal convictions will be corrected by the many activities described in the Compliance Agreement and the related legal orders, and therefore, suspension or debarment is not necessary to protect the public interest.

The term of the agreement is five years with an opportunity for early termination after three years.

Ketchikan Pulp Company obligations under the Compliance Agreement:

Develop and implement the following:

- Statement of environmental commitment: includes all managers who will be required to sign a commitment to avoid illegal environmental acts.
- Non-reprisal policy: protects those who report environmental problems from reprisal of any kind.
- Ethics policy: contains a commitment to comply with environmental laws; ethical guidelines for daily business; policy governing conflict of interest; and a commitment to appropriate disciplinary action for violations of environmental laws.
- Corporate disclosure policy: requires an anonymous and protected communication system by which environmental problems may be reported to the company president; investigation and follow-up actions must be documented.
- Pollution prevention policies: references the studies to be performed under the Consent Decree, as well as the Best Management Practices plan required by the NPDES permit.
- Corporate Responsibility Program: this is identical to the Environmental Compliance program developed in conjunction with the criminal proceedings.
- Environmental management and engineering plan: describes the Best Management Practices plan which is mentioned also in connection with pollution prevention policy development.
- Internal compliance audit schedule: sets a schedule of audits to be conducted over the term of the agreement.
- Environmental compliance: reaffirms Ketchikan Pulp Company Company's commitment to full compliance.

- Training: requires extensive training in environmental compliance, ethics, and management practices.

Ketchikan Pulp Company is currently on schedule to satisfy all requirements of the criminal, civil and administrative proceedings described in the previous paragraphs.

**Future Wastewater Management**

Ketchikan Pulp Company has planned for several years to relocate the discharge outfall to Tongass Narrows. EPA has issued a draft NPDES permit for the new location. This extended outfall is designed to provide improved dispersion of KPC's discharge and to reduce the impact of mill operation on Ward Cove, which is currently listed as an impaired water body and has a Total Maximum Daily Limit (TMDL) for Biochemical Oxygen Demand (BOD). The permit must be certified by the State of Alaska under Section 401 of the Clean Water Act. The purpose of the State certification is to assure that the discharge will meet all State Water Quality Standards. In the past, discharge permits were technology-based so KPC is now taking a giant step to meeting water quality standards in the receiving waters. Standards are designed to protect water use and establish parameters and controls for fecal coliform bacteria, dissolved gas, pH, turbidity, temperature, dissolved inorganic substances, sediment loads, toxics and other deleterious organic substances, color, petroleum hydrocarbons, oils and grease, radioactivity, total residual chlorine, and whole effluent toxicity. State water quality regulations contain provisions (under very strict guidance) for a mixing zone in which water quality standards may be exceeded. This permit, once certified, will be in effect for five years.

ADEC has requested comprehensive technical and analytical information to support this new outfall describe how its discharge will affect water quality in Tongass Narrows. KPC and ADEC are working cooperatively with EPA to finish this certification and have set a schedule which contemplates certification in early 1997.

Information provided to ADEC by KPC includes Human Health and Ecological Risk assessments of the impact of the new outfall to Tongass Narrows (2 versions), a baseline biological study of the new Tongass Narrows outfall location (2 versions), a baseline sediment study of the new Tongass Narrows outfall location (2 versions), Tongass Narrows outfall design and oceanographic conditions (2 versions), as well as responses to 90 specific questions generated by ADEC.

The Tongass Narrows permit is essentially the same as the current Ward Cove permit (AK-000092-2). Water column and sediment monitoring will be expanded to include coverage of Tongass Narrows. The State certification of the Tongass Narrows permit is planned to include a mixing zone. The Ward Cove permit was issued without a mixing zone because of a decision made by the State not to certify it under Section 401, but to concentrate on certification of the Tongass Narrows discharge.

In addition to this specific program for quarterly monitoring, KPC will continue to be required to maintain the following additional programs which were implemented with the present permit.

- Best Management Practices (BMP) Plan. This plan has been implemented by KPC and will continue to be in force after final certification of the Tongass Narrows permit.

- Stormwater Monitoring Program. Under this program, KPC will continue to monitor COD, TSS, pH, Oil and Grease, PAH's, Total Petroleum Hydrocarbons, Benzene, Ethylbenzene, Toluene, and Xylene three times per year at each respective stormwater outfall. Also, during the summer months, KPC will continue to monitor the BOD and dissolved oxygen content of each outfall twice per calendar month.

- Receiving Water Monitoring Program. The original purpose of this program was to monitor the water quality of Ward Cove, which is the direct receiving water of KPC's discharge. This program will continue to monitor Ward Cove after the certification of the Tongass Narrows Permit and after the relocation of the outfall.

- Annual Sediment Monitoring Studies. The annual sediment monitoring studies carried out at the same specific twelve stations throughout Ward Cove and Tongass Narrows. Currently, KPC is required to analyze appropriate sediment samples from each of these sites for all congeners of TCDD and TCDF, total organic carbon, PAH's, cadmium, arsenic, zinc, phenol, 4-methylphenol, benzoic acid, acid volatile sulfides, EOX, methyl mercury, and toxicity using marine amphipods, larval sanddollars and purple sea urchins. KPC is anticipating that this requirement will continue after certification of the Tongass Narrows permit. Procedures for this testing will continue to follow strict USEPA guidance. Reports, which will include thorough discussions of sampling and analytical methodologies and QA/QC procedures, will continue to be submitted to the EPA on an annual basis, if required.

- Annual Bioaccumulation Monitoring Program. The annual bioaccumulation monitoring program is conducted in the vicinity of the discharge. KPC is anticipating that this requirement will change with the certification of the Tongass Narrows permit. Current negotiations with ADEC have indicated that ongoing monitoring of the Tongass Narrows outfall location will occur, possibly including bioaccumulation monitoring.

**Air Emissions Control**

Overview

Air quality issues at the KPC facility are governed primarily by the State of Alaska through the Alaska Department of Environmental Conservation (ADEC). State statutes and regulations are incorporated into the State Implementation Plan (SIP). Once approved by EPA, the SIP is enforceable under Federal law. The State does not yet have authorization to enforce all

applicable Federal Clean Air Act requirements. In the absence of applicable State standards, certain Federal air requirements (e.g., New Source Performance Standards) are enforced directly by the Environmental Protection Agency (EPA) in the absence of comparable State law.

KPC has seven boilers at its facility which are used to generate power and recover chemicals from the pulping processes. KPC's powerhouse produces steam for process heating and to drive two 10,000 KWH turbine generators and one 18,000 KWH turbine generator. These boilers are the primary source of air emissions at the KPC facility. Emissions also result from the pulp production processes and the facility's wastewater conveyance system and treatment facilities.

Regulatory Authority

KPC is currently operating under the authority of a consent decree entered into between it and the State of Alaska in May 1995.

In April 1995, KPC completed a study to satisfy 18 AAC 50.110. This section of the Alaska Administrative Code provides that "No person may permit any emission which is injurious to human health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property." The purpose of the study was twofold: (1) model ambient concentrations of pollutants (2) determine the risk that these pollutants pose to human health and the environment. The study was conducted using computer dispersion modeling and the most current information regarding health risks. It is common in the air quality field to attempt to predict the ambient concentration of pollutants using computer generated models. The modeled concentrations of pollutants can then be assessed to determine potential compliance with the National Ambient Air Quality Standards (NAAQS) or alternatively, can be used to predict the risk posed to human and ecological receptors at the modeled locations.

KPC's April 1995 study indicated that the facility had the potential, under certain worst case operating and meteorological conditions, to exceed applicable ambient air standards for sulfur dioxide and oxides of nitrogen. The study also indicated that the risk to human health posed by chloroform emissions merited further analysis. Based on these results, the State of Alaska was unable to renew KPC's air operating permit upon its expiration in May 1995. A then existing provision of State law required compliance with 18 AAC 50.110 as a condition for reissuance of an existing air operating permit.

In May 1995, KPC entered into a consent decree with the State of Alaska to resolve ambient air and human health issues raised by the April 1995 study. The consent decree required KPC to undertake a comprehensive modeling analysis for fine particulate matter, sulfur dioxide, carbon monoxide, total reduced sulfur, nitrogen dioxide, lead, and chloroform. Based on the April 1995 study, ADEC preliminarily determined that these pollutants had the potential to cause noncompliance with the NAAQS or posed unacceptable risks to human health. The

consent decree also required KPC to develop and implement a program to monitor the ambient concentrations of sulfur dioxide and particulate matter.

The follow-up modeling study was conducted during the summer of 1995 utilizing facility-specific emissions data (as opposed to generic industry emissions factors) as well as a more refined dispersion model and health risk assessment model.

The follow-up modeling study indicated that KPC's emissions were in compliance for certain standards but yielded inconclusive results with respect to sulfur dioxide and particulate matter. With respect to these pollutants, the follow-up modeling indicated that the facility had the potential to exceed the NAAQS under certain worst case conditions. Under most circumstances, modeling is believed to be overly conservative in estimating ambient air emissions. One way to test this hypothesis is through ambient monitoring.

KPC commenced its ambient monitoring program in February 1996 at two locations near the pulp mill facility. The monitors are programmed to assess ambient concentrations of particulate matter and sulfur dioxide. Thus far, the monitors have recorded one exceedance of the three hour standard for sulfur dioxide in June 1996. This exceedance occured in June 1996. It resulted from an operational upset at the pulp mill which released approximately twenty-five pounds of sulfur dioxide into the ambient environment. KPC recognizes that this operational upset could recur and intends to install a scrubber to capture sulfur dioxide emissions at the source.

The consent decree also required KPC to undertake a comprehensive modeling and health risk assessment of chloroform emissions. KPC tested emission sources at its facility to determine the concentration of chloroform emitted under typical operating scenarios. This data was then incorporated into a computer model to determine potential ambient concentrations of chloroform resulting from KPC's processes. From this, KPC conducted a refined health risk assessment utilizing a range of probable receptor variables. After extensive review by ADEC and air toxicology consultants retained by KPC, the State of Alaska determined that the risk of increased cancer posed by KPC's chloroform emissions was acceptable and within the State's risk level of one in one hundred thousand (1/100,000). Moreover, anticipated process changes to KPC's bleach plant (ECF conversion, discussed above under **Recent Enforcement**) are expected to significantly reduce chloroform emissions (up to 40%) thereby further lowering the potential risk to human health posed by chloroform emissions.

The existing consent decree incorporates by reference numerous provisions from the expired air permit. In effect, it is the functional and legal equivalent of an air operating permit and has been treated by KPC and ADEC as such.

Currently, ADEC is in the process of finalizing the most recent draft air operating permit. The permit is expected to be issued in the summer of 1996.

Sources and Emissions Controls

As discussed above, emissions from the KPC facility result primarily from two multi-fuel-fired power boilers, one oil-fired package boiler, four chemical recovery boilers, two acid plants, nine digesters, bleach plant, wash plant, water treatment facility, miscellaneous storage and process tanks, and associated equipment and activities. These sources and the specific stacks or vents through which emissions are released to the ambient environment have been approved by ADEC and are subject to extensive and comprehensive monitoring and reporting requirements.

**Package Boiler.** KPC's oil-fired package boiler was constructed in 1988 and is rated at 153 million Btu per hour. This source was constructed after the promulgation of applicable Federal New Source Performance Standards (NSPS) and is regulated primarily by EPA under the regulatory standards found in 40 C.F.R. part 60. The NSPS impose limits for sulfur dioxide, nitrogen oxides, and opacity. NOx is limited to 0.300 lb/MMBtu. A Dynawave Scrubber was installed to ensure compliance with a requirement to remove 90 percent of sulfur dioxide. In addition, the concentration of sulfur dioxide is limited by regulation to 500 parts per million (ppm).

The boiler has continuous emission monitors (CEMs) on the scrubber inlet which measure nitrogen oxides, sulfur dioxide, oxygen and opacity. At the outlet, CEMs measure sulfur dioxide and oxygen. In the future, it will be a permit requirement to conduct visual readings (using a "certified eye" aka Method 9) for opacity during certain maintenance procedures and during startup scenarios when it is feasible to do so.

**Power Boilers.** The two multi-fuel boilers (power boilers) are regulated primarily by ADEC. They typically burn No. 6 low sulfur fuel oil, bark, sawdust, knots, waste treatment sludge, paper, used sorbent pads, and used oil. The power boilers have limitations on sulfur dioxide, nitrogen oxides and opacity. The sulfur dioxide is limited to 500 ppm. Nitrogen oxides are limited under a facility wide limit of 863 tons per year calculated on a monthly rolling basis. This limit was established to ensure compliance with Federal Prevention of Significant Deterioration (PSD) requirements.

Each power boiler is equipped with a mechanical fly ash collection device followed by an electrostatic precipitator (ESP) for control of particulate emissions. Each boiler has pressure recovery staged combustion burners low to help control NOx burners and CEMs to monitor nitrogen oxides, carbon monoxide, sulfur dioxide, oxygen, and opacity.

**Recovery Boilers.** KPC's four recovery boilers are used to recover chemicals from the pulping process as well as generate power to operate the facility. Emissions from KPC's four recovery boilers are sent to two separate absorption systems to collect and recycle sulfur dioxide. The reclaimed sulfur is used in the process. To control particulate emissions, the recovery boilers have multi-clones as well as six Brinks canisters. Each Brinks canister contains 28 filter elements which are packed with polyester fibers that trap and control particulate emissions.

KPC is in the process of conducting a trial to burn secondary sludge (generated in the waste water treatment facilities) in the recovery boilers. Although it is dewatered using a device called a screw press, it is nonetheless quite moist and can be difficult to burn. Currently, primary and secondary sludge is mixed with wood waste and burned in the power boilers. The high moisture content of sludge has the potential to cause emissions problems. KPC believes that burning sludge in the recovery boilers will obviate the need to dispose of it in the power boilers and allow for a better fuel mixture in the power boilers. It is believed that these changes will improve the power boilers' emissions characteristics.

KPC has extensive reporting requirements to ensure that governmental agencies and citizens have comprehensive, up to date information on the facility's air emissions. Under Federal law, KPC is required to immediately report certain gas leaks to appropriate State, local, and national authorities. KPC is also required to report sulfur dioxide and chlorine releases under its air permit/consent decree. ADEC also requires KPC to verbally report within 24 hours any emission control equipment failure or emission control unit bypass, process upsets that may cause exceedances of applicable air requirements, and opacity exceedances which last for more than twenty minutes. Under the proposed air operating permit, KPC will be required to report any releases of mist or foam from the wastewater treatment systems which have the potential to migrate off-site. KPC is implementing engineering measures which the Company believes will eliminate the potential for off-site transport of foams and mists from the wastewater treatment system.

KPC submits quarterly reports to both EPA and ADEC. These reports contain comprehensive data on operations and air quality processes including:

- number of hours or operating days for emission sources;
- tons of air-dried pulp produced;
- amount of steam produced by the boilers;
- amount of No. 6 low sulfur fuel oil used;
- amount of heavy red liquor solids burned in the recovery boilers;
- type and quantity of any paper, charcoal, and used oil spill absorbent material burned in the multi-fuel boilers;
- sources test results for the power boilers and the package boilers;
- percent of the time the ESP fields are energized;

- daily calculation of fuel-bound sulfur based on oil usage;
- amount of nitrogen oxides produced in the package boiler, power boilers, and the Komatsu log loader;
- opacity results;
- repairs that were undertaken which affect emissions;
- sulfur dioxide emissions form the recovery system;
- concentration of sulfur dioxide in the Brinks stack;
- particulate emissions from the recovery system;
- source test results for the Brinks stack;
- reports of when diesel is burned in the package boiler;
- nitrogen oxides emissions for the package boiler;
- operating parameters for the ESP and Brinks systems;
- a summary of all verbal and written excess emission reports;
- opacity incidents that violate State standards;
- instances where the three hour average for sulfur dioxide exceeds 500 ppm;
- instances where the sulfur dioxide removal on the package boiler is less than ninety percent for greater than three hours;
- the total sulfur dioxide emitted as excess emissions;
- instances where air pollution control equipment was bypassed;

Enforcement

When the package boiler was constructed in 1988, EPA determined that KPC did not follow all the mandatory pre-construction requirements found in 40 C.F.R. part 60. These allegations were settled by consent decree. The consent decree was entered with the court in September 1995 and is discussed in greater detail above under **NPDES Permit**.

In March 1995, KPC received a NOV from the State of Alaska alleging that it exceeded applicable opacity and particulate standards and associated reporting requirements. The exceedances were determined to have been caused by Brinks Canisters (emission control units) that, due to age and design problems, were no longer effective in ensuring compliance with particulate emission limits applicable to the recovery boilers. This matter was settled with ADEC and resulted in the payment of a penalty of $21,908 to the State as well as a schedule to install an additional (seventh) Brinks Canister. KPC believes that the additional Brinks Canister will give it more flexibility to perform maintenance and related activities on existing Brinks Canister(s) without compromising the pollution control effectiveness of the system.

As discussed above, the existing consent decree was entered into by ADEC and KPC in May 1995. In addition to the projects, studies, and reporting requirements imposed upon KPC by the decree, ADEC also has the authority to seek stipulated penalties for violations of consent decree conditions ($5,000 per violation) and exceedances of opacity limits ($500 per violation). ADEC has assessed stipulated penalties for opacity exceedances.

KPC has retained an outside consulting/engineering firm to study its powerhouse and determine ways to improve boiler performance and minimize opacity exceedances. In the context of permit negotiations with ADEC, KPC proposed to incorporate a number of the consultant's recommendations into the consent decree and/or permit as enforceable conditions. When the draft permit is finalized, KPC will be required to implement a number of the recommended measures ranging from enhanced powerhouse employee training to engineering and equipment improvements. These are designed to improve the operating performance of the boilers and reduce the potential for opacity exceedances.

**Solid Waste Management**

KPC currently operates two contiguous solid waste landfills located adjacent to the pulp mill at approximately Mile 9, North Tongass Highway. These two landfills, the Ash Landfill, and the Wood waste Disposal Site, are regulated by the ADEC Solid Waste Program and are thus subject to regulation under 18 AAC 60. Landfill leachate, as well as stormwater, are also regulated under the existing KPC NPDES permit.

Both landfills are managed in a series of lifts, with impermeable membranes installed between lifts. Both landfills also have a leachate collection system that routes landfill leachate to the pulp mill secondary treatment system prior to discharge.

The Ash landfill is permitted to accept solid wastes under Solid Waste Permit Number 9113-BA005, issued by ADEC on April 13, 1995. The permit expires on December 31, 1998. The Ash Landfill permit restricts landfilled materials to boiler ash, flyash, calcium filtrate, hogged fuel mixed with rock and dirt, and primary/secondary waste water treatment sludge. Materials specifically restricted from the landfill by the permit include waste oil, oily waste, domestic sewage sludge, material pumped from septic tanks, fish processing waste, and hazardous and potentially hazardous materials.

In addition to leachate collection and treatment, the Ash Landfill permit requires monthly visual monitoring of the site to ensure that permit requirements are not being violated, and requires that records of waste volumes be maintained. All landfill leachate and stormwater testing conforms to requirements specified in 18 AAC 70.020(c).

The Wood waste Disposal Site was previously permitted to accept wood waste under Solid Waste Disposal Permit Number 9213-BA001. This permit was issued on October 27, 1994, and expired on December 31, 1995. Although landfilling of wood waste at the site has been discontinued, on May 17, 1996, KPC received authorization by ADEC to temporarily dispose of 38,500 cubic yards of wood waste at the site.

Although landfilling wood waste at the site has been discontinued since expiration of the permit, leachate and stormwater collection, monitoring, and treatment has continued concurrently with the Ash Landfill.

On March 5, 1996, KPC received a Notice of Violation (NOV) for the Wood waste Disposal Site permit. The NOV specifically requested the following action:

- investigate, and if necessary, extinguish waste combustion;
- completion of a Visual Monitoring Plan;
- completion of a Landfill Closure Plan;
- completion of a Surface Water Monitoring Plan;
- completion of a Surface Water Corrective Action Plan;
- final plans for the SWL6A leachate control structure;
- submission of as-built drawings for the SWL4 leachate control structure.

KPC has addressed, or is in the process of addressing, each item specified in the NOV. The landfill was investigated for evidence of combustion. No evidence of combustion was noted by KPC or ADEC personnel during a recent ADEC inspection.

The Visual Monitoring Plan has been completed and is currently being implemented. The Landfill Closure Plan is currently being completed and will be implemented upon approval by ADEC. The Surface Waster Monitoring Plan is being revised to meet requirements of the Solid Waste Permit, as well as requirements specified in KPC's NPDES permit. In addition, KPC is addressing procedures for corrective action for any surface water stream that may be impacted by a leachate release. Final plans for the SWL6A and SWL4 leachate control structures have been submitted to ADEC. Construction of both structures is complete.

As part of the requirements of the Solid Waste and NPDES permits, weekly monitoring of streams in the vicinity of the landfill area is currently being conducted. Currently, three streams and one background location are being monitored for flow rate, temperature, pH, conductivity, salinity, dissolved oxygen, turbidity, total suspended solids, BOD, COD, tannin and lignin, oil and grease, benzene, ethylbenzene, toluene, and xylenes (BTEX), BNAs, and dioxins and furans. Weekly monitoring of these parameters has indicated detectable concentrations of only one BTEX compound, toluene. Toluene was detected in 16 of 23 samples collected since December 15, 1995. One dioxin/furan congener, specifically 2,3,7,8-TCDD, was detected in only one of 23 samples collected since December 15, 1995.

In addition to the requirements discussed above, KPC submits an annual volume and leachate analysis report to ADEC. Included in this report are waste volumes and a summary of analytical results of the leachate monitoring.

**Ward Cove Maintenance Dredging**

Periodic maintenance dredging within Ward Cove is required to ensure maritime access to the KPC loading and unloading facilities. Pursuant to the Clean Water Act, the US Army Corps of Engineers regulates dredging subject to a requirement that the Alaska Department of Environmental Conservation (ADEC) provide a certification before permits are issued. ADEC ensures that KPC's dredging will not create violations of State water quality standards.

KPC performs various marine activities in Ward Cove, including the transport of log rafts using tug boats, delivery of wood chips using tugs and barges, and shipment of pulp using large ocean-going ships. In order to perform these activities, it is necessary to maintain sufficient water depths within Ward Cove to allow ship and barge traffic. Even though KPC has systems and equipment to minimize the loss of settleable solids in Ward Cove, navigable depths are compromised over time by the build-up of settled materials generated during the course of normal operations and from normal Ward Creek drainage. It is therefore necessary for KPC to dredge selected areas of Ward Cove as a means of maintaining navigable water depths.

In 1990, KPC applied to renew an expired dredging permit. The application contemplated the dredging of about 15,000 cubic yards of sediment from areas in front of the pulp mill and sawmill. In response to the application, ADEC requested that KPC perform extensive sampling of the sediments to evaluate their properties before it would certify the permit. Due to the time required to develop and provide the data, the Corps of Engineers did not issue the permit until September 1992. Pursuant to the permit, KPC dredged about 38,000 cubic yards in the first part of 1993. The Corps of Engineers and ADEC determined that KPC had exceeded the permitted annual dredging quantity. The Corps of Engineers agreed to settle the matter without litigation in exchange for KPC contributing

$22,000 to the funding of a local fish hatchery. The resolution of the State issues was likewise achieved without litigation by the payment of a fine of $12,500.

Ketchikan Pulp Company spent approximately $70,000 during the 1995 dredge period on a program to monitor water quality standards during dredging operations. The results of the program were shared with ADEC and EPA and indicated that KPC's dredging does not cause or contribute to violations of water quality standards.

Authorization for KPC to perform maintenance dredging was received via a dredging permit issued by the US Army Corps of Engineers District of Alaska. The current terms allow KPC to dredge 15,000 cubic yard per year. Stipulations exist stating the dredged material will be placed in a specified site for dewatering, then transported in covered trucks to an upland landfill. The time limit for completing work under the current permit is March 31, 1997.

By Federal law, the final dredging permit cannot be issued until a State of Alaska Section 401 Water Quality Certification has been issued or waived, and a Coastal Zone Management consistency determination has been completed. KPC has currently stopped the review clock for the determination issued by the Alaska Division of Government Coordination to negotiate provisions with various State of Alaska resource agencies. The 401 Certification issued by the Alaska Department of Conservation, is pending resolution of several issues:

1. Identification of a suitable disposal site for the dredged material.
2. Approval of a Ward Cove water sampling plan to assure compliance with Alaska State Water Quality Standards, and
3. Definition of a practical time frame during which dredging will have a minimal effect on migrating salmonids, which will likely be the month of January.

KPC plans to conduct a maintenance dredging program after resolution of these issues. It is expected that this will occur in January 1997.

**Log Transfer Facilities**

Ketchikan Pulp Company operates an extensive logging operation. Logs are transferred from sort yards and collection points at log transfer facilities which are regulated by the US Environmental Protection Agency (EPA) pursuant to the Clean Water Act. The agency issues permits to log transfer facilities as part of the National Pollutant Discharge Elimination System (NPDES) program. KPC holds several such permits for its log transfer facilities. These permits generally place restrictions on how logs may be loaded, unloaded, and stored. Some permits also require monitoring to ensure that the deposition of bark does not cause environmental degradation. Monitoring of the waters for oil sheens at all KPC operated log transfer facilities is performed and logged on a daily basis. This is an NPDES permit stipulation. The United States Coast Guard and the Alaska

Department of Environmental Conservation are notified immediately by phone with a written follow-up report when KPC is responsible for a spill of any size to the water.

Debris is not allowed to accumulate on, or beneath log transfer structures. Thorne Bay and the Annette Hemlock Mill both have permitted annual dredge activities. Thorne Bay's dredging is strictly monitored as required by State, Section 401 certification stipulations.

General Stormwater permits (NPDES) are held by either KPC or the United States Forest Service for each Log Transfer Facility. These stormwater permits have requirements for monitoring which are implemented in a pollution prevention plan specifically for each Log Transfer Facility.

**Pollution Prevention**

Pollution prevention activities have been unofficially underway for many years at KPC. In the past, these activities have been carried out informally due to the absence of a requirement for specific pollution prevention activities in the State of Alaska. These activities include, but are not limited to, the use of non-toxic antifreeze, vegetable based hydraulic oils, recycle of lead batteries, burning waste oils and substitution of non-hazardous materials for hazardous materials. Recently however, KPC has been required to conduct a pollution prevention study by Consent Decree No. A92-587-CV.

KPC is in the process of conducting this study at the present time. The due date for completion is March 27, 1997, at which time EPA Region 10 will make determinations for implementation of any recommendations which appear in the final report. Currently, KPC has completed about 50% of this study, and has just completed the preliminary evaluation of alternatives as specified in the following draft workplan:

The goal of pollution prevention is to identify manufacturing and management process changes that will prevent the formation of pollutants, thus eliminating the need to remove them through various treatment processes. Pollution prevention focuses on all media; therefore, the transfer of a pollutant from one medium (e.g., water) to another (e.g., air or land) is not a preventive measure and is not considered an acceptable alternative for purposes of this study. The pollution prevention study is focused on KPC's key production processes, such as pulping and bleaching, and other on-site areas that may be responsible for the production and possible release of hazardous compounds (particularly chlorinated organics) to the environment.

KPC's commitment to pollution prevention dates back to the mill's initial construction. At that time, in the early 1950's the company decided to install a system for complete recovery of pulping chemicals. This decision was made at a time when other similar mills were achieving much less. Other accomplishments since the mill's startup include installation of a log bundle crane to reduce debris loss in Ward Cove, conversion from hydraulic to mechanical debarking to reduce water consumption, and expansion of evaporation capacity, washing improvements, and boiler modifications to further improve spent sulfite liquor (SSL) recovery.

This commitment to pollution prevention continues today. KPC is in the final design stage of a major bleach plant modification that will allow elemental chlorine free (ECF) bleaching and will result in a significant reduction in the formation of chlorinated organic compounds. Other studies and designs are currently in progress to implement spill containment and close up the screen room, both of which should aid in reducing the toxicity of the mill's wastewater. The pollution prevention study is another step in KPC's ongoing process of minimizing the amount of waste generated by its manufacturing operation.

KPC's Pollution Prevention Study will be patterned after EPA guidance documents provided by Region 10 ,*Handbook on Pollution Prevention Opportunities for Bleached Kraft Pulp and Paper Mills*, EPA 600/R-93/098, June 1993 and *Model Pollution Prevention Plan for the Kraft Segment of the Pulp and Paper Industry*, EPA 910/9-92-030, September 1992. In addition, KPC's study will incorporate an approach similar to those used by the states of Washington (WAC 173-307) and Texas (TAC 335, Subchapter Q).

KPC routinely collects a significant amount of analytical data to document chemical purchases and releases to the environment (air, water, solid waste,). This existing information will form the database for the pollution prevention study.

**Chronic Toxicity**

Chronic toxicity is defined by the particular bioassay tests performed on an effluent. The rationale behind toxicity testing is to measure the combined effects of all individual components of an effluent in terms of biological toxicity to a selected aquatic life form or life stage. KPC is committed to reducing final effluent chronic toxicity.

In previous attempts to identify specific sources of chronic toxicity at KPC, researchers were able to narrow the contributors of the greatest chronic toxicity to a small number of sources and to identify broad classes of chemical constituents that may account for the measured toxicity. Based on this internal research, a number of preliminary conclusions have been reached:

- Different compounds may account for toxicity to different marine test organisms; i.e., what is chronically toxic to sea urchins may not be toxic to oysters or mussels (and vice versa).

- Chronic toxicity in the mill internal effluent streams cannot be added and subtracted, as is the case with more conventional contaminants such as BOD and TSS. The synergistic or antagonistic effects of multiple compounds when mixed together may result in increases or decreases in the combined toxicity. This makes the study of individual contributing sources very difficult, and the results of internal effluent stream studies are

inconclusive without verification using some type of simulated pilot plant testing.

- Compounds or classes of compounds that may be responsible for the mill's chronic toxicity include residual chlorine, chlorinated organic compounds, color or lignin fragmentation products, aldehydes, resinous compounds, and sulfur compounds. Residual peroxide from the future ECF bleaching sequence may also contribute to toxicity. Results indicate that KPC's chronic toxicity is not related to a single compound.

- Major sources of chronic toxicity are thought to be the chlorine stage filtrate, screen room effluent, hot caustic stage filtrate, evaporator condensate, and in the future, the peroxide stage filtrate.

- Attempting to identify the specific compound(s) responsible for toxicity has proven to be a very inefficient process for reducing the mill's chronic toxicity. KPC will continue to seek a better understanding of the causes of toxicity and will follow developments in this field. Until cause-and-effect relationships are better documented, KPC will measure the chronic toxicity levels for different combinations of process changes and wastewater treatment steps in search of the best result that can be achieved, regardless of a precise understanding of the chemistry involved. Effect on final effluent toxicity will be considered when selecting pollution prevention alternatives.

KPC is committed to reducing final effluent toxicity as defined by the test procedures specified in KPC's NPDES permit and State water quality regulations. Over the past two years, KPC has performed a series of studies to identify effluent streams and classes of compounds which appear to impact chronic toxicity. The pollution prevention study will build on that work by exploring pollution prevention opportunities for those classes of compounds identified in the earlier studies.

**Spill Prevention and Containment**

Spill prevention measures have been developed and are aimed at addressing the following materials:

- pulping chemicals including cooking liquor, spent cooking liquor, and magnesium oxide;

- mineral acids;

- caustic (sodium hydroxide);

- polymers;

- chemicals delivered and unloaded from rail cars;

- chemicals used in the bleach plant such as chlorine, sodium hypochlorite, surfactants, and defoamer;
- materials used and stored in the maintenance shops and "stores" areas, such as oils, fuels, solvents, defoamers, and polymers;
- wastewater, foam, and defoamer spilled outside of the wastewater treatment system;
- oil, diesel fuel, fuel oil, boiler feed chemicals, caustic and sulfuric acid in the boiler building and turbine building.

The measures developed to address potential spills were divided into two categories: prevention and containment. The spill prevention measures include over 60 specific measures which can be categorized as:

- a program of installing instrumentation and control improvements, such as tank level sensors and alarms, pipeline pressure sensors and alarms, chlorine detectors, and non-discharging liquor density monitors;
- modification of operating procedures and methods;
- improved labeling program for piping and equipment;
- installation of a standby power system to operate critical loads during power outages;
- installation of additional equipment, such as instrument air compressors, pumps, and a vent line separator;
- rerouting piping, particularly overflows, to more appropriate locations;
- installation of paving and curbing as appropriate to prevent migration of spilled material out of the immediate area of a potential spill;
- installation of drip pans to collect oil and fuel from pipes and hoses in the wood room, the boiler house, and in the machine room;
- root cause analysis of process upsets and spills to .

The spill containment measures were consolidated into 20 projects briefly described as follows:

Project 1 - Liquor tank containment

Project 2 - Digester/accumulator area pump station 7

Project 3 - Heavy red liquor pump station

Project 4 - High liquor content diversions to spill tanks

Project 5 - Magnesium oxide unloading area containment

Project 6 - Magnesium oxide slaking tank and day tank containment

Project 7 - Screw press polymer tank containment

Project 8 - Filter plant polymer tank containment

Project 9 - Containment for rail car unloading and tanks south of the bleach plant

Project 10 - Auto shop furnace oil double wall tank

Project 11 - Containment for small tanks inside the bleach plant

Project 12 - Double containment piping for sulfuric acid and caustic

Project 13 - Central storage area for totes and barrels

Project 14 - Small containment systems throughout the mill for barrels and totes in use

Project 15 - Containment for the secondary treatment defoamer tank

Project 16 - Containment for the phosphoric acid tank

Project 17 - Containment for the sulfuric acid tank

Project 18 - Containment for the sulfuric acid and caustic day tanks in the turbine building

Project 19 - Oil containment on the first floor of the turbine building

Project 20 - Improved containment for fuel oil and diesel on the first floor of the boiler building

Components of the spill prevention and containment program are included in both the plea agreement and the Civil Consent Decree as well as KPC's Best Management Practices (BMP) Plan. The study and preliminary designs were completed and submitted to EPA in January, 1996. Many of the projects have been started and many are already complete. Final designs for the spill containment projects, along with an implementation schedule, will be submitted to EPA in September, 1996. The final implementation of the spill prevention and containment measures is expected to be complete in September, 1997.

Ketchikan Pulp Company also maintains Operations Manuals for Marine Transfer Facilities and Facility Response Plans for each camp Spill Prevention Control and

Countermeasure Plans are maintained for each of the camps, the Thorne Bay Sort Yard and the Annette Hemlock Mill.

**Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (1970) mandates that hazardous waste will be treated, stored, and disposed of so as to minimize the present and future threat to human health and the environment. RCRA is a regulatory statute designed to provide "cradle to grave" management of hazardous waste by imposing requirements on generators and transporters of hazardous waste. The Hazardous and Solid Waste Amendments of 1984 (HSWA) mandated waste minimization and a national land disposal ban program. Congress has declared that the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible, and land disposal should be the least favored method for managing hazardous waste. For facilities operating in the State of Alaska, this program is regulated by the Environmental Protection Agency. There have been no regulatory actions filed regarding hazardous waste management at KPC.

Ketchikan Pulp Company operates several facilities that have the potential for hazardous waste generation at different generation rates and volumes. The pulp mill complex currently operates under a Large Quantity Generator (LQG) status, although actual waste generation levels would often qualify it for Small Quantity Generator (SQG) status. A large quantity generator is one which generates over 1000 kilograms of waste in any calendar month, or exceeds a storage volume of hazardous waste of 6000 kilograms at any time. KPC's camps, sawmills, and helicopter hanger currently operate under a Conditionally Exempt Small Quantity Generator (CESQG) status. This level of generation specifies generation of up to but less than 100 kilograms of hazardous waste in a calendar month.

As a large quantity generator of hazardous waste, KPC's pulp mill complex is actively involved in waste minimization and source reduction programs. All waste streams are reviewed for source reduction and recycle possibilities. Ketchikan Pulp Company currently recycles a large number of waste streams, including but not limited to, antifreeze, crushed oil filters, batteries, light ballasts, and paint solvents. KPC has eliminated several waste streams through the substitution of less toxic or non-toxic material.

Ketchikan Pulp Company Company's pulp mill complex generates a variety of wastes that represent the following waste codes:

D001 Unlisted Hazardous Wastes Characteristic of Ignitability
D002 Unlisted Hazardous Wastes Characteristic of Corrosivity
D003 Unlisted Hazardous Wastes Characteristic of Reactivity
D004 Unlisted Hazardous Wastes Characteristic of Toxicity - Arsenic
D005 Unlisted Hazardous Wastes Characteristic of Toxicity - Barium
D006 Unlisted Hazardous Wastes Characteristic of Toxicity - Cadmium
D007 Unlisted Hazardous Wastes Characteristic of Toxicity - Chromium
D008 Unlisted Hazardous Wastes Characteristic of Toxicity - Lead

D009 Unlisted Hazardous Wastes Characteristic of Toxicity - Mercury
D011 Unlisted Hazardous Wastes Characteristic of Toxicity - Silver
D019 Unlisted Hazardous Wastes Characteristic of Toxicity - Carbon Tetrachloride
D026 Unlisted Hazardous Wastes Characteristic of Toxicity - Cresol
D028 Unlisted Hazardous Wastes Characteristic of Toxicity - 1,2 Dichloroeththane
D035 Unlisted Hazardous Wastes Characteristic of Toxicity - Methyl Ethyl Ketone
D039 Unlisted Hazardous Wastes Characteristic of Toxicity - Tetrachloroethylene
D040 Unlisted Hazardous Wastes Characteristic of Toxicity - Trichlorethylene
F002 The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume of one or more of the below listed halogenated solvents or those listed in F001, F004, F005, and still bottoms from the recovery of these spent solvents and spent solvent mixtures).

a) Tetrachlorethylene
b) Methylene Chloride
c) Trichloroethylene
d) 1,1,1,Trichloroethane
e) Chlorobenzene
f) 1,1,2-Trichloro-1,2,2-trifluroethane
g) 0-Dichlorobenzene
h) Trichlorochloromethane
i) 1,1,2 Trichloroethane

F003 The following spent non-halogenated solvents and solvents:

a) xylene
b) acetone
c) ethyl acetate
d) ethylbenzene
e) ethyl ether
f) methyl isobutyl ketone
g) n-butyl alcohol
h) cyclohexanone
i) methanol

F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:

a) toluene
b) methyl ethyl ketone

c) carbon disulfide
d) isubutanol
e) pyridine

U019 Benzene
U210 Tetrachloroethene
U226 1,1,1-trichloroethane

In 1994 and 1995 these materials accounted for over 25 tons of hazardous waste legally transported to an off-site treatment storage and disposal facility where most were burned for energy recovery, solidified, or extracted.

KPC expects the current rate of reporting generation of hazardous waste to remain constant or increase to some degree during 1996 and 1997. This is due primarily to obsolete and outdated materials being sent off-site for disposal. However, beyond 1997, the company expects the generation of hazardous waste to decrease substantially.

Hazardous waste at Ketchikan Pulp Company Company's camps, sawmills, and the helicopter hanger continues to be reduced, recycled and burned on-site for energy recovery. Used oil is also burned on-site in the power boilers for energy recovery. These facilities are also currently reducing supplies of obsolete inventories and may experience a brief increase in waste generation activities for 1996. Waste codes traditionally found at these facilities include D001, D002, and D008 as a result of on-going mobile-equipment maintenance activities.

KPC reports all waste generation activities in the Biennial Hazardous Waste Report as required by sections 3002, 3004, and 3007 of the Resource Conservation and Recovery Act and Alaska Statutes 46.03.302 and 46.03.305. Completion of this report fulfills both the State of Alaska Hazardous Waste Report and the Federal Biennial Report for each odd calendar year. In addition, KPC submits a waste minimization questionnaire as a supplement to the State of Alaska's Annual Hazardous Waste Report. In 1995, Alaska reduced it's Annual Hazardous Waste Report's annual submittal requirements to biennial submittal to correspond with the Federal reporting requirements.

KPC has also been aggressive in reducing its non-hazardous waste. A Recycle Process Improvement Team ("Recycle PIT") has been charged with increasing recycle rates and decreasing wastes for off-site disposal. Ketchikan Pulp Company became a Charter Member of EPA's Voluntary Wa$teWi$e program in 1994. This program fosters industry's innovative efforts to pledge and meet goals for reduction and recycle of non-hazardous wastes.

**Oil**

The oil spill resulting from the Exxon Valdez in Prince William Sound, Alaska in March 1989 catalyzed the enactment of oil spill prevention and discharge programs by several regulatory bodies.

Ketchikan Pulp Company Company's transportation and storage of petroleum products at its pulp mill complex, camps, sawmills, and helicopter hanger have resulted in several plans to address these recent regulations.

Applicable regulations include:

- 18 AAC 75
- 40 CFR 110
- 40 CFR 112
- 40 CFR 114
- 33 CFR 153
- 33 CFR 154
- 33 CFR 156

These regulations establish guidelines for procedures, methods and equipment, and other requirements necessary to prevent the discharge of oil from transportation and non-transportation-related on-shore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

Programs developed to meet the regulations include Operation Procedures, Product Transfer Procedures, Storage and Containment Programs, Notification Procedures, Equipment Lists and Inspections, Line Testing, Health and Safety Response Training, Identification of Environmentally Sensitive Areas, and Emergency Wildlife Management Procedures.

KPC is required to develop several spill scenarios for its operations and to regularly conduct response drills for those scenarios in order to be ready if a spill actually occurs. A quarterly notification exercise must be conducted by all EPA and USCG regulated facilities as well as aboard manned vessels and unmanned barges. The quarterly biannual Emergency Procedures Exercise must be conducted by manned vessels and unmanned barges. The Equipment Deployment Exercise must be conducted by all EPA and USCG regulated facilities and vessels. The annual Tabletop exercise must be conducted by all EPA and USCG regulated facilities and all vessels. One Tabletop exercise over the triennial cycle must evaluate the worst case discharge scenario. An annual Unannounced Exercise requirement must also be met.

KPC utilizes the following plans to fulfill planning requirements:

- EPA Facility Response Plan
- KPC Oil Discharge Prevention and Contingency Plan
- USCG Facility Response Plan
- KPC Facility Operations Manual
- KPC Spill Prevention Control and Countermeasure Plan
- KPC Emergency Response Plan

- Oil Discharge Prevention and Contingency Plan for KPC's oil and supply delivery barge.
- USCG Response Plan for the barge.

## TSCA

The Toxic Substances Control Act (TSCA) enacted in 1976 provides EPA with the authority to require testing of chemical substances entering the environment and to regulate them where necessary. Programs under TSCA gather information about the toxicity of chemicals and the extent to which people and the environment are exposed to them. Polychlorinated Biphenyls (PCBs) are regulated under TSCA. The EPA regulations that accompany the law set specific standards regarding PCB manufacturing and use.

Ketchikan Pulp Company does not manufacture PCBs, but is considered a generator of PCB waste. Prior to the mid seventies, PCBs were commonly used in transformers and capacitors because of their excellent heat transfer characteristics. PCBs were also commonly found in some petroleum products.

Processing, distribution and the use of PCBs are prohibited except in a totally enclosed manner. A transformer or capacitor is an example of an allowed totally enclosed system. Over the course of several years, Ketchikan Pulp Company has replaced PCB containing transformers and capacitors with more updated systems. The PCB fluid inside the units as well as the "carcass" of the units are disposed of in permitted disposal facilities. Ketchikan Pulp Company ships them off-site accompanied by a manifest similar to the manifest used for hazardous wastes in the RCRA program.

Several shipments of PCB contaminated material have been made off-site in recent years. As of Spring of 1996, all PCB enhanced transformers and capacitors have been successfully removed from operations and from locations at Ketchikan Pulp Company. An annual report to EPA early in 1997 will successfully close this program for KPC.

## CERCLA

Section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA, or Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986), Public Law 99-499 requires reporting of a release of a regulated substance above the Federally mandated 24 hour Reportable Quantity (RQ) that is not "federally permitted" or "continuous in nature". This reporting requirement is for releases expected to travel beyond the plant boundaries.

In the 1986 legislation, Congress specified an initial one pound RQ for all SARA "Extremely Hazardous Substances (EHS)"except for those substances which were already CERCLA hazardous substances with established RQs. In May, 1996 an EPA final rule was published which increased the reportable quantities for over 200 substances.

Ketchikan Pulp Company voluntarily chose to report the releases due to the potential exposure to persons off-site. Since January 1, 1996 Ketchikan Pulp Company has reported under Section 302 of EPCRA over sixty releases to the National Response Center for sulfur dioxide and chlorine gas. None of the sulfur dioxide gas releases approached the 500 pound RQ, and none of the chlorine gas releases approached the 10 pound RQ. In conjunction with the State air permit which is to be issued soon, KPC has agreed to report sulfur dioxide releases which exceed 25 pounds in a twenty hour period.

Submission of the Tier One, Emergency and Hazardous Material Inventory Form, is required by Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA, or Title III of the Superfund Amendments and Reauthorization Act of 1986), Public Law 99-499. The purpose of the form is to provide State and local officials and the public with information on the general types and locations of hazardous chemicals present at a facility during the past year.

A Tier Two form may be substituted for a Tier One form. The Tier Two form provides detailed information and must be submitted in response to a specific request from State or local officials.

In 1996, Ketchikan Pulp Company filed Tier Two Reports for

- Ketchikan Pulp Company Mill at Ward Cove
- Flight Department
- Ketchikan Sawmill
- Shelter Cove Camp
- Marguerite Bay Log Transfer Facility
- Annette Hemlock Sawmill
- Tuxekan Logging Camp at Labouchere Bay
- El Capitan Logging Camp at Coffman Cove
- Naukati Logging Camp
- Polk Inlet logging Camp
- Thorne Bay Logging

These reports were provided to local fire officials, the Local Emergency Planning Committee, and the Alaska Department of Environmental Conservation.

Submission of Form R, the Toxic Chemical Release Inventory (TRI) Reporting Form, is required by Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, or Title III of the Superfund Amendments and Reauthorization Act of 1986), Public Law 99-499. Reporting is required to provide the public with information on the releases of listed toxic chemicals in their communities and to provide EPA with release information to assist the Agency in determining the need for future regulations. Facilities must report the quantities of both routine and accidental releases of listed toxic chemicals, as well as the maximum amount of the listed toxic chemical on-site during the calendar year and the amount contained in wastes transferred off site.

Chemicals reported on Form R include hazardous chemicals used and hazardous chemicals generated in the manufacturing process (as defined by 40 CFR 372.65) in excess of the threshold planning quantities listed in 40 CFR 370.20. Form R also includes any information on hazardous substances above the threshold planning quantity in storm water and in wastes that are sent off-site for disposal.

A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at each covered facility as described in the reporting rule in 40 CFR Part 372 (originally published February 16, 1988, in the Federal Register).

Section 313 of EPCRA requires that reports be filed by owners and operators of facilities that meet all of the following criteria. Ketchikan Pulp Company Company's Pulp Mill Complex meets the submission requirements presented below:

- The facility has 10 or more full-time employees; and
- The facility is included in Standard Industrial Classification (SIC) Code 2611 and
- The facility manufactures (defined to include importing), processes, or otherwise uses listed toxic chemicals in quantities greater than the established threshold in the course of a calendar year.

Facilities that must report under section 313 of EPCRA are required to develop reasonable estimates of the amounts of listed chemicals released from the facility. Additional monitoring is not required by section 313, however facilities are required to consider all available data, including that developed under other environmental regulations. Facilities are required to document data developed and to maintain records for three years from the date that the report is submitted.

Until 1995, TRI reporting was required for 368 chemicals and chemical categories. On November 30, 1994, EPA promulgated final rules that added 286 chemicals and chemical categories to the list of toxic chemicals for which reporting is required, and provided an alternate threshold for some reporting. The addition of these chemicals and chemical categories almost doubled the number of toxic chemicals subject to TRI reporting.

Section 313's purpose is to make information available on the amount of specific toxic chemicals released to the environment from manufacturing facilities. EPA is required to make this information accessible on a computerized database. The Toxic Release Inventory (TRI) database became available in June 1989 through the National Library of Medicine's TOXNET system. EPA also is providing information on microfiche, computer tape, CD-ROM and diskette for analysis by interested organizations and individuals. Annual reports have been prepared by EPA to summarize release data by industry, region and chemical.

Ketchikan Pulp Company is required to develop reasonable estimates of amounts of chemicals released. KPC has historically relied on pulp mill specific data. If it has not been available, Ketchikan Pulp Company has referred to industry data, specifically the National Council For Air and Stream Improvement for the Pulp and Paper Industry's (NCASI) SARA Release Reporting documents. The report allows for estimates based on monitoring data or measurements, estimates based on mass balance calculations, estimates based on published emission factors, or estimates based on engineering calculations or best engineering judgment.

Separate section 313 reporting thresholds apply to manufacturing, processing and "otherwise using" section 313 chemicals. Manufacturing and processing thresholds are set at 25,000 pounds per year. The "otherwise use" threshold is 10,000 pounds per year. Any chemical that meets any of the three reporting thresholds must be reported for all activities at the facility. Of the 600 reportable chemicals, KPC only manufactures, processes or "otherwise uses" 9 chemicals in volumes that require reporting under Section 313.

Ketchikan Pulp Company currently provides reports for the following nine chemicals:

- Nitric Acid
- Phosphoric Acid
- Chlorine
- Chloroform
- Hydrochloric Acid
- SulfuricAcid
- Ammonia
- Methanol
- Formic Acid

Of those nine chemicals, two (Nitric Acid and Phosphoric Acid) are not discharged to the environment unless an unanticipated spill or release occurs. Nitric Acid has been successfully eliminated from pulp mill operations since 1989. Phosphoric acid, a feedstock for the secondary aerobic treatment system, was released to the environment in one reporting year over the last six years due to an unanticipated spill or release.

Chlorine is released to the environment in air emissions. This chemical's release ordinarily results from production activity in the Bleach Plant of the Pulp Mill facility unless an unanticipated spill or release provides alternative avenues to the environment.

Chloroform release amounts continue to decrease. This reduction in reported chloroform levels is based on recently available emission measurements taken at the mill. Originally, KPC used estimated values presented in the NCASI publications which include Kraft pulp mills as well as sulfite pulp mills. Ketchikan Pulp Company Company's sulfite pulp mill produces significantly less chloroform than a Kraft mill. With actual measured data available, Ketchikan Pulp Company has reported significant reductions in releases of this material. This material is expected to continue its decreasing trend with conversion to the Elemental Chlorine Free bleaching process in 1997.

Ketchikan Pulp Company has accomplished a dramatic reduction of hydrochloric acid releases. An average two million pounds of hydrochloric acid was calculated as released in the wastewater effluent each year from 1989 to 1992. In late 1993, with the addition of an Effluent Neutralization System (ENS), KPC successfully reduced hydrochloric acid discharges to less than 1,000 pounds a year. Technical documents suggest hydrochloric acid may be released in the effluent as a function of pH. (Hydrochloric acid concentration is inversely proportional to the pH of the effluent.)

Release of sulfuric acid to the environment is another by-product emission from the powerhouse and is directly related to the sulfur content of the fuel burned. Technical documents suggest sulfuric acid aerosol is inadvertently produced as an impurity in oil combustion in boilers. The reported release values for sulfuric acid continue to decrease from the early 1990's to present through the use of low sulfur fuels.

Releases of ammonia to the environment show a significant decrease over the last few years. This reduction in ammonia emissions is based on recently available emission measurement data. Originally, KPC used the values presented in the NCASI publications which allow for the reporting of either un-ionized or total ammonia. In prior years total ammonia has been reported. For 1994, Ketchikan Pulp Company reported un-ionized ammonia. The combined outfalls and better effluent pH control with the Effluent Neutralization System have provided assurances of consistent and acceptable pH ranges over the course of the year. The pH of the effluent directly impacts ammonia release.

Reported methanol releases over past years show a slight increase in fugitive releases and a slight decrease in air releases. This is a result of improved mill-specific data. Water releases show a significant decrease in methanol. This is a result of better pH control of the combined outfalls by way of the Effluent Neutralization System.

For the first time, KPC reported the manufacture of formic acid as a by-product of the pulping process under the Form R for the 1994 reporting year. Once this material is manufactured, it tends to adhere to the pulp fibers. It remains with the product and human exposure to the substance does not occur under normal conditions of use.

Ketchikan Pulp Company is a charter member and continuing participant in EPA's voluntary 33/50 program which fosters industry's innovative efforts to pledge and meet goals for reduction of TRI chemical releases. Ketchikan Pulp Company continues to regularly review guidance documents and mill specific data in order to anticipate future reporting responsibilities.

**Alaska Hazard Ranking Model**

The Alaska Hazard Ranking Model was developed as a tool to allow ADEC to prioritize contaminated sites for cleanup actions under Alaska's *Oil and Hazardous Substances Pollution Control Regulation,* 18 AAC 75, and the state's *Underground Storage Tank Cleanup Regulation,* 18 AAC 78. The model is designed to be used in the evaluation of sites where contamination has occurred, and contaminating activity has ceased.

The Hazard Ranking Model has several limitations that are important to understand. First, the Ranking Score derived by the model does not consider the actual human health impact of a site, only the potential for impact; therefore, a high score does not mean that human health impacts such as cancer and chronic health conditions have been observed that can be attributed to the site. Second, although the model does identify site specific conditions such as the relative toxicity and volume of the contaminants present, and the proximity to potentially affected plant, animal and human populations, the model is not a risk assessment. A relatively high Ranking Score based on agency file data alone does not demonstrate that a site poses any threat to human health or the environment, or that immediate action is warranted. Third, the model has no way to incorporate the actual or potential benefits of management practices or remediation programs which may have been implemented to address potential exposure pathways.

The Ranking Score compiled by ADEC incorrectly combines contaminants, contaminated media, and exposure and release pathways to develop a "composite" ranking score. The instructions which are part of the Model instruct the user not to score a site in this manner in several different places. Multiple contaminants and multiple source sites are accounted for using the Multiple Sources or Contaminants Value in the model. The method used by ADEC seriously overstates the resulting score.

**Worker Safety**

Ketchikan Pulp Company follows regulations established by the Federal Department of Labor, Occupational Safety and Health Division. The State of Alaska has adopted the Federal Regulations listed in 29 CFR. From January 1, 1993 through June 28, 1996 five inspections of the Ward cove pulp mill facilities were conducted by State OSHA. These were both in response to complaints filed by employees and unannounced inspections. These five inspections resulted in eleven citations and Ketchikan Pulp Company paid a total of $15,000 in fines. These inspections are further detailed below.

Three inspections occurred under the Process Safety Management Standard established in Federal law. This standard sets regulations for every process phase of highly hazardous chemicals. Such chemicals are in daily use in the pulping process which operates continuously, twenty four hours per day, seven days per week. These inspections were the result of chemical releases that either could have or did result in employee exposure to chemicals. These investigations resulted in a settlement with OSHA in which Ketchikan Pulp Company agreed to abatement procedures, and the potential fine was reduced by 60%.

One inspection resulted from an employee complaint regarding the Permit Required Confined Space Entry standard. As host employer on a work site, KPC also has responsibility for independent contractors working on the site. The complaint came from a contractor employee. The citation that resulted from the inspection was a "paperwork citation" that was classed, "Other than Serious" and carried no monetary penalty.

In 1993 an incident involving the improper removal of asbestos by a contractor resulted in a State OSHA inspection. This incident resulted in a $7,000 fine.

Prior to 1993, there were numerous asbestos inspections at KPC as a result of employee complaints. In 1988, a settlement agreement was reached with the Department of Labor that established a new asbestos abatement management program at the Ward Cove facility. In 1992 OSHA inspected the facility and determined that all of the required procedures had been implemented.

In the period from January 1993 through June, 1996 there was one Federal OSHA visit at the mill. Federal OSHA has jurisdiction over waterfront facilities along with the US Coast Guard. Five citations were issued. The basis for the citations was employee failure to wear Personal Protective Equipment when working on the barge, and management failure to enforce the rule requiring that the equipment be worn. The fine was $4,000.

KPC cooperates voluntarily with the Training and Consultation Section of the Department of Labor. Between 1991 and 1996 there have been five voluntary compliance inspections at Ward Cove. During a voluntary compliance inspection, representatives from OSHA and KPC inspect the facility for deficiencies and items that could lead to a citation if not corrected.

There have been ten OSHA inspections of other Ketchikan Pulp Company facilities including the Annette Hemlock Mill, Ketchikan Saw Mill, Shelter Cove logging camp, Thorne Bay Sort Yard and Shop and the Ward Cove wood room. Five were voluntary, one resulted from an injury, and three resulted from or complaints. The injury related inspection resulted in a fine of $16,000. A total of $4,000 was paid in fines as a result of all other inspections.

Ketchikan Pulp Company has a proactive safety management program which includes cash safety awards to employees. Over $1 million has been spent on proactive programs since 1991.

**Employee Training and Development**

Ketchikan Pulp Company involves employees throughout all divisions in discovering and fixing the root causes of compliance problems, and seeking solutions which are designed to prevent the recurrence. Planning for environmental compliance is now integrated with planning for product development, process changes, and power plant operations to be sure that production is achieved without compromise to environmental results.

Ketchikan Pulp Company has had success in involving employees in several company wide efforts to improve performance. The Total Quality Commitment program trains each employee in how to contribute to product quality. The STOP program trains each employee in how to recognize and stop unsafe acts in the workplace. The Company believes that knowledge of environmental requirements accompanied by the daily exercise of individual good judgment on the part of all employees will achieve the commitment and momentum necessary to achieve good results.

Ketchikan Pulp Company has introduced an Environmental Compliance program that includes engineering, construction, process changes, material substitutions and employee training. Employee training is a key element of the program. A comprehensive training program for KPC was developed in December, 1995. The program includes job-specific training for KPC's production personnel and general environmental sensitivity/awareness training for all management, administrative and operations personnel. The training program was developed in two stages:

1. Corporate Responsibility/Business Ethics/Environmental Overview Training.
2. Mill Operations Training for Environmental Compliance

The first stage represents training requirements that apply equally to all KPC personnel with emphasis on Corporate Responsibility. This training was completed for all company employees in June, 1996. The second stage involves training requirements that apply to all mill operations personnel. This stage is currently underway.

An employee handbook was developed and distributed to all employees. The handbook embodies KPC's Corporate Environmental Policy Statement, defines KPC management responsibilities as well as environmental responsibilities expected from all employees.

Ketchikan Pulp Company encourages its employees to voice concerns about suspected environmental problems or operating conditions that may adversely affect compliance. Employees are urged to report any concerns and are guaranteed protection from retribution for expressing concern about a problem. Efforts by co-employees or supervisors to retaliate against employees for reporting suspected problems will not be tolerated and will result in discipline. The company will not tolerate efforts to discover the identity of employees who choose to report anonymously.

Ketchikan Pulp Company has an open door policy in regard to reporting environmental concerns. Employees are encouraged to express concerns to their supervisors, Operations Manager, Industrial Relations Manager or the Environmental Manager. If employees are not satisfied with the reporting at these levels, they are welcome to meet with the General Manager.

If any employee is uncomfortable reporting environmental concerns to a supervisor or manager, KPC has retained an outside service to take confidential reports about suspected environmental problems. This service was selected to ensure that reports are strictly confidential. This "800" number service has been instructed to relay concerns to management for follow up but not to reveal the identity of the caller.

**ATTACHMENT C**

Ketchikan Pulp Company
Permits and Reporting Procedures
1996

| | Location | Type |
|---|---|---|
| **Draft Air Quality Operating Permit #9513-AA003** | Pulp Mill Complex | Air |
| **Consent Decree with the State of Alaska** | Pulp Mill | Air |
| **Federal New Source Performance Standards** | Pulp Mill Package Boiler | Air |
| **Federal New Source Performance Standards** | Annette Hemlock Mill | Air |
| **ACOE Dredging Permit R-730053** | Ward Cove | Dredging |
| **ACOE Dredging Thorne Bay 14** | Thorne Bay | Dredging |
| **Maintenance and Operating Manual** | Naukati Log | Drinking Water |
| **Biennial Hazardous Waste Report** | Pulp Mill | Hazardous Waste |
| **Waste Minimization Pollution Prevention Supplement:** | | |
| | Annette Hemlock Sawmill | Hazardous Waste |
| | Coffman Cove | Hazardous Waste |
| | Flight Department | Hazardous Waste |
| | Ketchikan Sawmill | Hazardous Waste |
| | Labouchere Bay | Hazardous Waste |
| | Naukati Log | Hazardous Waste |
| | Thorne Bay | Hazardous Waste |
| **316 Health Permit** | | |
| | Coffman Cove | Health |
| | Naukati Log | Health |
| | Shelter Cove | Health |
| | Thorne Bay | Health |
| **ACOE Log Storage Permit Clarence Strait 21** | Thorne Bay | Log Storage |
| **ACOE Log Storage Permit Clarence Strait 53** | Thorne Bay | Log Storage |
| **ACOE Log Transfer Facility Permit** | Coffman Cove | Log Transfer |
| **ACOE Permit NPAC)-OP** | Naukati Log | Moorage |

| | | |
|---|---|---|
| **Tuxecan Passage 6** | | |
| **ACOE Float Camp Moorage N-890511** | Marguerite bay 1 | Moorage |
| ACOE Permit NPACO-OP-P Tuxecan Passage 3 | Naukati Log | Moorage |
| **Facility Operations Manual** | Marguerite Bay | Oil and Chemicals |
| **Facility Operations Manual** | Shelter Cove | Oil and Chemicals |
| **Facility Response Plan** | | |
| | Coffman Cove | Oil and Chemicals |
| | Labouchere Bay | Oil and Chemicals |
| | Marguerite Bay | Oil and Chemicals |
| | Naukati Log | Oil and Chemicals |
| | Shelter Cove | Oil and Chemicals |
| | Thorne Bay | Oil and Chemicals |
| **Fuel Transfer Operations Manual** | Naukati Log | Oil and Chemicals |
| **KPC Emvergency Response Plan** | Pulp Mill | Oil and Chemicals |
| **KPC EPA Facility Response Plan** | Pulp Mill | Oil and Chemicals |
| **KPC Facility Operations** | Pulp Mill | Oil and Chemicals |
| **KPC Oil Discharge Prevention and Contingency Plan** | Pulp Mill | Oil and Chemicals |
| **KPC USCG Facility Operations Manual** | Pulp Mill | Oil and Chemicals |
| **Naukati Logging** | Naukati Log | Oil and Chemicals |
| **Spill Prevention Control and Countermeasure Plan** | | |
| | Marguerite Bay | Oil and Chemicals |
| | Naukati Log | Oil and Chemicals |
| | Polk Inlet | Oil and Chemicals |
| | Pulp Mill | Oil and Chemicals |
| | Thorne Bay | Oil and Chemicals |
| **Tier II EPCRA Report** | | |
| | Annette Hemlock Sawmill | Oil and Chemicals |
| | Coffman Cove | Oil and Chemicals |
| | Flight Department | Oil and Chemicals |
| | Ketchikan Sawmill | Oil and Chemicals |
| | Labouchere Bay | Oil and Chemicals |
| | Marguerite Bay | Oil and Chemicals |
| | Naukati Log | Oil and Chemicals |

| | | |
|---|---|---|
| | Pulp Mill | Oil and Chemicals |
| | Shelter Cove | Oil and Chemicals |
| | Thorne Bay | Oil and Chemicals |
| **Solid Waste Disposal Permit** | | |
| | #9213-BA001 Pulp Mill | Solid Waste |
| | #9313-BA001 Thorne Bay | Solid Waste |
| | #9113-BA005 Pulp Mill | Solid Waste |
| **NPDES Stormwater** | Thorne Bay Sort Yard | Stormwater |
| **NPDES Stormwater** | Thorne Bay Waste Yard | Stormwater |
| **NPDES Stormwater Pollution Control Plan** | Thorne Bay | Stormwater |
| **NPDES Stormwater Pollution Control Plan** | Naukati Log | Stormwater |
| **Wastewater Disposal Permit** | | |
| | #9413-DB007 Shelter Cove | Wastewater |
| | #AK-000092-2 Pulp Mill | Wastewater |
| | #AK005252-3 Draft Pulp Mill | Wastewater |
| | #9510-DB004 SM Floating Camp | Wastewater |
| | #9510-DB010 SM 3 Floating Camp | Wastewater |
| | #9610-DB001 SM 3 Floating Camp | Wastewater |
| | #9213-DB020 Coffman Cove | Wastewater |
| | #9313-DB021 Naukati Log | Wastewater |
| | #9413-DB007 Shelter Cove | Wastewater |
| **Consent Decree with United States Government** | Pulp Mill | All media, Environmental Audit |
| **Compliance Agreement with EPA** | Entire Company | Corporate Responsibility, Environmental Awareness |
| **Best Management Practices Plan** | Pulp Mill | Operating Procedures |
| **316 HealthPermit** | | |
| | Coffman Cove | Health |
| | Naukati Log | Health |
| | Thorne Bay | Health |

| | | |
|---|---|---|
| **Marguerite Bay Water Use Permit** | Marguerite Bay | Water |
| **Construction Operation Certificate** | SM 3 FloatingCamp | Water Treatment |
| **Operation Maintenance Manual** | SM 3 Floating Camp | Water Treatment |
| **Water Treatment Construction** | Shelter Cove | Water Treatment |
| | | |

Testimony of Ernesta Ballard
Senate Energy Committee
July 10, 1996

My name is Ernesta Ballard. I am an environmental consultant, and was formerly Regional Administrator of the Environmental Protection Agency. In my testimony I am going to focus on the serious allegations that have been made about KPC's environmental compliance. In my view, the time has come to set the record straight.

Ketchikan Pulp Company operates only with the specific permission of both State and Federal environmental agencies. KPC operations are regulated by at least 75 different permits and plans which cover everything from logging camp stormwater to hazardous waste disposal.

The allegations of KPC's opponents attack their performance, vilify their people, and distort their record. They present data out of the context in which they were originally reported and without regard for the strict scientific methods which are mandated by regulation. They reach conclusions which are based on subjective values instead of the objective measures established by law. In these presentations information has been manipulated and distorted in order to support theories which are intentionally designed to raise public alarm.

**The Felony and Misdemeanor Violations of the Clean Water Act**

Wastewater management at Ketchikan Pulp was the subject of a lengthy investigation by the United States Environmental Protection Agency which began in 1991. In 1995 KPC paid a fine of $4,250,000, and agreed to complete capital projects in lieu of an additional fine of $1,750,000. Available for Committee review are twelve studies and workplans describing additional projects required by the settlement.

KPC has paid a heavy price for the mistakes of the past. Money and management time have been heavily invested in achieving change. The enforcement action achieved the intended result of dramatically increasing corporate awareness of environmental responsibility.

**Ward Cove Fish Kills**

It has been alleged that KPC effluent kills fish in Ward Cove. There have been no reported fish kills resulting from KPC's effluent. The only fish kill for which KPC was responsible resulted over fifteen years ago from an accidental release of a cleaning chemical downstream of the water reservoir at Connell Lake.

**Toxic Release Inventory**

A regulatory report which is filed annually by KPC has been used by opponents to support a theory that the pulp mill is among the so-called "worst" polluters in the Pacific

Northwest. Submission of Form R, the Toxic Chemical Release Inventory is required by the Emergency Planning and Community Right-to-Know Act.

The reporting of hydrochloric acid on Form R is one of the best examples of data which must be properly interpreted to be understood. From 1989 to 1992 following Form R instructions, KPC reported that they discharged 2 million pounds of hydrochloric acid even though it is not used anywhere in the pulp process. This figure was an anomaly of the reporting process. In late 1993 KPC installed an effluent neutralization system which reduced the reported discharge of chloride ion as hydrochloric acid which is now more properly reported at less than 1,000 pounds per year.

To my knowledge, EPA does not use Form R in the way it is abused by KPC's opponents. The Form collects information for future use and is not a compliance measurement tool. Nonetheless, KPC's opponents continue to cite the old Form R data in a manner which completely distorts the truth.

**Health Effects of Air Pollutants**

Some have asserted that Ketchikan Pulp has not complied with Alaska laws protecting the enjoyment of life and property.

In April 1995, KPC completed exactly such a study for the State of Alaska. The purpose of the study was to determine the risk that air pollutants might pose to human health and the environment.

The study looked at the impact of dozens of chemicals including dioxin and showed that only chloroform merited further analysis. KPC completed a health risk assessment of chloroform which showed that the human health risk was within the State's regulatory risk level.

**Resource Conservation and Recovery Act**

Testimony has suggested that KPC is not properly regulated by the Resource Conservation and Recovery Act (RCRA) because the State of Alaska lacks adequate funding to enforce the law.

Alaska does not enforce this very important environmental law: EPA does. KPC reports all hazardous waste generation activities to EPA in the Biennial Hazardous Waste Report as required by the Resource Conservation and Recovery Act. In addition, KPC submits a waste minimization questionnaire as a supplement to the State of Alaska's Annual Hazardous Waste Report.

**Ward Cove Sediments and Bioaccumulation of Toxics**

Testimony has been given citing KPC's evaluation of water and sediment quality in Ward Cove. KPC monitors for dioxin as well as metals, methyl mercury, toxicity and many organic chemicals. Some have been detected at some Ward Cove sampling stations, but at levels lower than the action thresholds established in sediment standards. Concentrations of dioxin are 20

times lower than the standards and well below the threshold considered low risk for fish. Some compounds have been detected at levels which will be addressed in the Ward Cove remediation plan.

**Alaska Hazard Ranking Model**

KPC's score on the Alaska Hazard Ranking Model has been cited as evidence of threats to public health from the mill. The Hazard Ranking Model was developed as a tool to allow the State to rank sites where contamination has occurred and contaminating activity has ceased. It is inappropriate to apply to an ongoing operation.

The model has no way to incorporate the benefits of management practices or remediation programs which have been implemented by the site owner. The State has acknowledged that permits and review programs already in place properly manage the contaminants of concern and are rescoring the facility accordingly.

**Conclusion**

KPC's environmental record contains evidence of serious problems which include the enforcement action which I have already described. They have already been punished, and have already paid a heavy price. They deserve the same opportunity as other industrial enterprise to accept responsibility for their mistakes and to move on with their future.

I have only been able to cover a few of the fabrications of KPC' opponents. The alarm they have raised is unsupported and unwarranted. State and Federal regulators charged with enforcing environmental regulation and protecting public health are knowledgeable of the most minute details of KPC operation. They have available a full array of compliance and enforcement measures.

KPC's compliance and enforcement history is already a matter of public record. They accept responsibility for their shortcomings and mistakes. They have nothing to hide from the regulators, this Committee, or their community. Thank you for the opportunity to testify today.

**WRITTEN TESTIMONY OF J. SCOTT ESTEY: H.R. 3659**

## INTRODUCTION

Ketchikan Pulp Company (hereinafter "Ketchikan" or "the Company") has retained Jaakko Pöyry Consulting North America (hereinafter "Jaakko Pöyry") to provide testimony regarding typical financial return and project life requirements for capital expenditure within the pulp and paper industry. The request for testimony was made in light of the Company's request for an extension of its timber supply contract with the USFS in order to ensure that fiber supply is available for a sufficient period of time to allow the Company to earn an adequate return on capital expenditures at the Company's pulp mill in Ketchikan.

## PULP AND PAPER INDUSTRY INVESTMENTS

Pulp and paper is a capital intensive industry which requires not only large initial investments, but also significant on-going investments for the purposes of maintenance, environmental compliance, and facility improvements. Additionally, the pulp and paper industry is commodity oriented, highly cyclical, and typically realizes relatively low margins.

Expected rate of return, and the life of an investment project that is required in order for a company to earn that return, can vary significantly within the pulp and paper industry. In Jaakko Pöyry's experience, it is not uncommon to observe project returns ranging from negative to 30+%, and project life requirements ranging from 5 to 25 years.

Of the many factors that can potentially influence these measures, those items having the most significant impact include; the timing of the expenditure relative to the industry cycle, the magnitude of the expenditure, and the purpose of the expenditure, which, within the pulp and paper industry, can be roughly categorized as follows:

- New Mill or New Production Line
- Major Rebuild
- Productivity and/or Margin Enhancements
- Replacement/Maintenance
- Environmental

New Mill or New Production Line

The capital intensive nature of the pulp and paper industry is most evident when reviewing the investment requirements of a new mill or production line. As a reference point, a greenfield, or new, market pulp facility with a production capacity of 500,000 metric tons per year of bleached softwood

kraft pulp (BSKP) would require a capital investment of approximately US $900 million, or $1,800/annual ton. The historical trend selling price for BSKP is approximately US $680/ton.

Experience within the industry indicates that companies investing in new mills or production lines can typically expect to achieve a real, after tax, internal rate of return between 10% and 15%, and will require a project life of between 20 to 30 years in order to realize that return.

Major Rebuild

Major rebuilds of pulp and paper assets are typically designed to result in a significant increase in the productive potential of a mill, or to facilitate the conversion of an asset to the production of a higher valued grade. A major rebuild typically can require an investment on the order of 20% to 50% of the investment requirement to build new capacity.

While a major rebuild will often result in a significant increase in the remaining life of a facility, in most cases the project life will be somewhat less than would be expected with new capacity. As a result, experience indicates that companies will typically require a more significant rate of return, perhaps 15% to 20%, in order to compensate for the added uncertainty around project life. With this type of major rebuild investment, a company will usually require a project life of 10 to 20 years to realize return expectations.

Productivity and/or Margin Enhancements

Expenditures falling within this classification are minor capital projects relative to new investment and major rebuilds, and are typically undertaken in order to realize the full productive potential of a facility, resulting in incremental sales volume and/or improved profit margins. This type of expenditure can be further segmented to include productivity enhancement, cost reduction, and quality enhancement expenditures.

Productivity enhancements result in incremental capacity and an improved revenue stream. Often, productivity enhancements are accomplished without increasing the annual fixed costs of the facility, and therefore have the added benefit of reducing the operating cost per unit of production.

Cost reduction expenditures result in improved profit margins while having little or no impact on the capacity of a facility. An example of this type of expenditure would be an increase in the level of automation at a facility which results in a permanent reduction in the level of required personnel.

Expenditures for quality enhancement may result in improved profit margins through an increase in the realizable selling price, or may simply allow a facility to maintain its competitiveness in a market which is experiencing increased quality demands from its customers.

In general terms, the relatively low capital requirement for this type of expenditure, in combination with a relatively minor impact on the life expectancy of a facility, result in rate of return expectations of approximately 20% to 30%, and a required project life of 5 to 15 years.

Replacement/Maintenance
This type of capital expenditure includes the replacement of components or equipment as required to maintain productivity, cost structure, or product quality. By definition, these expenditures do not enhance the sales volume or margin potential of a facility and therefore are difficult for companies to justify based on rate of return expectations.

Large investments which result in the total replacement of a major section of a production line can be referred to as a major replacement. Since this type of replacement will often result in a significant increase in life expectancy of a facility, similar to a major rebuild investment as described above, but is not typically made for the purpose of significant improvement in revenues or margins, companies will typically require a project life of 15 to 20 years to realize an adequate return on the investment.

Environmental
Capital expenditure for environmental purposes within the pulp and paper industry is often required in order to maintain compliance with environmental regulations. In this regard, environmental expenditures are similar to maintenance expenditures in that they have no direct impact on the sales volume or margin potential of a facility and therefore are also difficult for companies to justify based on rate of return expectations. To the degree that environmental expenditures are required in order for a facility to operate and realize the full potential of prior investments, the expected rate of return will be lower, and the required project life to realize that return will be longer than expectations for new construction or a major rebuild.

## KETCHIKAN PULP COMPANY'S REQUEST FOR EXTENSION

Jaakko Pöyry's knowledge of the capital program being considered by Ketchikan is limited to the aggregate value of the expenditure, US $200 million, the estimated completion of the expenditure, 5 to 8 years hence, and a general description as provided by Ketchikan, which described the

expenditure as including bleach plant modifications, environmental equipment and facilities modifications, an upgrade of power generation facilities, and a modernization of the chemical recovery systems.

Given the general description and magnitude of the investment project, it appears that the majority of the investment could be classified best as a major replacement and environmental expenditure. Based on the above review of rate of return and project life requirements, it is within the range of expectations to require 15 to 25 years to allow for an adequate return on an investment program of this nature and magnitude.

# Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 328, Juneau, AK 99801
(907) 586-6942 phone (907) 463-3312 fax
email: seacc@alaska.net

STATEMENT OF ROBERT LINDEKUGEL, CONSERVATION DIRECTOR accompanied by DAVID KATZ, FOREST PLAN COORDINATOR

REGARDING H.R. 3659 THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT

JOINT HEARING BEFORE THE HOUSE COMMITTEE ON RESOURCES AND SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE
JULY 11, 1996

Mr. Chairman, and members of this Committee:

My name is Robert Lindekugel, and I am the Conservation Director for the Southeast Alaska Conservation Council (SEACC). With me today is David Katz, our Forest Plan Coordinator, who can help answer any detailed questions you may have. Thank you for the opportunity to participate on one of the panels testifying before you today. I respectfully request that my written statement and accompanying materials be entered into the official record of this Committee hearing.

Founded in 1970, SEACC is a coalition of 15 local citizen, volunteer conservation groups in 12 Southeast Alaska communities, from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaskan Natives, small timber operators and value-added wood manufacturers, tourism and recreation business owners, hunters and guides, and Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources.

This is the first hearing conducted by this Committee on H.R. 3659, the "Environmental Improvement Timber Contract Extension Act." Senator Murkowski did conduct Energy and Natural Resources Committee field hearings in Ketchikan and Juneau, Alaska, on May 28 and May 29, 1996, on the subjects of the Tongass Land Management Plan and a "possible extension" of the Ketchikan Pulp Company (KPC) 50-year contract more generally. However, we need to point out that those testifying at the May 28 and May 29 field hearings were not testifying to the provisions of this bill, because the bill had not yet been introduced. We suspect that if these Committees held hearings in Alaska on the specific provisions of this bill, a great many Alaskans would vehemently oppose this bill.

**Simply put, this bill is one of the most outrageous pieces of special interest, corporate welfare legislation we have ever seen and one of the most damaging pieces of legislation ever proposed for Southeast Alaska and the Tongass National Forest. SEACC strongly opposes this bill.**

**Even the name of this bill is an insult and double-speak at its worst. The Delegation's and L-P's proposal will damage the environment and threaten the Tongass, a national and international treasure.**

We are sure we will hear time and time again today that the recent Supreme Court decision in *United States v. Winstar Corp. et al.*, No 95-865, (July 1, 1996) is relevant to the unilateral modifications made by Congress to the two Tongass 50-year pulp contracts in the 1990 Tongass Timber Reform Act. Some may take the view that this decision limits the ability of the Congress or the Administration to modify or terminate a contract. Because KPC and Alaska Pulp Company have both filed lawsuits alleging that the Tongass Timber Reform Act breached the contracts or was a "taking" of contract interests, this is not the time or place for a debate on the relevance of this recent decision on past Congressional actions.

It is SEACC's position that the relevancy of the *Winstar Corp.* decision is the wrong question to focus on here. Instead, Congress should carefully consider whether it is good public policy for Congress to take any action today that may tie its hands in the future. The proposed bill will adversely affect the public interest by constraining the Forest Service's discretion to manage and protect public resources on this nation's largest national forest, the Tongass National Forest. We believe Congress should avoid even taking the risk of giving KPC an argument that might constrain a future Congress from taking an action it finds necessary to protect the public's interest in forest resources.

Our bottom line is that KPC does not need a new long-term contract to obtain timber. KPC is pushing for this bill because it does not want to pay fair market value, like other Tongass timber operators, for Tongass timber. It wants Congress to shield it from the inherent risks that come from competing in the free market. We find it hard to believe that Americans would support such an action by this Congress.

**The Alaska Delegation's frontal assault on the Tongass National Forest.**

This is the latest attack in an unprecedented assault that began in the fall of 1994. Counting this hearing and the Senate hearing scheduled for July 17, 1996, **the Delegation has held 14 hearings on 11 pieces of legislation. All of these actions have been aimed at rolling back the Tongass Timber Reform Act, increasing clearcutting, and giving over the Tongass, a national and international treasure, for exploitation by private commercial concerns. Chairman Young, your footprints are all over the bill to giveaway the Tongass, dismantle our national forest system, and the effort to hand over 200,000 acres of the Tongass to five (5) new Native for-profit corporations as an amendment to the Presidio Bill.**

**Background**

Louisiana-Pacific Corporation (L-P) is holding the workers at its Ketchikan Pulp Company (KPC) subsidiary and the people of Ketchikan hostage. KPC still has eight years of timber remaining on its 50-year monopoly Tongass timber contract, which expires in 2004. But L-P is demanding an immediate re-write of that contract, with unheard-of new governmental concessions and taxpayer subsidies, ostensibly to help the company obtain financing for a court-ordered environmental cleanup and other "improvements" at the aging and polluted KPC pulp mill. Otherwise the company threatens to shut the pulp mill down.

**KPC has used this scare tactic many times before.** (See Attachment 1.) KPC has threatened closure at least seven times since 1973, most often to prevent the imposition of pollution controls. ***The threat to close KPC is generated entirely from L-P.***

**Developments at L-P.** In the wake of scandal, major class-action and shareholder lawsuits, and market problems related to its oriented strand board siding, as well as major environmental problems resulting in civil and criminal penalties at several facilities including KPC, L-P has been replacing its top corporate management and re-focusing the company. At its last annual meeting, the company reportedly described its new strategy as focusing on its core business, doubling the size of the company by the year 2000 and reassessing the competitiveness of its mills.[1]

**In the last four years plus one quarter, L-P lost $64 million on its pulp division, and lost $22 million on pulp in the first quarter of 1996 alone.** The pulp sector lost money in 1992, 1993, and 1994, and the first quarter of 1996. The pulp division lost over twice as much as it made.

Current weak pulp prices may be below KPC's production cost.[2] The KPC mill is the largest toxic water polluter in the entire Pacific Northwest, and last year received the largest environmental fine ever assessed against a facility in that region--over $6 million in civil and criminal penalties, including a felony. KPC faces a costly environmental cleanup. And the largest part of its workforce is without a labor agreement and has been so for 12 years.

The bottom line appears to be an extraordinary sweetheart deal to induce L-P to remain in business in Ketchikan. So the company has asked for one. It is using its threat to shut down to see what it can leverage out of the federal government and the American taxpayer.

For its part, the Alaska Delegation is doing "whatever it takes" to get the company to stay. This bill would allow the company to operate virtually whatever operation it wanted, and force the Forest Service to sell L-P a guaranteed amount of Tongass timber, at "whatever price it takes" to keep the company competitive with mills in Washington and Oregon.

---

[1] "Stump Talk," Pacific Rim Wood Market Report, May 1996 at 16.
[2] Alaska Department of Labor, Alaska Economic Trends, May 1996 at 19.

**Provisions**

The Delegation is touting proposed legislation as a 15-year KPC contract "extension." But in testimony before this Committee on May 28 and 29 in Ketchikan and Juneau, L-P CEO Mark Suwyn made it clear that L-P would not be satisfied with its current contract terms, and required a new contract, starting right now.

The Delegation also claims that Governor Knowles supports this bill. Is the Governor here supporting this bill? The answer is **no!** This is not his bill, it is your bill. The Governor said he could support a contract "extension" **but** only if several conditions were met. Furthermore, **this bill does not embody anything close to the conditions the Governor laid down in his letter to L-P.**

SEACC strongly opposes this bill because it:

- **Replaces the current KPC timber contract, set to expire in 2004, with a new, 23-year monopoly contract starting right now and continuing through 2019, with the intention to continue in perpetuity.**

- **States Congress' intent to keep KPC in business, at a profit, permanently.**

- **Mandates increased clearcutting, regardless of impacts to any other Tongass resource.** The bills force the Forest Service to provide an average of 192.5 million board feet (mmbf) yearly to KPC, and require KPC to cut it, regardless of impacts to commercial and sport fishing, hunting, subsistence, tourism, recreation, fish and wildlife habitat. This is 33.5 mmbf higher than KPC's 15-year average annual cut of 159 mmbf. This means a mandate for a total of nearly 160,000 acres of clearcuts--130,000 football fields of clearcuts, or 5,650 football fields of clearcuts a year--in the heart of the world's most intact remaining temperate rainforest. This totals a line of football-field-sized clearcuts from Ketchikan to Washington, D.C.--and back. This would severely damage key fish and wildlife areas important to Ketchikan residents and other Alaskans--Cleveland Peninsula, Honker Divide, East Kuiu, Port Houghton, Poison Cove, and other areas.

- **Allows L-P to shut the pulp mill down, and replace it with a different facility (if the facility uses pulp logs for any part of its process), even if the new facility provides fewer jobs.** This would undermine the federal government's basic interest in the 50-year contract, which is the provision of local jobs. **A basic premise for this bill is L-P's claim that it must have time to amortize the costs of adding pollution upgrades and improvements to the pulp mill. But in fact, the bill would allow L-P to shut the pulp mill down.**

- **Guarantee that no matter what kind of mill KPC decides to run, the Forest Service must provide KPC timber at a rate that does not place the company at a "competitive disadvantage" to a similar mill in the Pacific Northwest.**

**This extraordinary concession could force the Forest Service to sell Tongass old-growth trees for the price of PNW raw materials such as recycled newspapers or sawmill waste--or even give refunds to keep KPC competitive. This open-ended government subsidy could cost American taxpayers billions of dollars.**

- Extend the current contract term by 15 years and make the new contract effective 45 days after passage of the bill.

- Requires the contract to include a 23-year schedule of KPC timber sales through 2019. The Forest Service must prepare this binding 23-year schedule within 45 days, without opportunity for public involvement; and once in place, the Forest Service cannot change this plan unless L-P agrees.

- Requires the Tongass Land Management Plan (TLMP) Revision to conform with the KPC plan. The current TLMP Revision draft does not contemplate any such schedule or requirement for KPC timber sales. This provision would delay the new Tongass plan, and require yet another draft of the plan. This means the KPC contract and logging schedule will control all future Forest Service Tongass planning.

- **Eliminates the Forest Service's right to terminate the contract for serious environmental damage, or because it is significantly inconsistent with the Tongass Land Management Plan, unless L-P agrees.** This is a provision of every Forest Service timber contract and basic to responsible management of public resources. But, if the Forest Service and L-P agree, they can change (or worsen) the contract terms without Congressional approval.

- Eliminates the TTRA requirement for KPC to pay rates comparable to those paid by independent Tongass timber purchasers and gives KPC new timber quality and price advantages over independent timber purchasers.

This bill, and a new KPC contract, would tie the hands of the Forest Service and substitute the corporate needs of a single favored company for the principles of balanced multiple use management of public lands embodied in the Tongass Timber Reform Act, the National Forest Management Act, and the Multiple-use Sustained Yield Act. The bills are the most extreme example of corporate welfare of which we are aware. **This is public policy at its worst.**

**The bill rolls back the Tongass Timber Reform Act.**

**Section 101.** Section 101 of the Tongass Timber Reform Act ("Tongass Reform Law" or "TTRA") replaced Section 705(a) of the Alaska National Interest Lands Conservation Act (ANILCA), which the Forest Service interpreted as requiring the agency to offer 450 million board feet (mmbf) of timber a year, regardless market conditions or cost to the taxpayer. Throughout the 1980s, acting under this mandate the Forest Service put up millions of board feet of timber which did not sell because of weak international pulp markets; but preparation and

administration of these and other sales cost the US Treasury over $50 million a year. At the same time, the timber program threatened many Tongass special fish, wildlife and recreation areas.

The Tongass Reform Law replaced this unwise and costly mandate with a flexible instruction authorizing the Forest Service to sell timber in response to market demand, but only to the extent consistent with the National Forest Management Act and all other applicable forest management laws, and only "to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources."[3]--including fish and wildlife and the commercial, sport, and subsistence uses thereof.[4]

Your bill would turn back the clock, and reinstate inflexible, unnecessary and costly logging mandates. It would also institutionalize this mandate as part of the Tongass Land Management Plan. This contractual logging requirement will require the Forest Service to emphasize satisfying KPC's long-term contract over other multiple uses of the Tongass and over the sustainable management of fish and wildlife, hunting, sport and commercial fishing, and subsistence.

**Section 301.** Section 301 of the Tongass Reform Law modified the KPC long-term contract. Congress unambiguously expressed its intent behind imposing these unilateral modifications to the contracts in Sec. 301(b)(1):

> [I]t is in the national interest to modify the [long-term contracts]...in order to assure that valuable public resources in the Tongass National Forest are protected and wisely managed. Modification of the long-term timber sale contracts will enhance the balanced use of resources on the forest and promote fair competition within the southeast Alaska timber industry.

These unilateral modifications, which your bill seeks to roll back, were based upon recommendations from the Forest Service's own internal review team following their investigation into the 1981 antitrust scandal--in which KPC was convicted of utilizing its contractual advantages to monopolize the Tongass timber industry. **Thus, your bill rewards a monopoly for monopolizing the industry and illegally driving others out of business.**

**Your bill effectively repeals (among other TTRA subsections):**

TTRA Sec. 301(c)(1), in which Congress sought to modify the long-term contracts "to resemble, to the greatest possible degree, short-term, independent sales." (TTRA Conference Report at 18.) By reinstating 5-year plans and other special considerations for KPC, S. 1877 again makes two classes of citizen in the Tongass timber industry and harms the interests of independent timber operators.

TTRA Sec. 301(c)(3), in which Congress sought to end the "back-log" and "pick-and-choose" abuses under the 50-year contracts. As noted in the Conference Report (at 18), this provision

[3]Tongass Timber Reform Act Sec. 101.
[4]Tongass Timber Reform Act Conference Report.

was intended to "prevent the long-term contract holders from harvesting only the better quality timber while continuing to accrue large backlogs of uncut, lower quality stands."

TTRA Sec. 301(c)(8), in which Congress instituted an adjustment intended to assure that the long-term contract holders would pay stumpage prices comparable to those paid by independent purchasers, and assuring similar profitability criteria. The bill repeals this comparison and replaces it with a different "comparability" clause keeping KPC competitive with mills in the Pacific Northwest. The bill also provides for a "mid-market" test of profitability which was never in the KPC contract, and which independent operators do not enjoy.

**L-P wants its timber prices lowered despite the fact that in 1995 it paid less than half what independent purchasers paid for Tongass timber.[5] From 1991-94, independent operators on the Ketchikan area paid in cash $97 per thousand board feet of Tongass timber, while KPC paid just $7 in cash.[6]**

**The bill jeopardizes Tongass fish and wildlife, and their commercial, sport and subsistence uses.**

The bill would (a) set a KPC logging mandate over 33 mmbf per year higher than KPC's 15-year average annual cut; resulting in a huge cumulative amount of logging--4.4 billion board feet; (b) set a 23-year timber sale schedule that could not be changed without KPC approval; and (c) prevent the Forest Service from ending the contract for environmental damage or inconsistency with the Tongass Land Management Plan. Taken together, or separately, these measures seriously threaten fish and wildlife populations on the Tongass.

**Every credible study of Tongass fish and wildlife over the last several years indicates that more habitat must be protected, not less.** These studies include:

- A Proposed Strategy for Maintaining Well-Distributed, Viable Populations of Wildlife Associated with Old-growth Forests in Southeast Alaska--Report of an Interagency Committee, May, 1993. The so-called "Viapops Report," commissioned for use in the TLMP Revision and carried out by wildlife scientists from the Forest Service, the Alaska Department of Fish and Game, and the US Fish and Wildlife Service, identified the need for a network of no-logging wildlife setasides, called Habitat Conservation Areas or HCAs, distributed across the forest, in order to provide for viable, well-distributed wildlife populations as required by the National Forest Management Act of 1976.

- Review of Wildlife Management and Conservation Biology on the Tongass National Forest: A Synthesis with Recommendations, March, 1994: US Forest Service Pacific Northwest Research Station, Corvallis, OR. This "blue-ribbon" Peer Review of the Viapops Report as

[5]US Forest Service, 1995 Tongass Timber Supply and Demand Report at iv. Counting cash payments and roadbuilding, KPC paid $121 per thousand board feet, independents forest-wide paid $279.
[6]SEACC calculation from Forest Service Alaska Region timber shop data. Counting total payments, including roadbuilding. KPC paid less than half the independent stumpage charge ($84 per thousand board feet vs. $166 for independents).

well as existing Forest Service wildlife conservation approaches was mandated by Congress in mid-1993. This review by nationally known experts endorsed the HCA approach but said it needed to go farther, including protecting more land from logging, to adequately provide for viable wildlife populations.

- Viapops Committee "Reconciliation Memo," May 1994. This response by the interagency biologist committee to the Peer Review of its work accepted many of the Peer Review's findings and embodied them in a further series of recommendations to protect additional lands from logging pending adoption of a comprehensive wildlife conservation strategy in the TLMP revision and completion of necessary scientific studies.

- Anadromous Fish Habitat Assessment--Report to Congress, January 1995, US Forest Service Pacific Northwest Research Station (AFHA Report). This extensive review of salmon and steelhead habitat condition and management practices on the Tongass concluded (with emphasis added):

  "Current direction for anadromous fish habitat protection on the Tongass National Forest is less than fully effective, and additional protection is needed to make timber harvest more compatible with maintaining high-quality fish habitat and long-term conservation of anadromous fish stocks." AFHA Synthesis Report at 11.

  "Current procedures for fish habitat protection are now applied primarily on a project-area basis; consequently, the much more important cumulative effects of timber harvest on fish habitat in a watershed are not fully assessed". AFHA Synthesis Report at 8.

  "[For the Tongass watersheds in which logging is allowed], 72% of these watersheds were classified as healthy, and 28% had conditions with reduced condition." An Evaluation of the Effectiveness of Current Procedures for Protecting Anadromous Fish Habitat on the Tongass National Forest, September 1994, US Forest Service Fish Habitat Analysis Team at 15 (included in the AFHA Report).

  "The long-term conservation of a harvestable surplus of salmon and steelhead across the Tongass is essential to the economic future of Southeast Alaska." AFHA Synthesis Report at 1.

Despite this evidence that less logging, not more, is needed to protect fish and wildlife, your bill would prevent the Forest Service from curtailing KPC logging even if it were shown to be necessary to protect these vital forest resources, which provide the basis for commercial fishing and tourism, the two largest private employers in the region.

**The Forest Service presently cannot protect subsistence in the face of any timber sale, often because of obligations to provide timber under the KPC long-term contract. Subsistence is protected under Title VIII of ANILCA. A new contract with a mandated**

**logging level would tie the Forest Service's hands and cause the loss of traditional subsistence areas.** Over 80% of rural Southeast Alaskans engage in subsistence hunting, fishing, or gathering.[7] Under ANILCA, federal actions are to have the least adverse impact possible on subsistence. But the Forest Service has gone so far as to develop a boilerplate disclaimer describing the fact that subsistence resources may be impacted, but that the agency has no choice but to do so because of its timber commitments. Extending the contract and mandating a higher KPC cut, as the bills do, will harm subsistence uses.

**The bill will prevent the development of a modern, high-value-added, secondary-processing timber industry based on the free market by keeping log prices artificially low and hindering independent operators from getting a timber supply.**

The new contract will prevent competition for logs and give L-P enormous price breaks, keeping the price of logs artificially low. This both cheats American taxpayers out of a fair return on their resources and diminishes any incentive to add value through additional manufacturing.

Between 1992 and 1995, the Forest Service emptied the independent sale pipeline to give independent sales to KPC under its contract. The Forest Service transferred six sales comprising 190 mmbf of independent sales to KPC. **With a new KPC contract, independent operators will continue to be second-class citizens.**

**Case in Point: the Control Lake/Honker Divide timber sale.** The Control Lake/Honker Divide timber sale on Prince of Wales Island is not within KPC's "primary sale area," and as such is available for independent operators. It includes the region known as Honker Divide, one of the most important wildlife habitat watersheds in the Tongass, with critical habitat for wolves, four species of Pacific Salmon, an internationally known run of steelhead trout, and an outstanding wilderness canoe route. Conservationists, independent timber operators, Alaska Natives, biologists, and other area residents collaborated to propose a 40 mmbf timber sale that would have constituted the largest independent timber sale on the Ketchikan Administrative Area, and would also have stayed out of Honker Divide. But driven by demands of the KPC contract, the Forest Service has made clear that it will very likely give this sale to KPC, and cut a much higher amount of timber (the agency's draft preferred alternative contained 182 mmbf) from the area. This will take timber away from independents and harm Honker Divide at the same time. With its higher mandated cutting level, a new KPC contract raises the likelihood of further cutting in this sensitive area.

**While this bill goes way beyond a contract "extension," a 15-year KPC contract extension by itself would be devastating for the Tongass. The leverage provided by a long-term contract makes it extremely difficult to gain fair consideration for other resources that would be harmed by logging --even when that logging would violate the law.**

---

[7]William Alves, Residents and Resources: Findings of the Alaska Public Survey on the Importance of Natural Resources to the Quality of Life of Southeast Alaska. Anchorage, AK: Institute of Social and Economic Research, University of Alaska, 1979 at V-4.

At its average cutting rates under KPC's current contract, extended 15 years beyond 2004 to the year 2019, the 23 years of timber that would be cut would equal **3.7 billion board feet. Honker Divide, Cleveland Peninsula, Port Houghton, East Kuiu, Poison Cove, and other magnificent Tongass wildlands are all scheduled for cutting by KPC.** The Forest Service will continue to be unable to protect subsistence areas, threatening the way of life of Alaska Natives and other rural residents. The agency will be unlikely to implement critical watershed analysis and conservation measures recommended by the AFHA Report. The agency is unlikely to take additional steps to conserve huntable populations (not just "viable" ones) of Tongass wildlife recommended by the Interagency Biologist Committee or the Peer Review of their Habitat Conservation Area plan.

An extended KPC contract by itself will harm other Tongass dependent industries such as commercial and sport fishing and tourism, by clearcutting and removing the resources they rely on for their health--namely the forest. As stated in the AFHA report:

> "Should freshwater habitats be degraded for long periods, salmon and steelhead stocks will eventually be confronted simultaneously with low marine productivity and degraded freshwater habitat. The likely result of such double jeopardy could be high, long-term risk of extinction....The overall risk to Southeast Alaska fisheries and the people who depend on them is determined in part by the total number of watersheds degraded."[8]

A contract "extension" would make such a result far more likely by placing contract requirements before watershed protection.

## Rewarding a corporate polluter for violating the law.

**One reason KPC has a high pollution cleanup bill is because it has violated, avoided and evaded environmental laws for so long. After failing ever to fully comply with the Clean Water and Clean Air Acts, after over 445 violations of pollution laws, and after pocketing the profits that came from its illegal acts, KPC is trying to force the American public to pay for its cleanup.** KPC is a chronic pollution law violator. In addition to their criminal and civil pleas last year, they have been sued for another 200 violations of the Clean Water and Clean Air Acts, and have just reported exceeding pollution limits under their consent decree. (Please see our May 28, 1996 written testimony at page 8, submitted to this Committee, as well as testimony submitted by the Alaska Clean Water Alliance.)

**L-P still is not coming clean with the public.** (Please see our first Supplementary Statement to the official record of the May 28 ad 29, 1996 hearings.) L-P's CEO, Mark Suwyn, and its pollution consultant made what can only be characterized as inaccurate and misleading statements about KPC pollution that indicate they are still trying to cover up or hide from the public the severity of KPC's pollution problems. This is unfortunate, because public health, public resources and the future of the Tongass are at stake. This behavior should not be rewarded.

---

[8] AFHA Report, Synthesis Report at 4.

**L-P has other serious civil and criminal pollution violations as well.** As revealed in L-P's most recent Securities and Exchange Commission quarterly filing (form 10-Q, period ending March 31, 1996)(hereinafter "March 1996 L-P 10-Q"):

- **The United States Department of Justice has stated its intention to seek civil penalties from KPC for Clean Air Act violations at the Anette Island hemlock mill.**

- In March 1996, an "information" was filed in the US District Court for the Eastern District of Washington charging L-P with two misdemeanor counts related to alleged record-keeping violations in connection with the disposal by an independent contractor of transformers from a mill owned by L-P in 1991.

- In June 1995, a grand jury returned an indictment in the US District Court in Denver, CO. L-P has been charged with 23 felony counts related to environmental matters at its Montrose, CO oriented strand board mill, including alleged conspiracy tampering with opacity monitoring equipment, and making false statement under the Clean Air Act. The indictment also charges L-P with 25 felony counts of fraud relating to improper use of a trademark as a result of L-P's alleged tampering with the procedure for the independent certification of its OSB product performance.

- L-P has been named a defendant in at least 12 purported class actions filed in various jurisdictions, as well as numerous non-class action proceedings because of alleged unfair business practices, breach of warranty, misrepresentation, conspiracy to defraud, and other theories related to alleged defects, deterioration or failure of OSB siding products. In addition, four other OSB-related actions have been brought between July 1995 and February 1996.

- L-P has also been sued by its stockholders for failure to disclose or improper disclosure related to the above matters.

- International Paper (IP), former employer of L-P CEO Suwyn, sued L-P in January 1996 claiming that Suwyn's employment with L-P violated a previous employment agreement he had with IP.

**The Delegation's, and L-P's arguments will not fly.**

The Delegation and L-P have advanced several arguments in support of these bills:

**1. Delegation/L-P Claim:**. L-P must have a new contract because the Forest Service hasn't given them enough timber. According to CEO Suwyn, the shortfall in timber over the last two years was 120 mmbf.[9] The Forest Service's shortfalls are what has caused KPC to lose money

[9]Oral testimony before this Committee, June 29, 1996, Juneau, AK.

every day of 1996.[10] KPC personnel commonly blame "timber shortages" for periodic mill shutdowns.

**The Facts: This is not what L-P is telling its shareholders. In its most recent SEC quarterly report, the company states:**

> **Pulp sales dropped 47 percent in the first quarter of 1996 over first quarter 1995. Prices decreased an average of approximately 11 percent while volume decreased approximately 41 percent. World-wide pulp inventories were high at the beginning of 1996 and remained high through the first quarter, creating very weak pulp markets. Production volume was 60 percent of capacity in the first quarter of 1996 compared to 90 percent in the first quarter of 1995. The decreased volume resulted from the lack of demand and from unscheduled maintenance shut-downs.**[11]

(Emphasis added.)

L-P does not cite timber shortages in this report, and given the description of weak market conditions it is dishonest and misleading for L-P to claim timber shortages as the reason for either mill shutdowns or financial losses. **L-P's problem is not its present long-term contract, timber shortages, or contract changes under the Tongass Timber Reform Act.**
**L-P's real problem is very weak international pulp markets.**

**There is no shortage of logs for L-P, and there hasn't been one.** (Please see SEACC's Second Supplementary Statement to the June 28-29, 1996 hearings at page 2.) From 1989-94, KPC logged 96% of their maximum allowable amount under the contract, and actually came within 35.6 mmbf of having to stop logging. KPC began FY 95 with over a year's supply of timber--164 mmbf-- released for timber operations, and at the beginning of FY 96 that cushion had grown to 180 mmbf. As of April 1, 1996, KPC had access to 209 mmbf--including 87 mmbf that required no, or minimal, new roading. (KPC's 15-year annual average cut is 159 mmbf.)

While complaining of timber shortages, from 1993-95 **KPC exported from Alaska an average of 26 mmbf per year of cedar logs in the round.** KPC could have sawed these logs in its sawmill.

**KPC complained of *worse* shortages *prior to* the Tongass Timber Reform Act.** Please see Attachment 2, a letter from KPC timber manager Owen Graham to the Forest Service prior to passage of the Tongass Timber Reform Act. In it, Graham complains about a shortage of timber--before the Tongass Reform Law. He claims that KPC's pipeline of released timber had shrunk to only 54 mmbf. If that was true, then **KPC's timber pipeline improved after the Reform Act.**

**L-P has plenty of timber remaining in its existing contract.** L-P has eight years of timber remaining on its current contract. Subsequently, L-P can buy timber from the Forest Service on

---

[10] Id.

[11] L-P Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934, for Quarterly Period Ended March 31, 1996.

the open market--just like every other timber purchaser in the country. They can also purchase logs from private owners.

**The Delegation is spreading the myth that the Tongass is the only source of logs in Southeast Alaska.** But from 1985-1995, private Alaska Native Corporations clearcut and exported 4.2 **billion** board feet of timber--more than half of all the timber cut in Southeast Alaska. Over that time, the Tongass timber program cut a yearly average of 339 mmbf. Native Corporations cut and exported in the round an annual average of 383 mmbf, including 72 mmbf of pulp logs a year. In 1994, Sealaska Native Corporation sold pulp logs to pulp mills in British Columbia. KPC was unwilling to bid for these logs, preferring to wait for cheap, taxpayer subsidized timber under their long-term contract.

**L-P has plenty of timber available. What L-P wants is cheap, taxpayer-subsidized timber, without competition in the bidding process.**

**2. Delegation/L-P Claim:** L-P claims it needs this new deal in order to obtain financing to clean up the pulp mill.

**The Facts:** In 1994, L-P was the 24th-largest forest products company in the world.[12] That year, L-P had the highest return on investment of any forest products company in the world.[13] **L-P has eight years of timber remaining on its current contract.** That is far more than many forest products companies have. Clearly, L-P has access to credit. According to the March 1996 L-P 10-Q:

> **Significant capital has also been expended for environmental projects (such as pollution control equipment) and upgrades of existing production facilities. L-P is budgeting capital expenditures, including timber and logging road additions, for all of 1996 of $275 million to $325 million.[14]**

**L-P has invested in facility upgrades and environmental controls elsewhere. L-P's one-year capital expenditure is up to $325 million, yet the company is unwilling to undertake a five-year[15] program to improve KPC, whose purported total expense is $200 million. The problem is not L-P's credit-worthiness, but the reluctance of its Board and management to commit capital to the KPC pulp mill. L-P and the Alaska Delegation want US citizens to commit the capital L-P is unwilling to commit.**

**L-P told its shareholders that its required environmental upgrades would cost no more than $20 million--not $200 million.** In the March 1996 10-Q, L-P states, with respect to the settlement of the recent civil lawsuit against KPC:

---

[12]Price Waterhouse: ForestProducts Survey 1994--North America at 37. Measured by sales value.
[13]Id. at 36.
[14]L-P March 1996 10-Q at 7.
[15]According to CEO Suwyn, June 29, 1996 oral testimony before this Committee.

> KPC also agreed to undertake further expenditures which are primarily capital in nature, including certain remedial and pollution control related measures, **with an estimated cost of up to approximately $20 million.**[16]

**In testimony before this Committee, L-P said it must spend up to 10 times that amount to "improve" the KPC pulp mill.**[17] **But clearly they'll invest the capital only if the American taxpayer repays that investment.**

**As the price of staying in Ketchikan, L-P wants the American taxpayer to buy the company a mill.** In 1995, KPC paid $121 per thousand board feet (mbf) of timber (including "payments" in the form of logging roads built). Independent timber purchasers paid over twice as much--$279 per mbf. (These rates include the TTRA "comparability" adjustment supposedly making KPC timber charges equal to rates paid by independent purchasers.)

**This new contract, and this bill, would provide KPC timber is worth at least $1.23 billion at prevailing market rates. Over time and with free-market competition, market rates and the total value could be expected to go up.**

At the current average stumpage price KPC paid in 1995 under its **current** contract, **KPC would pay just $532 million--a difference of $695 million below current market value, pocketed by the company. And under the new contract's outrageous pricing scheme, KPC's timber payments could go down, dramatically increasing the value of this gift from the American taxpayer to KPC. This taxpayer gift to KPC greatly exceeds L-P's purported $200 million expense to upgrade the mill. And as discussed below, after getting the new contract L-P is not required to spend a dime on these purported improvements.**

3. **Delegation/L-P Claim:** L-P must have a new contract in order to assure that it has enough timber to amortize the investment in cleanup and improvements at the pulp mill. There is no timber other than the timber L-P can access under its contract.

**The Facts: The Delegation's bill would in fact allow L-P to shut the pulp mill down. The day after this bill becomes effective, L-P could close the pulp mill, not perform the improvements to the pulp mill that are the rationale for this bill, and instead completely revamp its Ketchikan operation, investing whatever it pleased.** Its only obligation would appear to be cutting 192 mmbf per year and processing pulp logs in some way--including chipping them and exporting chips. The new L-P mill would not have to maintain its current complement of jobs, and CEO Suwyn has talked of "increasing productivity"--a code word for fewer employees.

This scenario is not far-fetched. L-P's purported "improvements" are experimental. Initial testing shows that the new "elemental chlorine free" process would increase effluent toxicity in some respects. While not using "elemental" chlorine, the process would instead use chlorine dioxide or

[16]March 1996 L-P 10-Q at 9.
[17]L-P CEO Mark Suwyn oral testimony, May 29, 1996, Juneau.

other chlorine compounds, and would still produce toxic, persistent organochlorine pollutants such as dioxins and furans. And there is no guarantee that the pulp produced would sell, or at what price.

**Thus this bill would allow L-P to obtain a 23-year guaranteed supply of public timber, along with a governmental guarantee to price that timber at a rate that kept L-P competitive with the Pacific Northwest no matter what L-P decided to do with the timber, and an expression of Congressional intent to supply adequate timber for permanent operation of KPC's facilities on a "permanently economical" basis--again, no matter what KPC decided to do with the timber. This timber would come to L-P regardless of the cost or impact of providing it on the taxpayer or any other Tongass resource or resource user. It would come regardless of environmental laws protecting other resources, and the deal could never be altered unless KPC agreed. All based on the rationale of improvements and investments that KPC is not required to make, and might choose not to make. Mr. Chairman, that's a hell of a deal.**

4. **Delegation/L-P Claim:** Southeast Alaska's economy is dependent on KPC. Without KPC, there will be an economic disaster--4,000 jobs are at stake--there is no other major timber operator. Senator Murkowski has said, "I can't stand back and watch Ketchikan die."

**The Facts: Every job is important. But giving in to corporate blackmail is not the way to safeguard Southeast Alaska's economy.** It is especially troubling for the Delegation to be making this argument given KPC's history of using its contract to monopolize the Southeast Alaska timber industry, illegally driving competitors and industry participants out of business.[18] The new, 23-year, taxpayer-subsidized contract L-P wants is a clear example of a huge government program stifling free enterprise.

**Southeast Alaska's largest private employers and its growth industries depend on a healthy environment.** Government is the largest employer in Southeast Alaska, with 12,350 jobs. In the private sector, activities associated with salmon produce the most natural resource jobs annually in Southeast Alaska.

**Commercial salmon fishing and fish processing** is the largest private employer, providing over 5,000 direct jobs; Commercial salmon fisheries yield 160 million pounds (average annual production from the Tongass) worth about $250 million annually.[19]

**Sport fishing provides another 1,200 direct jobs** with over $28 million in earnings and 250,000 angler-days, *and is growing at an average of 10% per year.*[20] The Ketchikan charter-boat fleet doubled in size from 1987-92, to 157 boats.[21]

---

[18] Reid Bros Logging v. Ketchikan Pulp Co., 464 U.S. 916 (1981)

[19] United States Forest Service, Pacific Northwest Research Station and Alaska Region, Anadromous Fish Habitat Assessment, Report to Congress, January 1995 at 1.

[20] Id. Note there may be some overlap between sport fishing jobs and tourism jobs.

**Tourism provides approximately 2,500 direct jobs.**[22] From 1990-94, tourism exploded, with visitor spending more than doubling to $160 million,[23] and total regional tourism jobs expanding by nearly 40%, to 3,674 jobs.[24] Over the same period, annual visitors to Ketchikan rose by 55%, annual hotel gross sales rose 33%,[25] and visitor spending increased by 88% to $32 million.

> ***These industries depend on a healthy Tongass old-growth forest--fishing for healthy watersheds and tourism for wild lands, unspoiled landscapes, and fish and wildlife. Large-scale clearcutting under the KPC contract threatens jobs in these industries, as well as the subsistence economy, community use areas, and the healthy fish and wildlife habitat that is basic to Alaska's quality of life. It also threatens long-term timber jobs and precludes the development of a sustainable timber industry based on the free market.***

**Timber is the fourth-largest industry.** In 1995, the timber industry (including private, Native Corporation logging) provided 2,002 direct jobs, and Tongass timber accounted for 1,216 direct jobs. Region-wide, KPC provides around 1,000 jobs (counting loggers and another sawmill it leases in Metlakatla). ***KPC directly provides just 3% of the region's jobs and 5% of all direct, indirect and induced employment.***

**Recent Alaska Delegation claims of massive job losses have little to do with reality.** The Delegation claims 4,000 jobs will be lost if KPC closes.[26] But in 1995, the entire Southeast Alaska timber industry, including all direct, indirect, and induced employment on Tongass National Forest, State, and private Native Corporation lands produced 3,463 jobs--how could 4,000 be lost? Independent timber sales and Native Corporation logging will continue. Using standard Forest Service multipliers, the 600 jobs at KPC's Ketchikan mills would support an additional 438 indirect and induced jobs for a total of 1,038 jobs or 13% of Ketchikan's jobs.

**Please see Attachment 3, The Potential Economic Consequences of a Reduction in Timber Supply from the Tongass National Forest--1996 Revised Report,** prepared by ECONorthwest, Eugene, OR. This report demonstrates that a reduced timber supply would have a minor impact on the regional economy, that timber was not the driving force behind the economy, and that **"the growth industries are tourism, fishing, and trade, all of which may benefit from reduced logging."**[27]

---

[21]Economic Development Center, University of Alaska Southeast Ketchikan Campus, Ketchikan Gateway Borough Economic Indicators, June 1995.

[22]US Forest Service, Alaska Regional Economist, Southeast Alaska Economy, February 1995 (number listed is 2,330, presumable referring to 1994).

[23]Planned testimony of Alaska Commisioner of Commerce Willie Hensley before Senate Energy Commitee, S. 1054, August 9, 1995 at 4. Hearing was downgraded to a workshop due to opposition to the bill.

[24]Id.

[25]Ketchikan Gateway Borough Economic Indicators, 1994 at v.

[26]Letter to the Editor of the New York Times, June 25, 1996.

[27]The Potential Economic Consequences of a Reduction in TimberSupply from the Tongass National Forest--1996 Revised Report. Eugene, OR: ECONorthwest at i. Summary of report attached.

**Ketchikan's economy, and the regional economy, are robust and diverse, and are not driven by timber. Contrary to misleading KPC advertisements, KPC's mills are directly responsible for only 7.5% of Ketchikan's jobs.** In 1995, Ketchikan, a town of 15,000, had 7,981 jobs producing $255 million in wages and salaries.[28] There are 515 jobs at KPC's pulp mill and around 85 at an adjunct sawmill. Together, these directly account for less than 7.5% of Ketchikan's jobs and less than 10% of its total wages. Despite steep declines in timber jobs, Southeast Alaska's economy has grown every year for the past eight years, and in 1995 the region's jobs base grew more than any other area of the state.[29] The region is now one of the world's premier cruise ship markets.

**From 1991-95, as Ketchikan's total timber jobs declined by 12%, virtually every other part of the Ketchikan's economy grew, indicating that timber does not drive the economy.** Construction grew by 24%; transportation, communication and utilities also increased by 24%; retail trade grew by 23%; services grew 18%.[30] Tourist spending nearly doubled.[31] From 1988-94, gross business sales increased by 52%, to $458 million,[32] driven largely by tourism. Construction is strong, with conversion of the old Ketchikan Spruce Mill dock into a major new residential and commercial development, also linked to tourism.

**There are other steady, year-round employers in Ketchikan.** KPC's Ketchikan mills have 600 employees and a payroll of around $25 million. But government is the largest employer in Ketchikan, with 1,783 jobs and a payroll of $68 million. Trade employs 1,625 with a payroll of $36 million; Services employs 1,445 and pays $34 million; Transportation, communication and utilities 770 with $25 million; Construction employs 432 with a payroll of $22 million; and Finance, insurance and real estate employs 319 at $8 million.[33]

These are all year-round employers including many family-wage jobs.[34] In 1993 there were also 322 commercial fish permit holders, holding 543 permits for many different fisheries, earning 18.7 million.[35]

**Ketchikan will go through a transition, just as Sitka did.** When the Japanese conglomerate that owned the Sitka pulp mill closed it for business reasons in October 1993, the mill directly accounted for 10% of that city's jobs and around 16% of Sitka's total wages. Ketchikan is considerably less dependent on KPC than Sitka was on its pulp mill when that mill closed. Just two and a half years later, Sitka's economy is healthy. Despite the loss of mill jobs, Sitka's housing starts, single-family housing prices, and gross business sales were all up through 1994,[36]

---

[28]Alaska Department of Labor, Emplyment and Earnings Summary Reports, Ketchikan Gateway Borough, 1995.
[29]Alaska Department of Labor, Alaska Economic Trends, May 1996.
[30]Alaska Department of Labor, Employment and Earnings Summary Reports.
[31]Hensley testimony, supra.
[32]Ketchikan Gateway Borough Economic Indicators, University of Alaska Ketchikan Campus, 1994.
[33]Alaska Dept. of Labor, Ketchikan Gateway Borough Employment and Earnings Summary Reports.
[34]Alaska Dept. of Labor, Ketchikan Gateway Borough Employment and Earnings Summary Reports.
[35]Ketchikan Gateway Borough Economic Indicators, University of Alaska Ketchikan Campus, 1995. Fishing income includes crew salaries, but number of crew members is unknown.
[36]Presentation to Moody's Investor Service by Sitka city officials, March 6, 1994.

and 1995 single-family housing starts increased by 17% over 1994.[37] Sitka's unemployment rate is the second-lowest in the region, below the state average.[38] Sales taxes remain strong, and Sitka's Finance Director recently acknowledged that predictions of disaster did not materialize.[39] While KPC's Ketchikan mills provide around one-third more jobs than the Sitka pulp mill, Ketchikan's total economy is around twice the size of Sitka's with its pulp mill.[40]

5. **Delegation/L-P Claim:** No other timber industry is possible, because 30% of the trees are "dead or dying," and suitable only for pulp. Therefore a pulp mill is absolutely necessary. Moreover, transportation costs will make it impossible for a secondary-manufacturing industry to develop in Southeast Alaska.

**The Facts: The logical conclusion of this argument is that if KPC closes, no one will ever cut another Tongass tree on a commercial basis. This conclusion is not believable, and is belied by recent developments. Transition to a high value added, secondary manufacturing timer industry based on the free market is both possible and desirable.** (Please see SEACC's original written comments, May 28 and 29, 1996 at 10-12, and our Supplementary Testimony at 7, where we discuss a value-added timber industry for Southeast Alaska.)

Please see Attachment 4. Far from being impossible, an established Southeast Alaska sawmill owner and operator has just proposed a new remanufacturing plant and wood drying operation for Prince of Wales Island. This kind of an operation is an important facet of a secondary-manufacturing industry. This is the kind of operation we'd like to see in our region's future.

The Alaska Legislature passed, and Governor Knowles just signed, a bill to promote high value-added manufacturing in Alaska. The provisions of this bill were weakened by the legislature, leaving the Department of Natural Resources with increased responsibility to recognize regional differences in Alaska's forests and make sure that the bill accomplishes its stated purposes while conserving important Alaskan resources. Nonetheless, the Governor and the legislature have embraced the importance of secondary manufacturing in the future Alaska timber industry.

**Studies have shown that components of a secondary manufacturing industry can work from Southeast Alaska.**

- Feasibility Analysis of Alternative Wood-Based Industries for the City and Borough of Sitka, Alaska, prepared by International Resources Unlimited, Inc. for the Forest Service and the City and Borough of Sitka (draft 12-13-95) showed that a sawmill, a dry-kiln operation, and a planer mill could be built from scratch and operated profitably in Southeast Alaska, both separately and as an integrated operation. Such a mill, while not necessarily producing secondary products in and of itself, produces the raw material--kiln-dried, surfaced lumber--

[37] Alaska Department of Labor, Alaska Economic Trends, May 1996.
[38] Alaska Department of Labor statistics.
[39] May 10, 1996 radio news story, KCAW, Sitka (transcript available).
[40] Measured by gross business sales (other measures reveal a similar relationship).

for secondary production. Custom kiln-drying of other companies' wood is also an important service provided by such a facility to the secondary sector.

- Southeast Alaska Value-added Timber Manufacturing Study, prepared for the Southeast Conference by C.L. Cheshire, Jon Galea, and Dubal, Beck and Associates (June 1991), examined opportunities in low-grade and small-diameter logs and determined that finger-jointed moulding and edge-glued boards--both value-added products--could be produced profitably in Southeast.

**The Forest Service has recognized the potential for a secondary manufacturing industry in Southeast Alaska.**

In Charting a Course for Sustainable Development in Southeast Alaska,[41] the authors stated, after visiting Southeast Alaska wood manufacturers:

> Past efforts to develop the timber-using industry and the timber-based economy have partially relied on strategies that encouraged a few, large firms. The current situation offers an opportunity for some transition to a large number of smaller firms. Markets appear to be more economically accessible to these firms than in the past. (Page 13.)
>
> Thirty-five of the 42 manufacturing facilities in SE Alaska are on Prince of Wales Island. There is considerable interest in new markets....Another opportunity is installing a regional dry kiln and concentration yard on Prince of Wales Island." (Page 16.)

In Economics of the Southeast Alaska Timber Industry,[42] Forest Service Alaska Regional Economist Kathleen Morse said:

> Old growth timber still commands a premium price because it is becoming increasingly scarce in wood products markets....A key to the successful future of the wood products industry in Alaska lies in recognition of this fact and developing the ability to use this wood to its maximum advantage in local manufacture. (Page 4.)
>
> Value-added wood products could be a key element of the Southeast Alaska timber industry in the future....This would mean a reorientation from the production-oriented manufacture of industrial commodities to more market-oriented production of specific products. (Page 6.)
>
> When you've got a high-cost producing region, like we've got here, you've [sic] simply must target higher value end-use products. Fortunately, we have a good supply of very valuable trees, that when logged, should have every penny squeezed out of them. To do otherwise, would be a true waste of resources. (Page 6.)

---

[41] Madison, WI Forest Products Lab, Pacific Northwest Research Station and Forest Service Region 10, undated (approximately January/February 1996).

[42] A mid-1994 presentation to the "Ketchikan 2004" conference held at the University of Alaska Southeast--Ketchikan.

**The high value-added sector is the dynamically growing segment of the Pacific Northwest timber industry.** According to the Center for International Trade in Forest Products at the University of Washington, exports of secondary products through the Columbia-Snake river Customs Districts, which includes all of Washington and Oregon, increased 181% between 1989 and 1993.[43]

According to the Evergreen Partnership, a Tacoma-based private non-profit membership corporation aiding the value-added sector, there are an estimated 1,400 secondary wood products producers in the states of Washington and Oregon, employing 33,000 people. Exports increased nearly 200% from 1989 through 1995, reaching $300 million.[44] While banks are reluctant to loan money to the primary sector, the Evergreen Partnership and secondary businesses have had success with banks by showing them that they are a separate, growing, profitable building products industry.[45]

**Sealaska Regional Native Corporation has shown interest in a new timber industry.** At a March 20-21, 1996 Wrangell conference on secondary wood product manufacture, Sealaska CEO Leo Barlow said that a timber industry based on pulp and cants is a thing of the past. Sealaska has been considering buying the old APC Wrangell sawmill and running it as a different kind of operation, based on markets rather than commodity production.

**Transportation costs are not a bar to secondary manufacturing in Southeast Alaska.** Barging containerized cargo by water is far less expensive per mile than hauling containerized cargo by truck, enabling Southeast Alaska manufacturers to compete with manufacturers closer to major transportation hubs.

One manufacturer of knockdown cedar furniture on Vancouver Island[46] ships a 40-foot container of finished product to Vancouver, B.C. for trans-shipment to their customers **in Europe**. The cost of trucking the container from the plant in Port Alberni to Vancouver is approximately $700CN or $511US. Trans-shipment to European ports such as Antwerp, Belgium or Bremerhaven costs around $2,500US. Shipping costs are paid by the customer, and clearly the transportation costs from the Vancouver hub to the final destination dwarf shipping costs to the hub.

Barging this amount of knockdown furniture from Ketchikan to the hub of Seattle would cost approximately $951,[47] for approximately 450 pieces. Significantly, this quote for shipping does not take into consideration better deals that might be worked out with shippers. **This difference in shipping cost to the hub would thus result in adding .98 to the cost of each piece of furniture. Clearly this is not significant--and shipping costs from Seattle to some**

---

[43]Center for International Trade in forest Products (CINTRAFOR), August 1994, Fact Sheet #13.
[44]The Evergreen Partneship, Prospectus at 1.
[45]Greg Schellberg, Evergreen Partnership Executive Director, workshops sponsored by SEACC in Ketchikan and Wrangell, February, 1996.
[46]Sarita Furniture, Port Alberni.
[47]Quoted price of $5.37/100lbs, prorated including prorated pickup and delivery of container. **This amount does not consider more favorable deals that might be worked out with shippers and as such is overly costly.**

**destinations might be lower than costs from Vancouver, thus recapturing initial shipping cost differences.**

**A similar situation would hold true for many other Southeast Alaskan products.**

**A high value-added, secondary manufacturing industry is market driven--based on quality and marketing to a far greater extent than is a commodity, production based industry, like pulp. Therefore, differences in shipping costs are far less significant. The quality of the individual product and the needs of the customer are paramount.**

**Southeast Alaska received $110 million from Congress last year to help with problems in the timber industry.** Now is the time to use that funding to effect a transition in the timber industry.

**Your bill deprives us of one of our greatest strengths--the genius of the free-enterprise system.** By decreeing who will get timber, and mandating price controls that have nothing to do with fair economic competition, your bill prevents free-market entrepreneurs in timber or other industries from establishing the most valuable and efficient use of Tongass resources, and at the same time cost American taxpayers a massive subsidy. This is a clear example of environment and development being compatible until distorted by a misguided and heavy-handed government subsidized program.

## Conclusion.

By placing the needs of KPC above those of all other forest users, your bill threatens all other forest users, and the environment. Although billed as a contract "extension," the new, 23-year, taxpayer-subsidized contract L-P wants (and the bill provides) would be devastating for the Tongass National Forest. It would start right now and go at least until the year 2019. It would place L-P's corporate needs above the needs of any other forest user; give L-P rights over the Tongass it has never had before; threaten jobs in other Tongass-dependent industries, and make a mockery of balanced multiple use.

Your bill would roll back vital balanced-management reforms of the 1990 Tongass Timber Reform Act, undermine the National Forest Management Act as it applies to the Tongass, and make conservation of fish and wildlife habitat and protection of the world's largest remaining temperate rainforest secondary to the commercial exploitation of that forest. The bill rewards a major corporate polluter for violating pollution laws. Because it officially establishes one company as the major commercial user of the forest, and commits the government to keeping that company profitable, the bill squelches free enterprise and will likely halt the development of a new timber industry based on the free market and secondary manufacturing of wood products within

the region. The new timber industry would cut less and employ more Alaskans, while allowing for conservation of vital forest resources that complement rather than threaten other Tongass-dependent businesses.

**By contractually enshrining L-P as the dominant user of the Tongass, this bill returns Southeast Alaska to the days of the timber barons. It is destructive to the environment and future generations. It should be rejected.**

**SOUTHEAST ALASKA CONSERVATION COUNCIL**

**TESTIMONY BEFORE THE U.S. SENATE**
**ENERGY AND NATURAL RESOURCES COMMITTEE**
**JULY 10, 1996**

**LIST OF ATTACHMENTS**


| | | |
|---|---|---|
| ATTACHMENT | 1 | KPC's Threats to Close Its Mill, 1973-Present |
| ATTACHMENT | 2 | September 21, 1990 Letter from Owen Graham, KPC Timber Manager, Complaining of Timber Shortages Prior to the Tongass Timber Reform Act |
| ATTACHMENT | 3 | The Potential Economic Consequences of a Reduction in Timber Supply from the Tongass National Forest 1996 Revised Report--Executive Summary |
| ATTACHMENT | 4 | "Seley Looks to Re-Open Mill in Thorne Bay," article in Ketchikan Daily News, June 8-9, 1996 |

## CORPORATE OUTLAW SEEKS NEW SWEETHEART DEAL

Since 1954, Ketchikan Pulp Company (KPC), a wholly-owned subsidiary of Louisiana Pacific Corporation, has owned exclusive rights to log timber on a substantial portion of the southern Tongass National Forest. In exchange for a guaranteed 50-year pulp timber supply at noncompetitive rates, KPC agreed to build and operate a pulp mill in Ketchikan until the contract expired by its terms in 2004.

Currently, KPC is seeking Congressional support for what it calls a 15-year "extension" of its monopolistic pulp contract. KPC's proposal, however, is not for an "extension" of its existing contract but a request for Congressional approval of a new, monopoly contract. The standard provision in Forest Service timber sale contracts permits an "extension" of that contract only if "purchaser's operations to date have been in reasonable compliance with contract terms." KPC's repeated violations of its pulp mill's air and water pollution discharge permits, which endanger the health and safety of Ketchikan residents, disqualify it from obtaining a contract "extension."

KPC claims it needs an "extension" so it can afford to spend the $150 million needed to install pollution-prevention upgrades at its antiquated pulp mill. These upgrades are required under a 1995 criminal plea agreement between EPA and KPC, in which KPC pled guilty to violating its water quality permit by intentionally dumping toxic sludge into marine waters adjacent to its pulp mill. This criminal plea agreement is the most notorious example of KPC's chronic failure to live up to its contractual promise to "conduct its operations under this contract and other related business activities in compliance with Federal, State, and local statutes, standards, orders, permits, or other regulations."

**Below are several examples of KPC holding local communities hostage by threatening mill closures over the last 23 years.**

- In 1973, following the first attempts to implement basic environmental impact statement requirements, C. L. Cloudy of the Alaska Loggers Association warned that the requirements would cause "complete [pulp] mill shutdowns" and "shutdowns of the remaining sawmills in Southeast Alaska." (*Ketchikan Daily News*, April 19, 1973).

- On May 4, 1976, the *Ketchikan Daily News* headline screamed "KPC says it will close July 1, 1977." But as the paper explained the next day, the announcement "wasn't news. It was part of a publicity stunt." The paper criticized the pulp mill for issuing false alarms one week before EPA pollution hearings and shortly before employee negotiations were due to start. One editorial concluded "Ketchikan Pulp Co. is crying wolf and playing with the faith of thousands of people. God help it." (*Ketchikan Daily News*, May 5, 1976.

- During 1983 EPA hearings, officials from KPC said the cost of installing water pollution control equipment would force them to shut down. KPC said it would "consider both legal recourse and mill closure if the variance requests" were denied (*Southeastern Log*, December 1983).

**Southeast Alaska Conservation Counci**
**Senate Bill 1877**
**July 10, 1996**

Attachment 1

- In 1984, KPC's comptroller (later president) Martin Pihl claimed that if the Forest Service didn't reduce the price of timber and allow larger clearcuts, "we're all going to pack up and leave." (*Juneau Empire*, March 29, 1984).

- In 1992, EPA proposed much tighter pollution controls for KPC's pulp mill. KPC's President, Martin Pihl, claimed that the new pollution controls "would seriously threaten the survival of the mill, or any pulp mill anywhere." (*Ketchikan Daily News*, April 17, 1992).

- In early summer of 1993, KPC announced that it would shut down its pulp mill "in August for three months because it was running out of wood for pulp." (*Ketchikan Daily News*, August 6, 1993). However, KPC "delayed the temporary shutdown of its pulp mill until the week of Sept. 15 and says it will last just 30 days ... [because of the mill's] aggressive logging plan, along with purchases of pulp logs and chips throughout Southeast Alaska and Canada." (*Sitka Sentinel*, August 5, 1993).

- On June 26, 1995, the *Ketchikan Daily News* announced that KPC "says it will close its Ward Cove sawmill for an indefinite period starting Friday because it is running out of timber sold by the U.S. Forest Service." The same day it announced the closure of the sawmill, the *Ketchikan Daily News* contained a paid add by KPC, which offered to sell "approximately 3,000 board feet of red cedar and 2,000 board feet of Alaska yellow cedar during the third quarter of 1995." In fact, the decision to close the sawmill was a business decision driven by pulp prices that had more than doubled since 1994, and were then at or near their highest price ever. While pulp prices were exploding, the average market price for sawn timber dropped by 33 percent.

- On March 12, 1996, the*Ketchikan Daily News* reported that KPC would close its sawmills in Ketchikan and Metlakatla from late March until after Memorial Day because of "a shortage of timber." KPC's problem is not timber supply, but the cyclical, and recently volatile, nature of the international pulp market. In the same article, the Ketchikan Area Forest Supervisor expressed his personal opinion "that the current shutdown has more to do with market conditions than supply of logs ...." These shutdowns occurred despite KPC having access to 209 million board feet of Tongass timber as of March 24, 1996 -- well over a year's supply -- including roughly 87 million board feet that required no new roading. KPC's problem is that its monopoly contract has shielded it from competition for so long that now it has trouble competing with modern, lower-cost competitors on the international pulp market.

KPC has a long history of "crying wolf" with closure threats every time their logging operations are questioned. KPC has further threatened to pack up and leave unless EPA waived pulp mill pollution requirements or relaxed enforcement of water quality regulations.

**KPC does not deserve any special treatment from Congress because it has repeatedly failed to act as a responsible corporate citizen. Any "extension" of KPC's monopoly would continue the environmental and economic problems caused by this exclusive, 50-year contract, and become one of the biggest heists of public resources since the days of the railroad robber barons.**

SEACC 05/27/96

File KPC 2450 DT

Ketchikan Pulp Company
A subsidiary of Louisiana-Pacific Corporation

Post Office Box 6600
Ketchikan, Alaska 99901, U.S.A.
Telephone: 907-225-2151
Telefax: 907-225-8260

USDA - FOREST SERVICE
KETCHIKAN AREA
RECEIVED
SEP 25 '90
FOREST SUPERVISORS OFFICE

| | | | |
|---|---|---|---|
| FS | | | |
| DFS | | | |
| PLN | | X | |
| PAS | | | |
| AO | | | |
| TM | | X | |
| ENG | | | |
| FOW | | | |
| MAWS | | | |
| B&L | | | |

September 21, 1990

Mr. J. Michael Lunn
Forest Supervisor
U. S. Forest Service
Ketchikan Area
Federal Building
Ketchikan, Alaska 99901

Dear Mike:

The five-year allotment of timber the Forest Service identified in the 89-94 EIS for our LTS appears to require about 360 miles of new construction to access the 960 mmbf.

Obviously, the roads must be built early enough in the five-year period to allow time for harvest. As you know, normally we consider six months of road constructed ahead of the logging the minimum, although two or more years ahead in some cases was necessary to keep construction costs (e.g. mobilization) to a reasonable amount. Indian Point is an example of an area where we had to build road two to three years ahead of the logging in order to avoid unreasonably costly remobilization. With relatively few opportunities for alternate means of mitigation to allow crossing fish streams outside the three-month fish timing "window", we now realistically need to maintain a minimum of 12 months of timber released ahead for road construction and six months of timber roaded ahead for logging. In any case, in order for you to offer the contractually required volume during the five year period the Forest Service must release all of the timber (960 mmbf) for construction and logging in not less than the first four years of the five year period and those releases must be distributed over those four years in a manner that will allow for the orderly construction of the roads required and also allow for a reasonably efficient logging operation (e.g., summer logging at high elevation, winter logging at low elevation).

In the period from October 1, 1989 through September 17, 1990 the Forest Service released only 139 mmbf for harvest. Our pipeline of timber released ahead has fallen from 79 mmbf on

TL:264

Trees are a Renewable Resource

Southeast Alaska Conservation Council
Senate Bill 1877
July 10, 1996
Attachment 2

October 1, 1989 to only 54 mmbf on September 17, 1990. Likewise, the volume prepared but not yet released has fallen from 73.1 mmbf on October 1, 1989 to 26.7 mmbf on September 17, 1990 (see Attachment "A").

The amount of timber available for us to harvest has become intolerably small. We have only a couple of months of timber roaded ahead and only a month of road released ahead of our construction crews. Through no fault of KPC, we have been forced to cut back our logging operations at Naukati, Labouchere, Coffman Cove and Thorne Bay. Many workers have been laid-off, and many of our construction crews have been able to work only intermittently all year. Our harvest costs have become unreasonably high this year because of the intermittent shutdowns caused by Forest Service failure to provide necessary timber volumes in a timely fashion, the reduced level of operations and the lack of planning opportunities available to us.

All of these operational problems are a result of not having sufficient timber prepared ahead to permit proper planning and management of our business. We had planned to harvest about 205 mmbf this year, but it is obvious now that we will not come close to that level. It appears more likely that we will be able to harvest about 175 mmbf. We have made an effort to replace this fiber loss with outside purchases. We have paid a premium for the additional fiber and we are still critically short. One or both of our sawmills will likely suffer considerable down time which could occur by late 1990 or early 1991. Furthermore, if the Forest Service does not get caught up with their sale preparation work immediately there is serious risk that our pulp mill will be without fiber in the fairly near future.

The Forest Service assured us at our May 10, 1990 meeting they would be back on schedule with our Annual Operating Plan by September. Instead, as of September 1990, the volume released was 238 mmbf behind what was approved in the Annual Operating Plans for 1989 and 1990 (see Attachment "B"). We request that you immediately investigate whatever possible Forest Service activities there may be that are contributing to this continuing problem of delayed releases. We request <u>again</u> that you take the steps necessary to get back on schedule immediately so that our company will not suffer further damages.

Another related problem is the fall-down in acreage and volume and economics from what was approved in the Record of Decision. Through September 1, 1990, the new units that have been

released to us (not including residual timber) have averaged 21.1% less acreage than the ROD (see Attachment "C"). This has exacerbated our problem with volume released ahead to operate on and it has an extreme impact on our costs (e.g., road construction cost per mbf, mobilization cost per mbf, etc.). Further, if this trend is not reversed you may be forced to prepare a supplemental EIS to replace the lost volume.

Finally, I still have not been able to locate the source of a report to Mike Barton that indicated we are harvesting timber that averages better than 40 mbf per acre. The truth is that from March 1, 1989 through June 30, 1990, our harvest averaged 31.3 mbf per acre net + net utility or 28.2 net (Attachment "D"). If you or anyone else in the Forest Service disputes this calculation I would like to hear about it now! We are being given a deaf ear in the Juneau office. Perhaps updating them with the correct information would help alleviate this situation.

Sincerely,

O. J. Graham
Timber Division Manager

:ts
cc: M. R. Pihl

TL:264

# The Potential Economic Consequences of a Reduction in Timber Supply from the Tongass National Forest

## 1996 Revised Report

Prepared for:

**The Alaska Rainforest Campaign**

Prepared by:

**ECONorthwest**
99 W. Tenth, Suite 400
Eugene, OR 97401
(541) 687-0051

December 1994

Revised June 1996

Southeast Alaska Conservation Council
Senate Bill 1877
July 10, 1996 Attachment 3

# Executive Summary of 1996 Revised Report

In December 1994, ECONorthwest studied the economy of Southeast Alaska and concluded that a reduced timber supply from the Tongass National Forest would have a minor impact on the region's economy, and this impact would be confined largely to the timber industry. Our report documented that the timber industry represents a relatively small fraction of the region's total economy and that, since 1990, Southeast Alaska's economy had grown steadily even as the timber industry was shrinking. We found that the growth industries in the region are tourism, fishing, and trade, all of which may benefit from reduced logging. We discussed the unique importance of subsistence in Southeast Alaska, an economic and cultural activity which is directly harmed by logging. Finally, we noted that Southeast Alaska's experience was consistent with the Pacific Northwest, which has experienced significant growth in total employment as employment in the timber industry declined.

One year later ECONorthwest reviewed the latest economic data from Southeast Alaska. This data strongly reinforces the findings and conclusions described above. The region's total employment continues to climb as employment in the timber industry continues its downward trend. Between 1988 and 1995, total employment in Southeast Alaska increased at an average-annual rate of 2.2 percent, in refreshing contrast to the average-annual decline of almost 7 percent for employment in the region's lumber, wood products, and pulp industries. In 1995, those directly employed in the timber industry accounted for less than 6 percent of the region's total employment, and many of these workers were nonresidents.

Clearly, Southeast Alaska's economy is diverse and strong enough to absorb reductions in timber harvest yet keep growing. In fact, since 1988, employment and earnings have increased steadily in every sector of the region's economy except timber—construction, transportation, trade, and services, to name a few.

Fishing, tourism, and the quality of the natural environment contribute to the regional economy's diversity and strength. Reductions in logging may have a positive effect on these driving forces of economic growth. For example, in a report to Congress in 1995, the Alaska Region of the U.S. Forest Service concluded that existing measures of habitat protection are inadequate and greater protection is needed to avoid declines in salmon and steelhead runs. As another example we note that a 1995 report concluded that while the number of boat-based tourists in Southeast Alaska is increasing dramatically, the number of suitable anchorages has declined, in part, due to logging.

This updated report, like the original, does not attempt to assess the impacts of reduced logging on every community in Southeast Alaska. The focus of our analysis is on the regional economy of Southeast Alaska. We note, though, that much of the concern regarding the economic consequences of reduced logging on the Tongass National Forest focuses on the communities that derive substantial income from logging. One cannot fully describe the consequences to these communities, however, by looking at each community, or even the entire set of communities, in isolation from the regional economy. The economic well-being of every community adjacent to the Tongass is tied to, and cannot be separated from, economic activity of the regional economy.

Ketchikan Daily News

Saturday-Sunday, June 8-9, 1996

# Seley looks to reopen mill in Thorne Bay

By CATHY ST. JOHN
*Daily News Staff Writer*

Seaborne Lumber owner Steve Seley is considering relocating his now shutdown Ketchikan operations to Prince of Wales Island as part of a new $5 million secondary manufacturing facility.

Seley is scheduled to present a proposal, which is in the early stages, to the Thorne Bay City Council on June 20, he said.

Seaborne Lumber's $5.1 million mill closed April 27 due to a declining timber supply. Seley is especially interested in locating to the Thorne Bay area, as the prospects of a Gravina Island industrial site dim and POW growth continues, he said.

POW has always "extended open arms to the (timber) industry and jobs," he said.

The island has more beachfront property than Ketchikan and will probably surpass Ketchikan's population in the next 10 years, he said.

"Thorne Bay is also a good community of primary manufacturers," he said.

Seley would relocate his log merchandising and primary manufacturing equipment and remanufacturing plant. He plans to add a dry kiln and planer to the facility. A dry kiln reduces the moisture content of wood in preparation for further manufacturing, while the planer provides the final cut before sale.

The proposal is to employ 60 workers, about four from Seley's shutdown Ketchikan operations. The remainder would be local hire, he said.

The plant would be designed to split its time between Seaborne's and other business's needs. Seley is looking at a "good, sound operation" that will allow added investment in the community by offering additional manufacturing for the smaller "mom-and-pop" operations, he said.

Seley would like to begin construction in spring 1997, but there's a lot of work ahead, including finding a fiber supply, he said.

He plans on two-thirds of his timber supply coming from U.S. Forest Service sales. The remainder would come from state timber sales, he said.

The facility will manufacture shop lumber, industrial clear boards and construction-grade products, which have a market in other parts of the state.

"There are a lot of users up north," he said.

Seley is scheduled to meet with Gov. Tony Knowles' staff next week to discuss how the project falls under a Knowles task force recommendation for a regional facility with value-added capabilities.

He is considering a site on the east coast of POW because it is strategic to the timber supply and because Thorne Bay has shown the most enthusiasm, said Seley.

The City of Thorne Bay had previously considered constructing a biomass plant to provide power and possible dry kilning for secondary manufacturing.

Mayor Kay McMaster said the city is very excited about the proposal.

"The city will do whatever it can do to accommodate (Seley) and facilitate the project," she said.

The city and City Council are also asking the state to create two 20-acre parcels for bid in its next sale of lots at the Goose Creek subdivision in case Seley is interested in those lands, said McMaster.

Southeast Alaska Conservation Council
Senate Bill 1877
July 10, 1996

Attachment 4

City of Pelican

BOX 737 · PELICAN, ALASKA 99832 · PHONE 735-2202 · FAX 735-2258

CITY OF PELICAN, ALASKA

RESOLUTION 1996-31

A RESOLUTION FOR THE CITY OF PELICAN, ALASKA, OPPOSING EXTENSION OF THE LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY 50 YEAR CONTRACT WITH THE FEDERAL GOVERNMENT

WHEREAS; the 50 year contract currently enjoyed by Louisiana Pacific's Ketchikan Pulp Company (KPC) gives that company an unfair advantage over competitors and exclusive rights to timber resources, and,

WHEREAS; the terms of that contract were negotiated in the 1950's and are wholly inappropriate today, and,

WHEREAS; the City of Pelican is opposed to federal subsidy of the timber industry in the Tongass National Forest, (Resolution 1995-22), and,

WHEREAS; genuine multiple use of the Tongass National Forest that provides for subsistence, tourism, independent timber operators, and adequate fish and wildlife habitat protection is incompatible with allowing KPC timber operations a continued priority, and,

WHEREAS; areas of Northern Chichagof, including the Eight Fathom Timber Sales, which were not in KPC's original contract area, have already been identified to supply KPC under the original contract, and,

WHEREAS; extension of the KPC contract would vastly increase pressure for immediate large-scale clearcutting on Chichagof Island, and,

WHEREAS; in 1995 KPC was convicted of a felony and 13 other charges related to violations of clean air and water laws, and,

WHEREAS; the possibility of long term economic diversity and stability for our community and the region would be harmed by extension of KPC's contract;

NOW THEREFORE BE IT RESOLVED that the City Council of Pelican, Alaska hereby opposes extension of Louisiana Pacific's Ketchikan Pulp Company's 50 Year Contract with the USDA Forest Service.

PASSED, APPROVED AND ADOPTED THIS 17TH DAY OF JUNE 1996.

Signed: _____
Glen W. Woods,
Mayor Pro-Tempore

attest: _____
Sheri Paddock, City Clerk/Treasurer

## City of Tenakee Springs

### RESOLUTION 96-37

In the Council
April 25, 1996

Introduced by the
Council President

**A RESOLUTION FOR THE CITY OF TENAKEE SPRINGS, ALASKA, OPPOSING EXTENSION OF THE LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY 50 YEAR CONTRACT WITH THE FEDERAL GOVERNMENT**

WHEREAS, the 50 year contract currently enjoyed by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives that company an unfair advantage over competitors and exclusive rights to timber resources; and

WHEREAS, the terms of that contract were negotiated in the 1950's and are wholly inappropriate today; and

WHEREAS, genuine multiple use of the Tongass National Forest that provides for subsistence, tourism, independent timber operators, and adequate fish and wildlife habitat protection is incompatible with allowing LPK timber operations a continued priority; and

WHEREAS, areas of Tenakee Inlet, which were not in LPK's original contract area, have already been identified to supply LPK under the original contract; and

WHEREAS, extension of the LPK contract would vastly increase pressure for immediate large-scale clearcutting in Tenakee Inlet; and

WHEREAS, in 1995 LPK was convicted of a felony and 13 other charges related to violations of clean air and water laws; and

WHEREAS, the possibility of long term economic diversity and stability for our community and the region would be harmed by extension of LPK's contract;

THEREFORE BE IT RESOLVED that the Common Council of the City of Tenakee Springs, Alaska hereby opposes extension of Louisiana Pacific's Ketchikan Pulp Company's 50 Year Contract with the USDA Forest Service.

BE IT FURTHER RESOLVED to direct the city clerk to forward a copy of this resolution to the Honorable Tony Knowles, Governor of the State of Alaska.

ADOPTED 6 Yes, 1 Vacant Seat THIS 25th DAY OF APRIL 1996

Louis S. Heins
City Council President
ex officio MAYOR

ATTEST:
Janice J. Eagle
City Clerk

**Gustavus Community Association**

Post Office Box 62
Gustavus, Alaska 99826

June 13, 1996
General Meeting

Introduced by
James Mackovjak

**A RESOLUTION FOR THE GUSTAVUS COMMUNITY ASSOCIATION OPPOSING EXTENSION OF THE LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY 50-YEAR CONTRACT WITH THE FEDERAL GOVERNMENT**

WHEREAS, the 50-year contract currently enjoyed by the Louisiana Pacific's Ketchikan Pulp Company (LPK) gives that company an unfair advantage over competitors and exclusive rights to timber resources, and

WHEREAS, the terms of the contract were negotiated in the 1950's and are wholly inappropriate today, and

WHEREAS, genuine multiple use of the Tongass Nation Forest that provides for subsistence, tourism, independent timber operators, and adequate fish and wildlife habitat protection is incompatible with allowing LPK timber operations and extended priority, and

WHEREAS, areas near Gustavus, which were not in LPK's original contract area, have already been identified to supply LPK under the original contract, and

WHEREAS, extension of the LPK contract would vastly increase pressure for immediate large-scale clearcutting in areas near Gustavus, and

WHEREAS, the possibility of long-term economic diversity and stability for our community and the region would be harmed by the extension of LPK's contract;

THEREFORE BE IT RESOLVED that the Gustavus Community Association hereby opposes the extension of Louisiana Pacific's Ketchikan Pulp Company's 50-Year Contract with the USDA Forest Service.

This Resolution Adopted Unanimously this 13th Day of June, 1996

Randy King

Randy King, President, GCA

**Community of Elfin Cove Non-Profit Corporation**
POST OFFICE BOX ONE
ELFIN COVE, ALASKA 99825

Testimony of Community of Elfin Cove June 7,1996
For TLMP Revision

The Community if Elfin Cove is opposed to:
Clearcut logging sale levels as proposed by the preferred alternative. Elfin Cove advocates for a reduced harvest; therefore consequent reduced impact on deer and fish habitat.

The Community of Elfin Cove is opposed to timber sales at Eight-Fathom Bight and Tenakee Inlet. There needs to be further study done on the adverse effects of logging on Tenakee Springs' economy and the impact of additional clearcuts at Chicken Creek on the tourism operators of Elfin Cove, Gustavus and Hoonah.

The Community of Elfin Cove is opposed to:
Renewal or extension of Ketchikan Pulp Company's long-term contract.

The Community of Elfin Cove believes that the Tongass left unlogged will provide the highest possible benefit for the social and economic structure of the community, now and in the future. Maintaining the LUD II designation for the surrounding area is of utmost importance to the community.

Adopted by unanimous vote at a regular meeting of the Community of Elfin Cove on June 7,1996.

signed by, Jim Wild

Jim Wild, secretary for the Community of Elfin Cove

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## PORT ALEXANDER FISH AND GAME ADVISORY COMMITTEE

RESOLUTION 96-1

A RESOLUTION FROM THE PORT ALEXANDER FISH AND GAME ADVISORY COMMITTEE OPPOSING THE PROPOSED 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY

WHEREAS, the 50-year contract currently used by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources; and

WHEREAS, the terms of that contract were negotiated in 1954 and are entirely inappropriate for today's market and natural resource conditions in Southeast Alaska; and

WHEREAS, making LPK timber operations the priority for the management of the Tongass National Forest damages other multiple use resources important for Southeast Alaska's economy including subsistence, tourism, recreation, fish and wildlife habitat; and

WHEREAS, most of the timber to supply LPK's remaining contract will be logged in the northern Tongass, an area not in the contract for its timber supply, indicating that logging in the specified KPC contract area is not sustainable; and

WHEREAS, the economic base in the northern Tongass, which includes commercial and sport fishing, recreation, tourism, and subsistence hunting and fishing, will be damaged if unsustainable logging to meet LPK's contract continues; and

WHEREAS, LPK was convicted of a felony and 13 other charges due to violations of clean water and clean air laws in 1995; and

WHEREAS, the long-term economic diversity and stability of northern Southeast Alaska and the entire panhandle region will be damaged by the proposed 15-year extension of LPK's timber contract.

THEREFORE BE IT RESOLVED that the Port Alexander Fish and Game Advisory Committee opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service.

BE IT FURTHER RESOLVED that Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service should be revoked immediately due to breaches of its contract.

BE IT FURTHER RESOLVED that a copy of this resolution shall be mailed to Tony Knowles, Governor of the State of Alaska and to the Tongass Land Management Planning Team of the USDA Forest Service.

ADOPTED JUNE 25, 1996.

Mim McConnell

Mim McConnell, Chairman

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**PORT ALEXANDER FISH AND GAME ADVISORY COMMITTEE**

June 26, 1996

Honorable Bill Clinton
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Clinton:

The Port Alexander Fish and Game Advisory Committee would like to thank you for your efforts in blocking the passage of harmful legislation last fall and winter concerning the Tongass National Forest in Alaska. Unfortunately, Sen. Murkowski has once again introduced legislation that would cause harm to the Forest.

The Port Alexander Fish and Game Advisory Committee is part of Alaska's Dept. of Fish and Game Boards system. We are all long-time residents of Port Alexander, a remote commercial fishing village in Southeast Alaska. We are surrounded by the Tongass National Forest. We are tired of how the Forest is being managed. We have enclosed a copy of a resolution we adopted expressing opposition to Louisiana Pacific's Ketchikan Pulp Company's contract to log the Tongass National Forest.

We are asking you to oppose any bill that promotes an extension of the existing contract with Louisiana Pacific's Ketchikan Pulp Company or that increases cutting to above current levels (approx. 150 mmbf/year).

Furthermore, we believe the damage being done to the Tongass National Forest through current management practices should be stopped, even if it means breaking the 50-year contract with Ketchikan Pulp Company. When considering the cost of breaking this contract please be aware of the fact that the subsidies to Louisiana Pacific are already costing taxpayers hundreds of millions of dollars.

We invite you to come to Southeast Alaska to see for yourself the terrible raping of the Tongass National Forest that has occurred in these past 42 years. Paying Louisiana Pacific's Ketchikan Pulp Company to ravage our National Forest is wrong and must stop.

Sincerely,
Mim McConnell
Mim McConnell, Chairman

Enclosure

Serving the Alaska Board of Fisheries and Alaska Board of Game
Boards Support Section, P.O. Box 25526, Juneau, Alaska 99802-5526

**TONGASS HUNTING AND FISHING COALITION**
PO Box 20637
Juneau, AK 99802

---

Resolution 96-625

A RESOLUTION FROM Tongass Hunting and Fishing Coalition OPPOSING THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT, BILLS S. 1877 & H.R. 3659, OR, THE 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY

WHEREAS, the 50-year contract currently enjoyed by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources; and

WHEREAS, the terms of the current contract were negotiated in 1954 and are entirely inappropriate in today's natural resource and market conditions in Southeast Alaska; and

WHEREAS, allowing LPK timber operations a priority on the Tongass National Forest is inconsistent with multiple use principles that provide for subsistence, tourism, independent timber operators, and adequate fish and wildlife habitat; and

WHEREAS, the obligatory supply of timber to fulfill LPK's remaining contract will be taken from the northern Tongass, an area not in the original contract area, indicates unsustainable logging practices in the specified contract area; and

WHEREAS, the economic base of the northern Tongass includes commercial and sport fishing, recreation, tourism, and subsistence hunting and fishing will be damaged if the level of logging allowed under the contract spreads to the northern Tongass; and

WHEREAS, LPK was convicted in 1995 of a felony and 13 misdemeanors for violating the Clean Water Act; and

WHEREAS, LPK was convicted in 1983 of violating civil anti-trust, driving 102 small independent timber operators out of business in Southeast Alaska; and

WHEREAS, the long-term economic diversity and stability of Southeast Alaska will be damaged by the proposed 15-year extension of LPK's timber contract.

THEREFORE BE IT RESOLVED that the membership of the Tongass Hunting and Fishing Coalition, a grassroots organization with widespread membership throughout Southeast Alaska of hunters, fishers, tourism operators and Forest subsistence resource gatherers, who feel their interests are not being recognized adequately by the Alaska Congressional Delegation opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service.

Be it further resolved that a copy of this resolution shall be sent to Tony Knowles, Governor of the state of Alaska, the Alaska Congressional Delegation, and other members of Congress.

ADOPTED [signature] co-director 7/2/96

Tom Schmuige - Co-Director

**A RESOLUTION FROM FRIENDS OF SOUTHEAST'S FUTURE OPPOSING THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT BILLS S.1877 & H.R. 3659, OR , THE 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY**

**WHEREAS,** the 50-year contract currently enjoyed by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources: and

**WHEREAS,** the terms of the current contract were negotiated in 1954 and are entirely inappropriate in today's natural resource and market conditions in Southeast Alaska: and

**WHEREAS,** allowing LPK timber operations a priority on the Tongass National Forest is inconsistent with multiple use principles that provide for subsistence, tourism, independent timber operators, and adequate fish and wildlife habitat: and

**WHEREAS,** the obligatory supply of timber to fulfill LPK's remaining contract will be taken from the northern Tongass, an area not in the original contract area and is indicative of unsustainable logging practices; and

**WHEREAS,** the economic base of the northern Tongass includes commercial and sport fishing, recreation, tourism, and subsistence hunting and fishing which will be damaged if the level of logging allowed under the current contract spreads to the northern Tongass; and

**WHEREAS,** LPK was convicted in 1995 of a felony and 13 misdemeanors for violating the Clean Water Act; and

**WHEREAS,** LPK was convicted in 1983 of violating civil anti-trust laws and driving 102 small independent timber operators out of business in Southeast Alaska; and

**WHEREAS,** the long-term economic diversity and stability of Southeast Alaska will be damaged by the proposed 15-year extension of LPK's timber contract, and

**WHEREAS,** 1,698 Sitkans, out of 3,400 voters, voted in October, 1995, to end clearcutting in the Sitka Local Use Area; and

**WHEREAS,** Sitka is the largest subsistence community in Alaska, and the harvest and sharing of subsistence foods and materials are vital to the culture, economy, and well-being of our community; and

**WHEREAS,** it is widely believed the imminent logging will cause negative impacts to subsistence and other forest uses that are irreversible within the span of many human generations; and

**WHEREAS,** all the streams and estuaries in Southeast Alaska represent the richest habitat for all our fisheries, they deserve all the protection we can provide; and

**WHEREAS,** about 88 percent of the original high-volume timber per acre forest (which formerly was habitat of highest importance for maintaining subsistence hunting and fishing and other forest uses) has already been removed by logging from the Sitka Local Use Area; and

**WHEREAS,** Friends of Southeast's Future is opposed to clear-cut logging in the Sitka Local Use Area, we are opposing the Poison Cove and Northwest Baranof Timber Sales; and

**WHEREAS,** we believe selling area trees to LPK to be detrimental to Sitka's economy, that rather the harvesting of second-growth, with value-added production performed by Sitkans is preferred; and

**WHEREAS,** old growth must be left for habitat, subsistence, tourism, recreation, fisheries and cultural needs; and

**WHEREAS,** the "Sitka Local Use Area" is the area from Broad Creek and Ushk Bay southward down the west side of Baranof Island, including adjacent islands, to Windy Passage (specifically, Forest Service Value Comparison Units 246, 279-281, 287-290, 299-313, 318-325, and 349-351,

**THEREFORE BE IT RESOLVED** that Friends of Southeast's Future opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service

Larry Trani 6-21-96

ADOPTED

**Point Adolphus Seafoods**
**P.O. Box 63**
**Gustavus, Alaska 99826**
**(907) 697-2246**

**April 3, 1996**

**To: Governor Tony Knowles**

**From: James R. Mackovjak**

**Re: KPC long-term contract extension**

Dear Governor Knowles,

As a long-time resident of southeast Alaska, I have seen firsthand the damage caused by extensive clearcut logging. Near our community, the clearcutting done on the Tongass was done to meet the Forest Service's obligation under the terms of the Alaska Pulp Company's long-term contract.

Although they may have been considered a good idea half a century ago, the long-term timber contracts on the Tongass have been no less than a blight upon the forest. Though we may be connected to the Internet, southeast Alaska is, as regards timber, a bona fide member of the "Third World".

I understand that much of Alaska's legislature, an institutionalized embarrassment, is pressing a resolution to support a fifteen year extension to KPC's long-term contract. This is the ultimate in stupidity, and will guarantee that the Louisiana Pacific Corporation prospers at the expense of southeast Alaska's future. Take a flight some day soon and see what is left of the forest on N.E. Chichagof Island--its only 20 minutes by air from Juneau.

Given your common sense and concern for the future of our children, I expect that you will not support an extension to KPC's long-term contract. Your office should take a leadership position toward insuring the sustainability of our future.

Thank you,

James R. Mackovjak

James R. Mackovjak

ALASKA DISCOVERY
Dedicated to the Enjoyment & Conservation of Alaska's Wilderness • Since 1972

Senator Frank Murkowski
Committee on Energy and Natural Resources

via fax to: 202-228-0539 attention Mark Rey

May 23, 1996

TONGASS FIELD HEARING, JUNEAU ALASKA, MAY 29, 1996

Testimony of Ken Leghorn, President and co-owner, on behalf of the Board of Directors of Alaska Discovery, Inc.

WE OPPOSE THE KPC CONTRACT EXTENSION

In the 1950s when Tongass timber policy was enacted, there was virtually no tourism industry operating on the Tongass, and only a few small tour ships plied the Inside Passage. In 1972, Alaska Discovery was the first tourism company to receive a permit to operate commercial tours using federal land on the Tongass National Forest. Today there are over 200 businesses under permit on the Tongass. Our company's major concern with Tongass management is that the Tongass is quickly becoming crowded with a wide variety of users, not all of which are mutually compatible, and yet too much prime land for tourism development is being committed to the timber industry.

Although we support the timber industry in general and believe there is enough land base on the Tongass to maintain a long term timber industry, we are opposed to the extension of the KPC contract. Tourism and timber are only compatible to the extent that they utilize mutually exclusive areas. Virtually no tourism can take place in an area undergoing major clearcutting, and most Alaska tourism opportunities are very limited in places after clear-cutting has taken place. This is largely due to impacts on scenery and the desires of visitors to come to Alaska to experience pristine nature combined with a degree of quiet and tranquillity they are no longer able to experience in National Parks or National Forests elsewhere.

Unfortunately, clearcutting practices needed to support the KPC pulp contract force the Forest Service to continually develop timber sales in new, previously untouched areas.
We have also seen timber sales increased in size and scope to meet the needs of the KPC contract, including areas of prime tourism potential such as Honker Divide on Prince of Wales Island and Port Houghton. For example, whereas a 65 million board feet timber sale was originally planned for Port Houghton, the current Port Houghton project recommends a sale volume of 123 million board feet, with a range of alternatives studied that only varies between 100-125 million board feet. This three-fold increase in sale volume is based entirely on the need to satisfy the pulp mill contract, and suddenly puts this timber sale into major conflict with tourism and recreation uses of that area.

[illegible] • JUNEAU, ALASKA 99801 • ADMINISTRATION: [illegible] • RESERVATIONS: [illegible] • TELEFAX: [illegible]

Wilderness areas on the Tongass are not adequate to meet the needs of the expanding nature-based tourism industry, and these areas are totally off-limits for any tour operations that require even simple facilities, such as cabins, shelters, or even out houses or new trails. Wilderness is also limited to groups smaller than 12 people, including guides. And although Wilderness designation is a great marketing tool in attracting visitors to an area, the Forest Service has determined that the carrying capacity for those tour groups that use Wilderness is quite limited. Furthermore, approximately 70% of Tongass Wilderness consists of high mountains, ice and snow fields, poorly-drained muskegs, and low-volume forests supporting low wildlife numbers. Much of the coastal Wilderness has rocky or steep shorelines or contains no safe anchorages. Therefore, much of Wilderness is of limited utility to a majority of the tour industry, and to those companies like Alaska Discovery who heavily market trips to the more accessible and protected coast Wilderness areas, these areas are designed and managed for low levels of commercial use. Thus, we and other companies look to areas outside of Wilderness, such as many of those in the KPC sale area, for future tourism opportunities.

The Forest Service estimates in the current draft Tongass Plan that the demand for semi-primitive motorized recreation will exceed the supply within a few areas. This means that those areas of coastal southeast Alaska most accessible by visitors will no longer meet their desired goal of less than 10 group encounters per day and camping or anchoring at night without being in sight or sound of other campers or boats. The KPC contract extension would greatly exacerbate this shortage of recreation and tourism places. If this happens, coastal southeast Alaska will no longer provide adequate opportunities for visitors and residents alike to have the experiences for which they travel to the Tongass.

Rather than extend the contract, and thus the high level of conflict, we prefer to see federal and state officials use the remaining 8 years of the current contract to plan for a transition to a lower timber volume for the Tongass. Rather than counting timber volume, we urge officials to help the industry provide the same number of timber jobs using a lower timber volume via an emphasis on high value-added secondary woods products manaufacturing.. Without the pulp mill contract, this should be possible, thus representing a win-win situation for everyone in the Tongass.

TLMP UNDERESTIMATES TOURISM SECTOR AND DOES NOT ADEQUATELY PLAN FOR FUTURE TOURISM DEVELOPMENT

We continue to be disappointed in the tourism analysis and planning contained in the latest version of the Tongass Land Management Plan. However, we do not wish to see the Plan delayed any longer, and we urge the Forest Service to stay on its current timeline to complete the Plan.

TLMP is clearly a timber plan only, and it does an inadequate job of planning for tourism development over the next ten years. For example, there is no alternative that emphasizes tourism development and examines the employment that could be generated if tourism development were a goal in the Plan. Instead, tourism is assumed to remain virtually the same in all alternatives. Also, the methodology used to determine present net value of recreation/tourism on page 3-323 is highly questionable, considering no good date exists to estimate total recreation visitor days on the Tongass, and the daily value of an average recreation visit on the Tongass of $25.73 is unsupported by any study other than an

inadequate 1988 study. (Indeed, Fish and Game calculations show values for sportfishing, which is one of the most common activities on the Tongass, of approximately $200/day. Alaska Discovery guests spend an average of $250 per person pér day on the Tongass, and many companies charge higher rates than we do.) The prime importance of tourism and recreation dollars to the region as a whole is underscored by the figures shown on page 3-295, which demonstrate that the regional economy is expected to grown above 1994 levels no matter which timber harvest alternative is chosen.

Rather than delay TLMP any further, we recommend the agency be funded to do the first economic survey to ever determine the total contribution of the tourism and recreation industries to the Tongass region. We also recommend that the above shortcomings in the socioeconomic study of TLMP be addressed between now and issuance of the final EIA, and that a record of decision that minimizes conflicts between coastal tourism needs and the timber industry be reached without further delay.

Thank you.

**Alaska Wilderness Recreation & Tourism Association**

P.O. Box 22827
Juneau, AK 99802
Phone (907) 463-3038
Fax (907) 463.3280
E mail awrta@alaska.net

Honorable Tony Knowles

April 16, 1996

Dear Governor Knowles,

The Alaska Wilderness Recreation and Tourism Association (AWRTA) strongly opposes any extension of Ketchikan Pulp Corporation's (KPC) timber contract until basic flaws in Tongass Forest timber management are addressed. Extending the contract before these issues are resolved would not be in the best interests of either the tourism industry or the communities of Southeast Alaska.

The recent history of Tongass Forest management under the monopoly contracts provides abundant reason to reject extension of the KPC contract. These contracts have forced the Forest Service to ignore significant impacts to tourism, recreational hunting and fishing, subsistence, and independent loggers that are clearly identified in their plans and environmental impact statements. As you know, this has forced AWRTA and other users of the Tongass into court to get the Forest Service to consider our interests.

Tourism is the fastest growing industry in Southeast Alaska. It diversifies the economies of communities in the region, and has the potential for significant growth. All Alaska tourism is essentially nature based, depending on scenic beauty, abundant wildlife, and wild places to satisfy our visitors. However, without a long-term plan for tourism in the Tongass, our members have no assurances that the areas they use for their businesses will not be logged and their business plans disrupted.

The Tongass Land Management Plan revision is the obvious place to address the needs of our industry and other users of the Tongass relative to the needs of the timber industry. We believe that it should be completed, giving the public and our businesses a chance to see what the Forest Service says about impacts of alternatives, before an extension of the KPC contract is considered. It should include reliable data about all subsectors of the tourism industry and their trends in the Tongass, analyze the impacts of logging on sites with nature tourism potential, and analyze the comparative benefits and costs of logging versus protecting areas for tourism.

Until these questions are resolved extension of the KPC contract would only continue, and exacerbate, unwise and unsustainable land management policies. Please oppose extension of the contract.

Sincerely,

Steven Behnke
Executive Director

**Wrangell Resource Council**
P.O. Box 1727 Wrangell, Alaska 99929
Phone (907) 874-3504 Fax (907) 874-3431

A RESOLUTION FROM WRANGELL RESOURCE COUNCIL OPPOSING THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT, BILLS S.1877 & H.R. 3859, OR, THE 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY

WHEREAS, the 50-year contract currently used by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources; and

WHEREAS, the terms of that contract were negotiated in 1954 and are entirely inappropriate for today's market and natural resource conditions in Southeast Alaska; and

WHEREAS, making LPK timber operations the priority for the management of the Tongass National Forest damages other multiple use resources important for Southeast Alaska's economy including subsistance, tourism, recreation, fish and wildlife habitat; and

WHEREAS, though not in the LPK contract area, most of the timber sales in the Wrangell area have gone to LPK instead of benifiting the local Wrangell economy; and

WHEREAS, most of the timber to supply LPK's remaining contract will be logged in the northern Tongass, an area not in the contract for its timber supply indicating that logging in the specified LPK contract area is not sustainable; and

WHEREAS, the economic base in the northern Tongass, which includes commercial and sport fishing, recreation, tourism, and subsistance hunting and fishing, will be damaged if unsustainable logging to meet LPK's contract continues; and

WHEREAS, LPK was convicted of a felony and 13 other charges due to violations of clean water and clean air laws in 1995; and

WHEREAS, LPK was convicted in 1983 of violating civil anti-trust law, driving 102 small independent operators out of business in Southeast Alaska; and

WHEREAS, the long-term economic diversity and stability of Southeast Alaska will be damaged by the proposed 15 year extension of LPK's timber contract

THEREFORE BE IT RESOLVED that Wrangell Resource Council opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50 year contract with the U.S. Forest Service.

ADOPTED JUNE 2 [illegible]96.

Pat Branson
President (ACTING)

**Hoonah Indian Association**
P.O. Box 602
Hoonah, AK 99829-0602
Phone (907) 945-3545 Fax (907) 945-3703

June 4, 1996

Testimony for the Tongass Land Management Plan:

**HOONAH INDIAN ASSOCIATION OPINION**

The Hoonah Indian Association is the federally recognized tribe of the Huna Tlingit. My name is Johanna Dybdahl and I am the Tribal Administrator. I have been instructed by the Hoonah Indian Association Board of Directors to offer this testimony on behalf of our tribal members.

In the revised Tongass Land Management Plan (TLMP), the Forest Service will make decisions that will guide the management of the Tongass for the next 10 to 15 years. Since the impacts of logging can persist for 100 years after an area has been logged we must consider the alternatives very carefully. For the past nine months the Hoonah Indian Association has taken the position of No Harvest, No Action and we must remain steadfast that Alternative 1 would be our "preferred alternative". The cumulative effects of the for profit corporations and Forest Service logging scheduled in the Huna traditional and customary usage areas will no doubt eliminate the traditional and customary harvesting of the land, thus forever altering the status of a hunting and fish gathering people.

The Hoonah Indian Association believes that the Ketchikan Pulp Co. contract must be canceled. The Ketchikan Pulp Co. is a convicted felon for intentionally dumping toxic sludge into Ward Cove. The Timber Land Management document confirms that Tongass timber has been harvested at an unsustainable rate. "The harvest schedule, for all alternatives, indicates that there is a deficit of timber in existing stands. The KPC Contract Area in southern Southeast has only about half enough timber for the contract. The rest will come from central and northern Southeast. Under standards incorporated in Alternative 3, KPC's Contract Area can only supply 96 mmbf of the 192 mmbf contract volume. The remaining 106 mmbf must come from the Stikine and Chatham areas. These areas under Alternative 3, have 145 mmbf a year available, so the majority of that would go to KPC. There is not enough timber under most alternatives to fill the needs of both the KPC contract and the new commitment to Small Business Administration sales. The "Preferred Alternative" is an altered version of Alternative 3 which was produced by reducing protections for streams, beach fringes and wildlife habitat. We believe the proposed Allowable Sale Quantity of 357 mmbf a year will place important fishing and hunting areas at risk and key areas will be logged to meet this target. We feel the timber industry must center more around high value-added small business secondary wood processing, which would create more jobs while cutting less timber. KPC must not be rewarded for blatant misuse of the Tongass National Forest. If KPC wishes to remain viable they must convert to a higher value-added, non-polluting facility that provides more jobs with less timber. At the present operation, KPC costs the American taxpayer hundreds of millions of dollars in subsides to clear-cut the Tongass old-growth trees.

Under the Preferred Alternative the protection of streams has been severely reduced. The Forest Service released in Anadromous Fish Habitat Assessment in 1995. It found that current measures "for anadromous fish habitat protection on the Tongass National Forest are less than fully effective, and additional protection is needed to make timber harvest more compatible with maintaining high-quality fish habitat and long term conservation of fish stocks". Fishery experts who reviewed the various options considered for protecting fish habitat strongly recommended "Option 1 protection for the highest value watersheds and nothing less than Option 2 protection across the remainder of the watersheds. We ask that the Forest Service adopt the highest level of protection for fish habitat. The Preferred Alternative fails to follow the advise of the Report to Congress and the best scientific information available on the Tongass. No assessment has been done for the Preferred Alternative. One of the strongest recommendations of the Report to Congress was to begin implementing watershed analysis. Watershed analysis would provide timber sale planning teams with valuable site-specific information about highly productive fisheries, potential road locations, unstable and steep slopes, and other important watershed values. This needs to be accomplished to provide more accurate information and protective measures for streams and fish on the Tongass. We ask that the Forest Service also extend the proposed no-cut buffer along the coastline from 500 feet to 1,000 feet, with an adjacent 500-foot selection cutting zone to protect against blowdown of this beach fringe buffer.

Deer habitat will be substantially reduced under the Preferred Alternative. The enlarged beach fringe buffer, important for deer winter range has been abandoned. After several decades of research biologists agree that current high levels of logging and expansive road

building practices will likely cause severe reductions in deer populations over the long term. Although the Forest Service has taken a step in the right direction in creating connecting habitat reserves the buffer strips along the coastline are too small to provide adequate connecting corridors between reserves. These buffers must not be reduced to provide more wood to the timber industry. The Preferred Alternative also drops the deer habitat standard of Alternative 3, which was specifically designed to address concerns of subsistence and sport hunters of deer. The Forest Service is required by law to provide for all users of the forest. We must consider the other uses such as hunting, fishing, hiking and other recreational uses. We need to consider the dilemma that clearcutting and exporting has created. The Forest Service needs to be innovative and long-range goal orientated as we approach the 21st Century. The key must be management of the forest for all users.

The Preferred Alternative does not take in to consideration the effects that further logging will have on the tourism industry. As the Hoonah Indian Association begins to diversify their economic base we are faced with the prospect of becoming a player in the tourism industry. Where will the vast untamed land and its wildlife be projected. With continued road building, cutting of the beach fringe and clearcutting practices we are left with very little to offer the visitors.

In conclusion the Hoonah Indian Association would like to go on record as objecting to the release of the Record of Decision regarding the Eight Fathom Timber Sale. We feel it is somewhat premature considering the Tongass Land Management Plan is still out for review. We are talking about a substantial portion of the Tongass and it should rightfully

be included in the management plan of the forest. Will the Eight Fathom Timber Sale not receive the same consideration as others.

On behalf on the Hoonah Indian Association, I would like to thank you for the opportunity to express our views and let us all consider ourselves managers of the Forest.

Respectfully,

Johanna K. Dybdahl

Johanna K. Dybdahl
Tribal Administrator

Taku Conservation Society
1700 Branta Road
Juneau, Alaska 99801

**This resolution opposes the Environmental Improvement Timber Contract Extension Act, Bills S. 1877 and H.R. 3659, commonly known as the 15-year contract extension for Louisiana Pacific's Ketchikan Pulp Company.**

RESOLUTION

Whereas, the 50-year contract currently held by Louisiana Pacific's Ketchikan Pulp Company (LPKPC) was negotiated in 1954; and

Whereas, systemic changes require different management practices today; and

Whereas, the obligatory supply of timber to fulfill LPKPC's remaining contract will be taken from the northern Tongass, an area not in the original contract area and an area near Juneau; and

Whereas, allowing LPKPC operations a priority on the Tongass National Forest is inconsistent with current multiple use principles that provide for subsistence, tourism, adequate fish and wildlife habitat, and timber operators; and

Whereas, the long-term economic diversity and stability of Southeast Alaska will be enhanced by sustainable management of the Tongass National Forest for multiple use by the U.S. Forest Service, not the U. S. Congress.

THEREFORE BE IT RESOLVED that Taku Conservation Society opposes any extension of Lousisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U. S. Forest Service by the U. S. Congress.

Signed Mary Lou King Date 6/29/96
Mary Lou King, Chair

Attn: Greg

ACWA
ALASKA CLEAN WATER ALLIANCE
Conservation Fishing Subsistence Tourism Public Health
Box 1441, Haines AK 99827 Phone: (907) 766-2296 Fax: -2290 E-mail acwa@igc.apc.org

5/24/96

Senator Frank Murkowski Chairman
U.S. Senate Committee on Energy and Natural Resources
Fax- 202-228-0539

Re: Testimony of Gershon Cohen, Executive Director of ACWA, on the Extension of the Ketchikan Pulp Company Long Term Timber Contract

Mr. Chairman, and Members of the U.S. Senate Committee on Energy and Natural Resources,

The Clean Water Act has slowly begun to reverse the dangerous decline in the health of our nation's waters. Yet according to the National Water Quality Inventory, half of our nation's rivers, lakes, and estuaries are still not safe for drinking, or harvesting fish and shellfish. Although polluted waters and sediments often begin by contaminating the smallest aquatic organisms; the greatest concentration of poisons are eventually found at the top of the food chain. In Alaska the animals at highest risk are whales, bears, eagles, and people.

Ward Cove, the site of the Ketchikan Pulp Company mill, has become one of the most polluted water bodies in our nation. It is listed as an "impaired water body", and ranks second out of over 2000 contaminated sites statewide. KPC's facility consistently tops the EPA's Toxic Release Inventory list, meets the federal criteria for Superfund, and last September was assessed the largest penalty for water quality violations in the history of the Clean Water Act.

Ward Cove historically supported a healthy and diverse aquatic community — but fish kills were being recorded as early as 1957, only four years after the opening of the pulp mill. Subsequent water quality studies testify to the Cove's rapid and continuous decline. The waters and sediments in Ward Cove are now heavily contaminated after forty years of discharging ~34 million gallons of polluted wastewater every day.

In 1994 EPA finally issued a standard industry permit for the mill, to replace the mill's administratively extended permit, now twelve years old. This new Ward Cove permit would have required the mill to comply with the *minimal*

*requirements* of State and Federal law. But the company knew that the mill's discharge would not comply with even the most minimal of standards. Therefore KPC immediately challenged, and continues to challenge the '94 Ward Cove permit; blocking its adoption for the past 21 months while it continues to discharge toxic waste. In an attempt to preempt the Ward Cove permit, KPC has applied for a new discharge permit to begin the pollution of the adjacent water body of Tongass Narrows.

On May 16th, several citizen's groups including ACWA, filed a lawsuit against KPC for 283 violations of State and Federal pollution laws. More than a hundred of these violations, totaling over a million gallons of illegal discharges, have occurred *since* the consent decree settlement last Fall. The mill's consistent state of non-compliance as evidenced in our suit underscores the immediate need to contain and cleanup the toxic waste in and about Ward Cove. To ignore the connection between toxic pollution and cancer, reproductive disorders, and immune dysfunction, shirks our responsibility to the residents of Ketchikan, both present and future generations.

Why does the mill continue to have such widespread pollution problems? Because KPC's antiquated facility is a dinosaur of the pulp industry. There is no guarantee that even a major rebuilding of the mill would allow the operation to meet State and Federal water quality standards.

KPC officials have stated their intention to eliminate the use of elemental chlorine. We support this goal. But while eliminating the creation of highly toxic organochlorines is a positive step towards the protection of public health, these same process changes are expected to increase the concentration of other wastes in the mill's effluent that rob oxygen from the water, further increasing the toxicity of the mill's discharge to aquatic life.

Every time the government has demanded the mill clean up its operation, KPC has used the people of Ketchikan and their economic survival as a shield, spitting out reruns of the "jobs vs. environment" myth. The truth is a non-pulp, value-added timber industry would cut fewer trees and provide far more job security for the people of Ketchikan than KPC's current operation.

The $110 million "Economic Disaster Fund", perhaps more aptly named the "Economic Opportunity Fund", should be dedicated to the construction of a state of the art, value-added manufacturing plant that can yield a return on our timber many times greater than the value of pulp, without producing the toxic waste. Instead of discussing a fifteen year extension of a contract that locks us into the past, we should be designing and constructing a new, more efficient timber based industry for Southeast Alaska, while establishing a safety net to protect the mill workers and their families until the new industry is operational.

For the past two years, as a member of the Natural Resources Task Force of the President's Council on Sustainable Development, I have met with community leaders from all over the Western United States, where people are facing the same issues we are addressing here in Ketchikan. I can report to you that more and more communities are realizing that sustaining a high quality of life depends equally upon economic stability, environmental protection, and social justice. This contract, written over four decades ago, fails this test of sustainability by every measure; it assumes that our forests can be clear-cut forever, it forces us to manage wildlife without consideration of habitat, it eliminates competition within the industry and eliminates the use of the resource by more sustainable industries, and it ignores both the physical and financial impacts that highly toxic wastes have on all living things.

Mr. Chairman, we are blessed to have the natural resources, the financial capital, and the skilled labor force needed to fulfill the fundamental needs of everyone here today. This community is now at a crossroads — one path leads to a cooperative future, the other a return to the political polarization of the past. We sincerely hope you will assist us in moving forward together.

Thank you for the opportunity to address your Committee on this most important issue.

Sincerely,

Gershon Cohen

Gershon Cohen
Executive Director

**Lynn Canal Conservation, Inc.**
Post Office Box 964
Haines, Alaska 99827

RESOLUTION 96-617

A RESOLUTION FROM LYNN CANAL CONSERVATION, INC. OPPOSING THE PROPOSED 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY

WHEREAS, the 50-year contract currently used by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources; and

WHEREAS, the terms of that contract were negotiated in 1954 and are entirely inappropriate for today's market and natural resource conditions in Southeast Alaska; and

WHEREAS, making LPK timber operations the priority for the management of the Tongass National Forest damages other multiple use resources important for Southeast Alaska's economy including subsistence, tourism, recreation, fish and wildlife habitat; and

WHEREAS, most of the timber to supply LPK's remaining contract will be logged in the northern Tongass, an area not in the contract for its timber supply, indicating that logging in the specified KPC contract area is not sustainable; and

WHEREAS, the economic base in the northern Tongass, which includes commercial and sport fishing, recreation, tourism, and subsistence hunting and fishing, will be damaged if unsustainable logging to meet LPK's contract continues; and

WHEREAS, LPK was convicted of a felony and 13 other charges due to violations of clean water and clean air laws in 1995; and

WHEREAS, the long-term economic diversity and stability of northern Southeast Alaska and the entire Panhandle region will be damaged by the proposed 15-year extension of LPK's timber contract.

THEREFORE BE IT RESOLVED that Lynn Canal Conservation, Inc., representing more than 100 members in northern Southeast Alaska, opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service.

BE IT FURTHER RESOLVED that Louisiana Pacific's Ketchikan Pulp Company's 50-year contract with the U.S. Forest Service should be revoked immediately due to breaches of its contract.

BE IT FURTHER RESOLVED that a copy of this resolution shall be mailed to Tony Knowles, Governor of the State of Alaska.

ADOPTED JUNE 17, 1996.

Eric Holle
Eric Holle
President

## ALASKANS FOR JUNEAU

## RESOLUTION

WHEREAS the Ketchikan Pulp Corporation has requested the United States Congress to extend its fifty year long-term federal timber sale contract for harvest of timber on federal lands within the Tongass National Forest, and

WHEREAS KPC's operation under the existing long-term contract has resulted in large scale clearcutting of the Tongass's forests, to an extent incompatible with other beneficial uses of the forest, including recreation, fish and game habitat, tourism, and timber harvest by small value-added forest products companies; and

WHEREAS KPC has repeatedly violated federal and state water and air quality regulations, continues to do so, and has little likelihood of an early compliance with such laws; and

WHEREAS a continuation of KPC's timber harvest levels and its pollution levels will become even more of a threat to the region's environmental and economic health as the forest resources diminish in the coming century; and

WHEREAS a vital and stable economy for Southeast Alaska depends on a variety of uses of the Tongass National Forest, including small scale value-added forest product manufacturing, which are not compatible with extension of KPC's long-term contract,

IT IS HEREBY RESOLVED by the Board of Directors of Alaskans for Juneau that Alaskans for Juneau opposes extension of the long-term federal timber sale contract of Ketchikan Pulp Corporation.

Dated: June 20, 1996

attest: Jonathan D. (Skip) Skagg
President

Governor Tony Knowles
PO Box 110001
Juneau, Alaska 99811

Dear Governor Knowles, April 4, 1996

Below please find a copy of my testimony regarding HJR. 64, the proposal to extend Ketchikan Pulp Company's long term timber contract for an additional 15 years. As as fishery biologist and as a representative of the Juneau Chapter of the National Audubon Society I am opposed to this resolution and respectfully encourage you to oppose it.

*Good afternoon, and thank you for this opportunity to speak. My name is Kathy Coghill and I am here today on behalf of the Juneau Chapter of the National Audubon Society to present our position on the proposal to extend Ketchikan Pulp Company's long term contract for another 15 years. Although we support the presence of a timber industry in southeast Alaska, we are opposed to this proposal (HJR 64) for the following reasons:*

*1. We are no longer living under the same conditions which lead to signing the original contract in 1954. Our economy here is healthy and growing as we head into the 21st century.*

*2. Extending the contract is not a good way to create or preserve jobs. If more jobs are desired, the emphasis should focus on creating a better environment for small timber contractors, and fostering value-added operations. Extending special favors to KPC will only hinder any positive movement in this direction.*

*3. The Tongass National Forest will release its latest revision of the Tongass Land Management Plan within the next month. As a part of this process, a panel of fishery experts were asked to evaluate the impacts of the alternative plans, on the health and productivity of salmon. Their consistent response was that roads are a serious cause of damage to fish habitat, and that as more miles of road are constructed, the danger to fish increases. We didn't know this 40 years ago. We do know it now. How can we continue to operate as if roads are inherently good and award KPC credits for creating them? Over the last 40 years we have learned that logging roads are more of a burden than an asset. If anything, KPC should be paying a penalty for building roads that damage fishermen's livelihoods and cost the Forest Service millions of dollars to maintain.*

*4. The timber industry is heavily subsidized in southeast Alaska, and the Federal government can no longer afford this expense, particularly when you consider that we pay three times for this subsidy. First we pay with road credits, virtually giving away the trees in exchange for new roads. Then we pay in lost opportunity for tourism, fishing, subsistence, and recreation. Finally we pay for restoration when the logging roads get old and begin to fail.*

*5. KPC has not been a good corporate neighbor. In 1995 KPC pled guilty to 14 criminal violations for intentionally polluting the waters of southeast Alaska.*

*In closing, I want to re-emphasize that times have changed since 1954, and the sweetheart deal that KPC has been enjoying since then is no longer appropriate. In addition, KPC has repeatedly proven itself irresponsible, negligent, and particularly unworthy of special favors. Extending the 50 year timber contract with KPC is not in the best interest of Alaskans, and in fact it would do them a great disservice.*

Thank you, Governor Knowles, for your careful consideration of this resolution.

Sincerely,
Kathy Coghill
Kathy Coghill

Apr 5 1996
Testimony on HJR 64
Juneau, Audubon

Good afternoon, and thank you for this opportunity to speak. My name is Kathy Coghill and I am here today on behalf of the Juneau Chapter of the National Audubon Society to present our position on the proposal to extend Ketchikan Pulp Company's long term contract for another 15 years. Although we support the presence of a timber industry in southeast Alaska, we are opposed to this proposal (HJR 64) for the following reasons:

1. We are no longer living under the same conditions which lead to signing the original contract in 1954. Our economy here is healthy and growing as we head into the 21st century.

2. Extending the contract is not a good way to create or preserve jobs. If more jobs are desired, the emphasis should focus on creating a better environment for small timber contractors, and fostering value-added operations. Extending special favors to KPC will only hinder any positive movement in this direction.

3. The Tongass National Forest will release its latest revision of the Tongass Land Management Plan within the next month. As a part of this process, a panel of fishery experts were asked to evaluate the impacts of the alternative plans, on the health and productivity of salmon. Their consistent response was that roads are a serious cause of damage to fish habitat, and that as more miles of road are constructed, the danger to fish increases. We didn't know this 40 years ago. We do know it now. How can we continue to operate as if roads are inherently good and award KPC credits for creating them? Over the last 40 years we have learned that logging roads are more of a burden than an asset. If anything, KPC should be paying a penalty for building roads that damage fishermen's livelihoods and cost the Forest Service millions of dollars to maintain.

4. The timber industry is heavily subsidized in southeast Alaska, and the Federal government can no longer afford this expense, particularly when you consider that we pay three times for this subsidy. First we pay with road credits, virtually giving away the trees in exchange for new roads. Then we pay in lost opportunity for tourism, fishing, subsistence, and recreation. Finally we pay for restoration when the logging roads get old and begin to fail.

5. KPC has not been a good corporate neighbor. In 1995 KPC pled guilty to 14 criminal violations for intentionally polluting the waters of southeast Alaska.

In closing, I want to re-emphasize that times have changed since 1954, and the sweetheart deal that KPC has been enjoying since then is no longer appropriate. In addition, KPC has repeatedly proven itself irresponsible, negligent, and particularly unworthy of special favors. Extending the 50 year timber contract with KPC is not in the best interest of Alaskans, and in fact it would do them a great disservice.

Thank you for the opportunity to comment.

TENAKEE HISTORICAL COLLECTION
Post Office Box 633
Tenakee Springs, Alaska 99841
(907-736-2243)

June 18, 1996

Governor Tony Knowles
PO Box 110001
Juneau, AK 99811

Dear Governor Knowles,

As local historians we find ourselves more and more concerned about the future of our area. Senators Murkowski's and Representative Young's efforts to extend KPC's contract to the year 2019 will have a tremendous effect on Tenakee Inlet's resources. Our major means of survival here (subsistence, commercial fishing and tourism) are seriously threatened by this move to supply the timber industry.

The drainages that supply Tenakee Inlet have suffered from the impact of logging in the past and present. The impact of the future (23 more years if this legislation passes) timber harvesting will devastate the remaining delicate balance of flora and fauna of this area.

Tenakee Inlet is home and retreat for many individuals who are strong of heart and perseverance. As a community we have coped in the past with natural disasters of fire and storm matter-of-factly and with determination. We are faced now with a disastrous situation imposed by legislation.

An extension of 15 years to KPC can not allow us to proceed as carefully and cautiously as needed to prevent irreparable damage to one of the few last great places on earth. Please help preserve what is left of this rich and still viable Tenakee Inlet. We can't change history, but we can change the future. This is our opportunity to use and protect resources responsibly and with conscience.

We beseech you to consider carefully the implications of extension of this long term contract and not allow it to happen.

Sincerely,

V. Wisenbaugh

Vicki Wisenbaugh, Coordinator
Tenakee Historical Collection

A RESOLUTION
OPPOSING THE
ENVIRONMENT IMPROVEMENT TIMBER CONTRACT EXTENSION ACT
S. 1877 AND H.R. 3659

WHEREAS: The fifty-year timber contract between the U.S. Government and Louisiana Pacific Ketchikan Pulp mill awards unfair market advantages to the consignee.

WHEREAS: The terms of the contract negotiated in 1954 are forty years past the date and times in which subsistence, tourism, recreation, fisheries and hunting have assumed new and increasing social and economic implications and importance relative to timber cutting.

WHEREAS: The contract is inconsistent with multiple-use of the forest.

WHEREAS: The economics of commerical fisheries, sport fisheries, recreation, tourist, hunting and subsistence will be irreparably damaged.

WHEREAS: LPK in 1995 was convicted of one felony and 13 misdemeanors.

WHEREAS: LPK was convicted in 1983 of conspiring to drive out of business 102 small independent timber operators.

WHEREAS: Movement of forest cutting practices outside of the southern working circle into northern southeast Alaska will irreparably damage forest resources, including, fisheries, game, subsistence, recreation and tourist.

WHEREAS; In the sense of the members of the United States Senate and the U. S. House of Representatives bound under oath to support and to up hold the laws of the United States the awarding of a contract extension to LPK is inconsistent with the intent of those laws.

LET IT BE RESOLVED that the JUNEAU GROUP OF THE SIERRA CLUB opposes any form 15 year contract extension to LPK embodied in S. 1877 and H.R. 3659.

Richard T. Myren
Chair, Juneau Group of the Sierra Club
Representing 153 members in Juneau, Alaska.

June 20, 1996

File__Sierra70

Sitka Conservation Society
P.O. Box 316
Sitka, Alaska 99835

(907) 747-7509 Phone
(907) 747-6105 Fax

The Sitka Conservation Society, a membership organization in Sitka, discussed and passed the following Resolution at a regular Board meeting on June 23rd, 1996:

WHEREAS, SCS has a twenty-seven year history of conservation advocacy and,

WHEREAS, SCS has an established record of monitoring Alaska Pulp Corporation air and water quality violations during this time period and has brought violations to the attention of State and Federal authorities and has given formal and informal testimony at public meetings and hearings, and thus has established its credibility as a citizen group and as an organization knowledgeable about air and water quality regulations and,

WHEREAS, SCS has a representative on the present Citizen Advisory Committee which is involved with DEC, EPA, APC and its contractors in the cleanup of toxic waste materials determined to be present on Silver Bay and the adjacent mill site, and thus has demonstrated its continuing and current participation and awareness of the toxic waste by-products from the APC mill site and,

WHEREAS, SCS is familiar with and involved with timber supply issues, Tongass National Forest land use planning, and Timber Sale practices and thus has demonstrated its continuing and current participation in reviewing and commenting on such issues and,

THEREFORE, SCS Board of Directors does hereby oppose any extension of the federal timber supply contract for Ketchikan Pulp Corporation - an industry with a history parallel to that of Alaska Pulp Corporation: repeated air and water quality violations, high-grading clear-cut logging practices, a joint conviction with APC for anti-trust violations, and a conviction in 1995 for water pollution violations.

SCS Board further supports the termination of the KPC contract as being in the best interests of the health of Ketchikan residents, the best interests of the tourism industry and other small scale users of the Tongass forest ecosystem, the best interests of wildlife dependent on the old growth ecosystem, and in the best interests of the American people who through taxes are subsidizing the operation of this polluting, technologically outdated pulp mill.

Instead, SCS supports a transition of the Ketchikan Pulp facility into a nonpolluting value-added industry that uses fewer trees while employing more people. We support funding for the transition of this facility and the retraining of employees, if necessary.

Votes: Yes - 12 No - 0

Passed 23 June, 1996
Margaret Calvin
Margaret Calvin, Recording Secretary

File Copy

**TENAKEE HOT SPRINGS LODGE** 907-736-2400 VOICE & FAX

PO Box 3
Tenakee Springs, AK 99841

April 24, 1996

Gonernor Tony Knowles
PO Box 110001
Juneau, AK 99811

Dear Gonernor Knowles,

I implore you, do not support the extension of Ketchikan Pulp's long term contract!!!

It is becoming more evident all the time that the 50 year contracts where a bad idea. They locked in a management scheme for the Tongass that is simply not sustainable. Virtually every scientific study that has been done on the Tongass will support the position that the logging practices of the past cannot be sustained in the future. It is time we step back and reassess the level of logging the forest can support - not just lock in a bad policy for another 15 years.

The Alaska Dept. of Fish and Game and the Forest Service scientists agree that the fish and wildlife of the Tongass need more protection - not less - if they are to maintain healthy populations.

For those of us in the other industries who depend upon the Tongass for our livelihoods, (fishing and tourism in my case) it is absolutely essential that the forest be managed for multiple use.

Once again, please, do not support KPC's contract extension!!

Sincerely,

Samuel E. McBeen

Samuel E. McBeen

**Prince of Wales Conservation League**
**Resolution 96-03**
**KPC Long Term Contract Renewal**

Whereas, it appears that the US Forest Service has offered enough timber to fulfill the 50 year contract with KPC;

Whereas, a new contract will be detrimental to the economic diversifictation of the Island;

Whereas, we believe a sustainable timber industry must be defined as a value added industry based on a lower ASQ employing more people while cutting fewer trees;

Whereas, Prince of Wales Island has already been heavily logged and the bulk of the contract obligation has come from Prince of Wales Island;

Whereas, KPC's long term contract has wasted millions of taxpayers' dollars;

Whereas, KPC has been convicted in anti-trust suits, crushing competition;

Whereas, KPC has never been in compliance with state and federal air and water quality laws;

Whereas, the parent company LP posted a profit in excess of 370 million dollars (1994), it is unconecionable that taxpayers subsidize their environmental compliance costs;

Whereas, Senator Steven's "110 Million Dollar Economic Development Fund" could provide some of the money needed to begin the transition to a value added timber industry and away from industrial scale logging;

Whereas, Honker Divide is the last remaining high volume old growth stand on Prince of Wales Island, and will be threatened by this contract;

Whereas, subsistence represents a traditional way of life for Prince of Wales residents, this contract will jeopardize a federally manadated lifestyle.

Whereas, the Forest Service continues to ignore the cumulative effects of logging on private and public lands which have heavily impected fish and wildlife habitat.

Whereas, industrial scale clearcut logging represents a single use of the forest, which does not comply with the congressionally manadated intent of multiple use of federal land.

Now therefore be it resolved, the Prince of Wales Conservation League calls for the termination of the long term KPC contract.

THOMS PLACE HOMEOWNERS ASSOCIATION
P.O. Box 2073
Wrangell, Ak 99929

A RESOLUTION FROM THOMS PLACE HOMEOWNERS ASSOCIATION OPPOSING THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT, BILLS S.1877 & H.R. 3659, OR, THE 15-YEAR CONTRACT EXTENSION FOR LOUISIANA PACIFIC'S KETCHIKAN PULP COMPANY

WHEREAS, the 50-year contract currently used by Louisiana Pacific's Ketchikan Pulp Company (LPK) gives LPK an unfair market advantage over other timber businesses and exclusive rights to timber resources; and

WHEREAS, the terms of that contract were negotiated in 1954 and are entirely inappropriate for today's market and natural resource conditions in Southeast Alaska; and

WHEREAS, making LPK timber operations the priority for the management of the Tongass National Forest damages other multiple use resources important for Southeast Alaska's economy including subsistence, tourism, recreation, fish and wildlife habitat; and

WHEREAS, though not in the LPK contract area, most of the timber sales in the Wrangell area have gone to LPK instead of benifiting the local Wrangell economy; and

WHEREAS, most of the timber to supply LPK's remaining contract will be logged in the northern Tongass, an area not in the contract for its timber supply, indicating that logging in the specified LPK contract area is not sustainable; and

WHEREAS, the economic base in the northern Tongass, which includes commercial and sport fishing, recreation, tourism, and subsistance hunting and fishing, will be damaged if unsustainable logging to meet LPK's contract continues; and

WHEREAS, LPK was convicted of a felony and 13 other charges due to violations of clean water and clean air laws in 1995; and

WHEREAS, LPK was convicted in 1983 of violating civil anti-trust law, driving 102 small independent operators out of business in Southeast Alaska; and

WHEREAS, the long-term economic diversity and stability of Southeast Alaska will be damaged by the proposed 15 year extension of LPK's timber contract.

THEREFORE BE IT RESOLVED that Thoms Place Homeowners Association opposes any extension of Louisiana Pacific's Ketchikan Pulp Company's 50 year contract with the U.S. Forest Service.

ADOPTED JUNE [illegible] 1996. Peggy [illegible] President

FRIENDS OF GLACIER BAY
P.O. Box 135
Gustavus, Alaska 99826

June 20, 1996

Senator Frank Murkowski
Chairman, Resources Committee
U. S. Senate
Washington, D.C. 20510

Dear Seantor Murkowski:

Friends of Glacier Bay strongly oppose extension of the Ketchikan Pulp Company's monopoly contract.

We wait for the day when it becomes possible to constitute a sustainable forest industry on the Tongass, one that uses less timber to produce more jobs, and provides better protection for the other uses of the forest.

KPC could certainly decide to become part of this new way of doing business, but they have no incentive so long as their sweeheart deal continues at the expense of the taxpayer and the environment.

Sincerely,

Gregory P. Streveler
Board Member

## cc:Mail for: Representative Caren Robinson

**Subject:** KPC extension
**From:** akskiff@alaska.net (Alaska Skiff Charters) at CC2MHS1 04/03/96 7:19 PM
**To:** Representative Caren Robinson at JNU_CAPITOL

Caren,
You have our full support in preventing the extension of Ketchikan Pulp Company's 50 year contract. We believe KPC should not be allowed to do business today if it cannot meet current water and air quality standards and the government should not subsidize it any longer at the expense of other Tongass users.

They state they need the extension in order to amortize facility upgrading to meet water and air quality standards. This is a joke.! Their parent company, Louisiana Pacific had the largest return on its assets in the timber industry in the world in 1993 and 1994. KPC is a convicted felon and should not be rewarded.

The contract must end so the Tongass can be managed on a true multiple use basis. If KPC wants to continue doing business, then they should conduct business within the confines of the marketplace and compete alongside independent loggers of the Tongass.

We feel an extension will be harmful to our business in the sense of additional logging effects on salmon streams throughout Southeast. Although KPC is not logging watersheds around our fishing area, the impact they have : the Southeast stocks has a very direct effect. That being loss of habitat leading to less healthy runs and possible shifting of the fishing fleet to our fishing grounds.

Please vote NO on the resolution extending KPC's timber contract.

Thank you
Michelle and Mark Kaelke
Alaska Skiff Charters
3718 El Camino
Juneau, AK 99801
MK

Text Item

SILVER KING MARINE
Mike Bethers
P.O. BOX 210003
AUKE BAY, ALASKA 99821
(907) 789-0165

DEAR LEGISLATOR, COMMENTS: KPC CONTRACT EXTENSION
4-2-96

I WAS VERY DISHEARTENED TO HEAR THAT THE LEGISLATIVE MAJORITY SUPPORTED EXTENDING THE KPC CONTRACT. THIS IS ONE OF THE TWO ORIGINAL CONTRACTS WHICH DID MORE DAMAGE TO LOCAL PUBLIC RESOURCES, PUBLIC LAND AND FUTURE USE OF THE LAND FOR PUBLIC USE THAN ANY OTHER DEAL EVER CUT BY CONGRESS. FURTHERMORE, U.S. TAX PAYERS WOULD HAVE TO SPEND 10'S OF MILLIONS ANNUALLY TO SUBSIDIZE FURTHER DESTRUCTION OF OUR PUBLIC LANDS IN THE TONGASS.

EARLIER LOGGING DONE UNDER CONTRACT HAS LEFT MANY AREAS OF SOUTHERN SOUTHEAST ALASKA UNSUITABLE FOR ANY OTHER USE. SUBSISTENCE CAPABILITY OF THE LAND IS DEMONISHED AS THE USFS REPORTS THAT DEER NUMBERS ARE DROPPING DUE TO LOGGING IMPACTS. ALSO, IT HAS BEEN SAID BY THE USFS THAT PRINCE OF WALES ISLAND WILL BE CLOSED TO SPORT HUNTING ABOUT THE YEAR 2000 BECAUSE OF LOW DEER NUMBERS DUE TO LOGGING. THIS IS A DIRECT LOSS OF PUBLIC USE OF A PUBLIC RESOURCE ON PUBLIC LANDS!

MANY FISH STREAMS IN HEAVILY LOGGED AREAS NO LONGER CONTAIN ENOUGH WATER IN MID-SUMMER TO PROVIDE ACCESS FOR SPAWNING SALMON — OR PROVIDE MUCH WET AREA FOR JUVENILE FISH REARING.

AS FOR TOURISM - YOU'VE OBVIOUSLY NEVER TRIED TO SELL VISITORS A TRIP TO AN AREA THAT'S BEEN LOGGED. THE MOST COMMON QUESTION ASKED BY POTENTIAL VISITORS IS — "IS THE AREA NATURAL OR HAS IT BEEN LOGGED?" VISITORS DON'T COME TO S.E. AK TO SEE LOGGING - THEY COME TO SEE WILD NATURAL COUNTRY. THEY CAN SEE MILES OF LOGGED OFF COUNTRY IN THE LOWER U.S. - THAT'S WHY THEY LIKE TO COME TO S.E. BECAUSE IN SOME AREAS IT STILL HAS TALL TREES STANDING.

MY EMPLOYMENT DEPENDS ON WILD-NATURAL LANDSCAPES AND SOUND DEPENDABLE FISH RUNS. I AM TOTALLY OPPOSED TO THE EXTENSION OF THE KPC TIMBER CONTRACT AND URGE YOU TO DO THE SAME. IT'S TIME FOR THE LOGGING INDUSTRY TO SCALE BACK TO A FRACTION OF HISTORICAL LEVELS. THAT WAY, A WELL BALANCED MULTIPLE RESOURCE MGT. APPROACH TO THE PUBLIC RESOURCES ON THE TONGASS WILL PROVIDE FOR ALL USER GROUPS.

ONCE AGAIN, I URGE YOU TO OPPOSE EXTENSION OF ANY FEDERAL CONTRACT ON ANY PUBLIC RESOURCES.

THANK YOU!

Mike Bethers

SILVER KING MARINE
Mike Bethers
P.O. BOX 210003
AUKE BAY, ALASKA 99821
(907) 789-0165

4/2/96

SILVER KING MARINE
*Mike Bethers*
P.O. BOX 210003
AUKE BAY, ALASKA 99821
(907) 789-0165

FAX DISTRIBUTION

| | |
|---|---|
| TONY KNOWLES | 465-3532 |
| JIM DOUGLAS | 465-4748 |
| ROBIN TAYLOR | 465-3922 |
| JOSEPH GREEN | 465-4316 |
| DAVID FINKELSTEIN | 465-3794 |
| LOREN LEMAN | 465-3810 |
| JENNY MACKIE | 465-3517 |
| CAREN ROBINSON | 465-6790 |
| BILL WILLIAMS | 465-3793 |
| ALAN MUSTELMAN | 465-4956 |
| ELDON MULDER | 465-3578 |
| KIM ELTON | 465-2108 |
| JERRY SANDERS | 465-3476 |

7/10/96

GUSTAVUS INN
AT GLACIER BAY

DAVID & JOANN LESH, INNKEEPERS

President Bill Clinton
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Clinton,

I am writing to ask you not to support the extension of the Ketchikan Pulp Company's monopoly contract on the trees of the Tongass National Forest. The Gustavus Inn is a small family tourist business located on the north shore of Icy Strait, near the mouth of Glacier Bay. We have been in business for 31 years, not that much less than Ketchikan Pulp Company.

KPC states they need the extension to pay for all the new regulations that they aren't complying with now. We to have had to comply with many new regulations, same as KPC. However, unlike the mill, we never asked to be guaranteed a certain percentage of the tourists in order to pay for the changes. It is our belief that the new regulations are to protect the health and welfare of the public and environment and should be complied with. These new rules forced us to upgrade our septic and water system, remodel to meet new fire and life/safety codes and handicapped accommodations as well as changes in our commercial kitchen. All were expensive and time consuming.

I could write pages on other valid reasons not to support the contract but I will let others do that. Just remember, KPC is not the only one that has had to comply with new regulations.

Sincerely,

David Lesh and Jo Ann Lesh

MAY - SEPT. • GUSTAVUS INN • P.O. BOX 60 • GUSTAVUS, ALASKA 99826 • 907/697-2254 • FAX 907/697-2253
OCT. - APRIL • GUSTAVUS INN • 7920 OUTLOOK • PRAIRIE VILLAGE, KANSAS 66208 • 913/649-5220 FAX & PHONE

Gail Corbin

Box 770 Pelican, Alaska 99832 (907) 735-[illegible]

4-3-96

Governor Tony Knowles
Juneau,Ak

Dear Governor Knowles:

Any logging in this area would severely impact our family tourist business. Our clients are "eco- tourists" that come here to see entire forests of standing virgin timber. This corner of Southeast Alaska is the last untouched place in the panhandle. But if the Ketchikan Pulp Corporation is permitted to exercise a monopoly that extends their contract another 15 years, then our trees will be cut and this gorgeous country will be ruined to the extent that visitors wanting to see a genuine Alaska Wilderness will not bother to come.

Please use your influence to curtail clearcutting in the Tongass. The principles of multiple-use cannot be implemented with the operations of KPC in the Tongass N.F. Once this area is logged it has very little value left in it for the next 100 years until the trees grow back. Meanwhile the tourism and fishing are put into great jeopardy. Thank you for your time and concern. Logging would do NOTHING for Pelican

Sincerely,

Gail D. Corbin

Gail D. Corbin

ACWA
ALASKA CLEAN WATER ALLIANCE
Conservation Fishing Subsistence Tourism Public Health
Box 1441, Haines AK 99827 Phone: (907) 766-2296 Fax: -2290 E-mail acwa@igc.apc.org

7/3/96

Representative Don Young Chairman
U.S. House Committee on Natural Resources
U.S. Capitol
Washington D.C. 20510

Re: Testimony of Gershon Cohen, Executive Director of ACWA, on the Extension of the Ketchikan Pulp Company Long Term Timber Contract

Mr. Chairman, and Members of the U.S. House Committee on Natural Resources,

According to the National Water Quality Inventory, half of our nation's rivers, lakes, and estuaries are still not safe for drinking, or harvesting fish and shellfish. Polluted waters and sediments often begin by contaminating the smallest aquatic organisms; but the greatest concentration of poisons eventually reachs the top of the food chain — in Alaska the animals at highest risk are whales, bears, eagles, and people.

Ward Cove, the site of the Ketchikan Pulp Company mill, is one of the most polluted water bodies in our nation. KPC consistently tops the National Toxic Release Inventory List. KPC easily exceeds the criteria to be classified as a Superfund pollution site. KPC was recently ranked as the second most polluted site in Alaska out of over two thousand evaluated sites, with a score nearly ten times the level necessary to be placed in the highest priority category. Last fall KPC received the largest Clean Water Act fine ever imposed; plea bargaining down to one felony and thirteen misdemeanor convictions.

Ward Cove historically supported a healthy and diverse aquatic community — but fish kills were being recorded as early as 1957, only four years after the opening of the pulp mill. The waters and sediments in Ward Cove are now heavily contaminated after forty years of discharging ~34 million gallons of polluted wastewater every day.

On May 16th, several citizen's groups including ACWA, filed a lawsuit against KPC for 283 violations of State and Federal pollution laws. More than a hundred of these violations, totaling over a million gallons of illegal discharges, have occurred *since* the consent decree settlement of KPC's felony conviction. The

mill's consistent state of non-compliance as evidenced in our suit underscores the immediate need to contain and cleanup the toxic waste in and about Ward Cove. To ignore the connection between toxic pollution and cancer, reproductive disorders, and immune dysfunction, shirks our responsibility to both the present and future generations of the residents of Ketchikan.

KPC has routinely used the people of Ketchikan and their economic survival as a shield from compliance with environmental laws. KPC consistently operates in a manner that violates the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Rivers and Harbors Act, the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response/Compensation and Liability Act, the Alaska Solid Waste Regulations, the Alaska General Safety Codes, and the Alaska Water Quality Standards.

As you know these laws were passed to protect public health, maintain healthy fish populations, and allow diverse economic and recreational use of PUBLIC waters. If you or I conducted our daily business as KPC has and does, we'd probably be in a federal prison.

In 1994 EPA finally issued a standard industry permit for the mill, to replace the mill's administratively extended permit, now twelve years old. This new Ward Cove permit would have required compliance with the *minimal requirements* of State and Federal law. But KPC knew that they could not comply with even the most minimal of standards. KPC has blocked the adoption of the '94 permit for nearly two years; while it continues to discharge toxic waste. In an attempt to preempt the Ward Cove permit, KPC has applied for a new discharge permit to begin the pollution of the adjacent water body of Tongass Narrows.

KPC officials have stated their intention to eliminate the use of elemental chlorine. We support this goal. But while eliminating the creation of highly toxic organochlorines is a positive step towards the protection of public health, these same process changes are expected to increase the concentration of other wastes in the mill's effluent that rob oxygen from the water, further increasing the toxicity of the mill's discharge to aquatic life.

Everyone agrees that KPC's antiquated facility is a dinosaur of the pulp industry. But there is no agreement that even a major rebuilding of the mill would allow the operation to meet State and Federal water quality standards.

Instead of discussing a fifteen year extension of a contract that locks us into the past, we should be designing and constructing a new, more efficient timber based industry for Southeast Alaska, while using the $110 million Economic Disaster Fund to establish a safety net to protect the mill workers and their families until the new industry is operational.

For the past two years, as a member of the Natural Resources Task Force of the President's Council on Sustainable Development, I have had the opportunity to speak with many people in the western United States on the sustainable development of natural resources. There is a growing understanding world-wide that maintaining a high quality of life depends equally upon economic stability, environmental protection, and social justice. This long term timber contract, written over four decades ago, fails the test of sustainability by every measure. It assumes that our forests can be clear-cut forever, it forces us to manage wildlife without consideration of habitat, it eliminates competition within the industry and eliminates the use of the resource by more sustainable industries, and it ignores both the physical and financial impacts that highly toxic wastes have on all living things.

Mr. Chairman, ACWA does not work on timber allocation issues and defers to other individuals and organizations on such matters; however, we could not begin to consider supporting extensions to the KPC timber contract unless four conditions were met: (1) suspension of KPC's opposition to the 1994 EPA permit; (2) a complete cessation of KPC's discharge of toxic materials to the waters of S.E. Alaska; (3) the timely completion and implementation of a site remediation plan for Ward Cove, and (4) an immediate initiation of the refitting of the facility to allow the company to operate in compliance with all State and Federal pollution laws.

Thank you Mr. Chairman for this opportunity to address your Committee on this most important issue.

Sincerely,

Gershon Cohen

Gershon Cohen
Executive Director

**STATEMENT OF MARY A. MUNSON**
**PUBLIC LANDS ASSOCIATE**
**DEFENDERS OF WILDLIFE**
**ON**
**H.R. 3659--THE ENVIRONMENTAL IMPROVEMENT TIMBER CONTRACT EXTENSION ACT OF 1996**
**FOR**
**THE HOUSE RESOURCES COMMITTEE**
**THE U.S. HOUSE OF REPRESENTATIVES**
**JULY 11, 1996**
**ON BEHALF OF**
**DEFENDERS OF WILDLIFE**

Mr. Chairman and Members of the Committee:

My name is Mary Munson, Public Lands Associate for Defenders of Wildlife. On behalf of Defenders, a national conservation organization with over 150,000 members nationwide, I thank you for the invitation to provide testimony on H.R.3659, the Environmental Improvement Timber Contract Extension Act. Defenders has been a leading proponent of the protection of wildlife and wildlife habitat in the Tongass National Forest, and is a member of the steering committee of the Alaska Rainforest Campaign.

H.R. 3659 would modify the Ketchikan Pulp Company's 50-year logging contract in Tongass National Forest by extending it an additional 15 years. It would also establish minimum annual volumes of timber for the company, and guarantee that rates paid reflect those assessed in forests of the Pacific Northwest. We strongly oppose H.R. 3659 because of the damaging impacts the existing Ketchikan Pulp Company (KPC) contract is already having on wildlife, and the fact that KPC has a long record of violating federal environmental laws. We also believe that H.R. 3659 would undermine an essential forest plan revision process now taking place on the Tongass.

The Tongass National Forest is owned not only by Alaskans, but by all Americans, and the issues involved with the Ketchikan Pulp Company's performance are of national significance, and are not simply parochial economic or jobs issues. The Tongass is the world's largest intact temperate rainforest, home to over 300 wildlife species, many of which depend on old-growth forest habitats. Sustainable management of this beautiful and unique resource is properly a matter of national concern. All Americans have an interest in making sure Tongass wildlife thrives, so that current and future generations will benefit from the recreation, beauty, and resources of this jewel in the National Forest System's crown. As protector of this national interest, Congress has a duty to oversee its management by allowing only sustainable and responsible logging at a level consistent with habitat protection. Extending the KPC contract would be a violation of this duty.

H.R. 3659 would essentially hand an additional 15 years of dominance over one of our country's premier wildlife habitats to KPC. The area yielding the bulk of the timber already promised to KPC is on Prince of Wales Island, which sustains the river otter, Prince of Wales flying squirrel, Vancouver Canada goose, and two species of special concern: the marbled murrelet and Queen Charlotte goshawk. Prince of Wales also has a distinct population of Franklin's spruce grouse. More common residents include the Sitka black-tailed deer and some of the largest black bears in the nation. H.R. 3659 does not provide for maintaining the viability of these populations, and will undermine efforts to do so.

The timber wolf is also at risk. Prince of Wales Island contains a stronghold of the Alexander Archipelago wolf. Although hunting and trapping occurs in the Tongass, logging and roadbuilding remain the major threats to these animals. The wolf survives largely on predation of deer. Deer depend on the diverse plant community fostered by the multi-layer canopy of the old-growth rainforest. Stands with large trees are critical for deer in hard winters because the crowns intercept the snow, making travel and feeding easier. Post-logging clearcuts not only hinder deer movement in snow, but also cause forage to become less nutritious. For a short while after clearcuts, forage is healthy because seedling regeneration is good in logged Sitka spruce and western hemlock forests. But some 25-30 years after clearcutting, the overlapping branches of the new trees completely shade the forest floor, and although the deer can use the stands for cover against snow, there is little or no forage. It takes 200 to 250 years for clearcuts to resemble old-growth conditions conducive to these deer.

If H.R. 3659 becomes law, KPC will be allowed to continue clearcutting at increased rates. This will have grave impacts on the wildlife already mentioned, particularly in the region of the roadless areas of Honker Divide and nearby Elevenmile. Named for the resonant call of migrating Canada geese following this natural flyway up the center of Prince of Wales, Honker Divide is a misty reach of moss-covered forest studded by a chain of lakes that stretches from the mouth of the Thorne River at Thorne Bay over the low divide to Hatchery Creek and again to the sea. It boasts a 30-mile canoe trail and is the source of the Thorne River, known for its steelhead trout runs. The trees in this area are generally smaller, with the biggest trees being found on hilltops separated by sparsely timbered muskeg. If the area were open to logging, many miles of roads would be necessary to reach the denser stands. Honker Divide and Elevenmile are simply the best of what's left of unprotected wildlife habitat on Prince of Wales Island. Pressure to fulfill the high-volume requirements of the extended contract would surely put those areas in jeopardy. Logging could cause significant reduction of deer and wolves in the area. Increased logging would not only harm the forage, it would also provide better access for hunters. Due to this potential logging, the Thorne was named by American Rivers as one of the nation's ten most endangered rivers.

The National Forest Management Act (NFMA) requires that the Forest Service provide for the diversity of plant and animal communities. Maintenance of "viable populations of native vertebrate species" is required in implementing regulations. The Tongass Land Management Plan (TLMP), which is now undergoing revision, is the blueprint for ensuring that logging activities in the Tongass are consistent with those legal requirements as well as other legitimate purposes of the National Forest.

Activities taking place under the existing KPC contract, including the guaranteed supply of 192.5 million board feet per year, are certainly those which must be governed by the forest plan blueprint. So why isn't this proposed contract renewal taking place within the context of the TLMP revision process? We believe that if the effects of the KPC contract are legitimately assessed through the revision process, it will be found to harm the Forest Service's ability to maintain viable populations of native species. In fact, we are convinced that the TLMP revision team should not just reject the KPC contract extension, but should cancel the existing contract immediately, based on KPC's black track record and the effects of mandated logging on the wildlife habitat. This bill would ride roughshod over the TLMP process, and force the Forest Service to provide a high volume of trees regardless of the environmental, economic, recreational, social, and ecological costs.

For over 40 years, KPC, owned by Louisiana-Pacific, has been operating under a contract unique to the national forest system. Based on its record, there is no justification for contract renewal, let alone the sweetheart deal that H.R. 3659 entails. As representatives from local Alaskan groups have pointed out, the Environmental Protection Agency's most recent reports show that KPC is one of the biggest toxic water polluters in the Pacific Northwest, and has failed to comply with a host of federal clean air and water laws. The record of KPC over the past 20 years includes a felony and thirteen misdemeanor pollution convictions, millions of dollars in criminal and civil penalty fines, hundreds of other pollution violations and citations, and numerous breaches of its contract. Most importantly, the existing KPC contract guarantees a timber volume of 192.5 million board feet per year. Based on our analysis, we believe the Forest Service simply cannot guarantee KPC this volume, provide timber for independent operators, and still meet the requirements of NFMA to maintain well-distributed, viable populations of wildlife on the Tongass. And significantly, viable population levels only meet the criteria that there are enough individuals for the populations to continue to exist. There is no assurance that enough individuals will be left for subsistence, hunting, viewing, or other uses of wildlife upon which Alaskans and other Americans depend. As long as the KPC contract is in existence, timber will be first priority, and wildlife, along with all other forest resources, will take a back seat.

Defenders of Wildlife has sympathy for anyone whose livelihood would be affected by the non-extension of the KPC contract. But there are thousands of employers throughout the country which also depend on timber supplies, but are not given this unprecedented control over a national forest, nor the subsidies which amount to millions

of dollars. And many of these employers are dependent upon resources that do not have fraction of the ecological importance and national significance that the Tongass has. As discussed by other panelists at today's hearing, there are plenty of alternatives for providing jobs which would be much less resource-intensive, and run by companies without abysmal records of pollution and contract violations. The argument that the company needs this contract in order to make necessary improvements to comply with environmental laws is outrageous. KPC has had years to make the necessary changes, but declined to do so in favor of increased profits. For this, they should not be rewarded by a bail-out, as represented by H.R. 3659.

Logging in one of the American people's most valuable and productive forests is a privilege, and it is important that it be done through the accepted forest planning and management process. Comments on the proposed Tongass Land Management Plan are due in August, and this is the appropriate forum for discussions about increased logging and guaranteed timber supplies. The KPC contract must be considered as part of the TLMP, not as a separate initiative which ignores the scientific analysis, ecological effects and years of public input. For that reason, as well as the incalculable adverse effects on wildlife and wildlife habitat in affected areas, we strongly oppose H.R. 3659.

**AFFIDAVIT OF MARK F. HARTLEY, D.B.A.**
**BEFORE THE U.S. HOUSE SUBCOMMITTEE ON NATIONAL PARKS & PUBLIC LANDS**
**JULY 18, 1996**

**PERSONALLY** appeared before me, MARK F. HARTLEY, D.B.A., who being duly sworn makes the following statement under oath:

Mr. Chairman and members of this honorable committee, I was born on November 30, 1956, in West Palm Beach, Florida. I am presently an Associate Professor of Business Administration at the College of Charleston in Charleston, SC, where I have been a member of the teaching faculty for the past eleven (11) years. I currently hold the National Association of Purchasing Management Chair in the School of Business and Economics at the College. I hold a Doctor of Business Administration degree from Louisiana Tech University, with a major in quantitative analysis and a minor in economics, and have taught business statistics for over fifteen (15) years. Attached to this Statement is my curriculum vita, academic credentials, employment history, and membership in professional and academic organizations, as well as a list of 34 recent quantitative research studies I have coordinated or performed, and a list of 63 academic publications I have authored or co-authored.

I have been requested to state my professional opinion as to whether the methodology required by a National Park Service (NPS) written guideline, known as NPS-48, is consistent with generally accepted statistical, accounting and business practices and consequently appropriate for calculating franchise fees payable by Concessioners, or that such methodology is defective, invalid and unreliable for such a purpose.

In order to develop an adequate basis for my opinion, I thoroughly reviewed and became familiar with the written franchise fee determination process set forth in the NPS-48 guideline. Believing it would be helpful to learn precisely how the NPS actually implements this guideline, I used the NPS calculation for Fort Sumter Tours, Inc., (FST) as a case study, assuming that the same methodology would be used for all concessioners nationwide under similar circumstances. As a part of the case study, I became familiar with a franchise fee analysis prepared by the NPS for FST dated February 27, 1992, as well as the facts and issues involved in Federal Case Number 94-1570, Fort Sumter Tours, Inc. vs. Bruce Babbitt, etc. Also, because of my educational background and previous experience, I am thoroughly familiar with, but have again reviewed, the annual Dun and Bradstreet Publication, *Industry Norms ("D&B Industry Norms")* for "Standard Industrial Classification" (SIC) codes generally, and particularly code number 4489, Water Transportation, Not Elsewhere Classified, for the years 1988-1989. I also have reviewed the *D&B Industry Norms* data for each SIC code, which includes any water transportation services for the years 1985-1987. I am also familiar with and have reviewed the Robert Morris and Associates publication, *1990 Annual Statement Studies ("RMA Statement Studies")*. Also because of my experience, I am thoroughly familiar with the content, sampling procedures and methodology employed in producing these two publications. I am aware of the professional use and limitations of the data contained therein. I am also thoroughly familiar with the SIC code system, along with its usefulness and limitations. As a brief explanation, the Office of Management & Budget (OMB) has developed and publishes an SIC code manual, which contains an SIC code classification number for every known type of business operation nationwide, such as hotels, barber shops, restaurants, auto manufacturers, drug stores, water transportation services, etc. For purposes of franchise fee calculations, pursuant to its guideline, the NPS, in its discretion, assigns each concession operation a SIC code number, thus placing the concession operation within a SIC code classification of all other related businesses. The NPS then concludes or assumes that a particular concessioner is comparable to all other

business with the same SIC code classification, in every respect, including the relationship between gross income, operating expenses and net profit.

A thorough understanding and review of the above clearly demonstrates that the NPS, in accordance with its predetermined objective, attempted to set FST's franchise fee at a level that would cause its profitability, if any, to fall at or near the average profitability for all of the other unknown businesses classified under the same SIC code. The NPS assigned FST to SIC code #4489 for the years 1988-1990. For the years 1985-1987, there was no SIC code 4489; therefore, deponent reviewed any and all other SIC codes involving any type of water transportation service for the years 1985-1989. In the FFA, the NPS stated that it applied SIC code 4489 to FST for the years 1985-1989. However, this is a clearly obvious and undebatable error because the 4489 code did not exist until 1988. Therefore, by using this methodology, the entire franchise fee determination process for FST was predicated upon a completely invalid assumption. That is, that the net profitability levels reported in the *D&B Industry Norms* for SIC code 4489 is a proper yardstick to measure the net income profitability level of FST, simply because the NPS has assigned FST the SIC code number 4489. In my professional and academic opinion, the NPS's most basic assumption, described above, is fatally flawed and therefore fee calculations based thereon are also flawed. This renders the NPS calculations concerning FST statistically invalid, as it would any other concessioner when this process is similarly applied. Absolutely, no statistically valid inferences regarding any particular one or all other businesses classified under SIC 4489, can be drawn from the data reported in the *D&B Industry Norms* or the RMA statement studies. Specifically, it is totally invalid for the NPS to infer that any data contained in the *D&B Industry Norms* or the RMA Statement Studies properly reflects the financial statement information, including profitability, for all other businesses, or any particular business classified under the same SIC code number. Drawing any such inferences from this published data clearly violates fundamental principles of statistics, and constitutes a flagrant

misuse of the data for the NPS's purpose. All knowledgeable statisticians, after even a cursory analysis of this particular process, would agree with this conclusion.

Because, as indicated above, the fundamental inference upon which the NPS based its FFA is statistically invalid, the conclusion based thereon, that a twelve (12%) percent franchise fee will cause FST's profitability to equal or approach the average profitability of all other businesses nationwide classified under the same SIC code classification, is also statistically invalid and completely inaccurate and unacceptable procedurally. In fact, no valid inferences regarding the general population of businesses, or any particular business, including any concession operation classified according to any SIC code, may be drawn from the *D&B Industry Norms* or the *RMA Statement Studies* discussed above.

Additionally, the *D&B Industry Norms* data simply has well known deficiencies which are both irrefutable and insurmountable statistically, including the following:

a. The samples of businesses from which the *D&B* information is drawn are not random samples. According to the most basic statistical principles, if one is to draw any inference about a national population of businesses classified under the same SIC code, based upon samples received only from a relatively small number of businesses who voluntarily submit their financial data, any such inference is basically flawed because the sample businesses are not randomly selected. The voluntary convenience samples so used are fundamentally not considered representative of all other businesses classified under the same SIC code number, and information gathered in this manner is therefore considered invalid and unreliable for such purposes as those used by NPS. This well known *D&B Industry Norms* data deficiency is either

overlooked or disregarded by NPS, but this data deficiency is clearly based upon well known and basic principles in the field of statistics.

b. Additionally, I call into question the method of data collection employed by the compilers of *D&B Industry Norms.* According to reliable sources inside *D&B,* much of the data is collected through telephone interviews by transcribers, rather than through more standard acceptable procedures such as thorough financial statement analysis, detailed corporate personal interviewing, and/or rigorous data collection through financial audit. I therefore question the reliability of the *D&B Industry Norms* data because it is improperly collected and potentially inaccurate on its face for this purpose, or any purpose in which a rigorous statistical methodology is employed and the *D&B Industry Norms* data is utilized as the underlying foundation for the analysis.

c. Moreover, based upon information I consider reliable, the entire population of businesses which could be properly classified under SIC number 4489, is approximately 3,000 nationwide. The sample sizes reported by *D&B Industry Norms* under SIC 4489, for FST, were 16 in 1988 and 56 in 1989, and the sample size employed in the *RMA Statement Studies* used by the NPS was 10. Clearly, even if these samples had been randomly and properly selected as required, they are too small to draw any valid inference about the larger population of other businesses under the same SIC code, because the sample sizes are too small relative to the vast number of other businesses classified under the same SIC code.

Based upon the above, clearly the NPS's methodology is statistically unreliable. due to the nonrandom nature of the samples reported, the small sample numbers, and the complete absence of other data essential to properly test the statistically validity of the *D&B Industry Norms* and the *RMA Statement Studies*. Because of this unreliability, the validity of any inferences drawn form the *D&B Industry Norms* and the *RMA Statement Studies* cannot successfully withstand normal statistical validity testing. It is thus fatally flawed for the purposes employed by the NPS.

There is a standard and fundamental procedure in the field of quantitative statistical analysis known for measuring the degree of confidence one may place in inferences about an entire population, when those inferences are based upon such information contained in *D&B Industry Norms*. The *D&B Industry Norms* and the *RMA Statement Studies* data is clearly and simply beyond the reach of such fundamental statistical evaluation because of its incomplete nature and because of the unreliable statistical techniques employed. And D&B itself acknowledges as much in disclaimers it publishes along with its information. The only possible conclusion is that the data has absolutely no validity for the purposes employed by the NPS.

In my professional opinion, even if the *D&B Industry Norms* and *RMA Statement Studies* were based upon data properly collected in accordance with established statistical standards, the NPS clearly and fundamentally misuses such data in its NPS-48 process. It is fundamentally inappropriate to use any data classified by SIC codes for the purpose of setting a predetermined anticipated profitability level of any particular business based upon SIC code classifications. Generally, four digit SIC codes, such as those employed in the *D&B Industry Norms* and *RMA Statement Studies*, include too many varied businesses to be properly utilized for this singular purpose. In other words, rarely does a particular business sufficiently "fit" into any four digit SIC code to enable anyone, including the NPS, to

accurately utilize such profitability data as an accurate indicator of a desirable level of profitability for any other particular business. In my professional opinion, this is clearly the case with regards to FST and the NPS's attempt to determine what FST's level of profitability "should be". The NPS compared FST's audited financial statements, after adjusting same to fictitiously increased net income levels, to net profit information classified by SIC code in the *D&B Industry Norms* and *RMA Statement Studies,* which is neither audited nor adjusted by D&B or NPS. This procedure is akin to comparing apples to oranges and is clearly a flagrantly flawed process. Without question this NPS-48 process, of necessity, would, with complete certainty, produce invalid franchise fee calculations for every concessioner, based upon such a fundamentally flawed process.

Based upon the above observations alone, it is clear that the NPS-48 process should be discontinued because it is inherently flawed, unreliable and completely inconsistent with generally accepted statistical, accounting and business practices. There are compelling reasons why this NPS-48 guideline, as it pertains to franchise fee calculations, should be set aside forthwith, along with any and all franchise fee increases based thereon. Upon basic equitable principles, those in authority within our government, should immediately require this most appropriate and proper action.

Mark F. Hartley, D.B.A.

SWORN TO BEFORE ME THIS
15 day of July, 1996.

Notary Public for the State of South Carolina

My Commission Expires: AUGUSTA L. ALLEN
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES SEPT. 27, 2005

# CURRICULUM VITA
# MARK F. HARTLEY

School of Business and Economics
College of Charleston
Charleston, SC 29424
(803) 953-5955, (803) 953-1797 fax

PO Box 1822
Mt. Pleasant, SC 29465
(803) 971-9425
hartleym@cofc.edu email

**Education:**

Doctor of Business Administration (D.B.A.), 1986
Louisiana Tech University, Ruston, LA
Major field of study: Quantitative Analysis Minor fields of study: Marketing, Economics
Dissertation Title: Income Concentration in the United States: Measurement, Trends, and Stability of Correlates, 1950-1980.

Master of Business Administration (M.B.A.), 1979
Columbus College, Columbus, GA
Major field of study: Administration

Bachelor of Business Administration (B.B.A.), 1978
Columbus College, Columbus, GA
Major field of study: Marketing

**Employment:**

Associate Professor, 1994 - present. Assistant Professor, 1985 - 1994.
Department of Management and Marketing, School of Business and Economics
College of Charleston, Charleston, SC.
Tenured August, 1988.
Holder, National Association of Purchasing Management - Carolinas/Virginia Chair, 1993 to present.

Courses taught at the College of Charleston:

Production and Operations Management, Purchasing and Materials Management, Business Statistics II, Marketing Research, Quantitative Methods and Decision Making, Intermodal Information Systems

Assistant Professor, 1982 - 1985.
School of Business Administration
Columbus College, Columbus, GA.

Teaching Assistant, 1980 - 1982.
College of Administration and Business
Louisiana Tech University, Ruston, LA.

**Honor Societies and Recognitions:**

Beta Gamma Sigma (Business Honorary Organization)
Omicron Delta Epsilon (Economics Honorary Organization)
School of Business and Economics Dean's Special Service Award

**Publications in Academic Peer Refereed Journals:**

"The Adoption of Document Imaging Processing Systems in the Small Business Community." Accepted for publication in Coastal Business Review (1996). (with Gregory B. Turner).

"Purchasing's Role in Corporate Strategic Planning." International Journal of Physical Distribution and Logistics Management, XXVI (4), (1996) 51-62. (with Wade Ferguson, Gregory B. Turner, and Edward M. Pierce).

"Ethics, Gratuities, and Professionalization of the Purchasing Function." Journal of Business Ethics, XIV, (1995) 751-760. (with Gregory B. Turner and Stephen Taylor).

"Developing Ethical Policy Statements in Purchasing Departments." T.S.U. Business and Economic Review, XIX (2), (1995) 2-6. (with Gregory B. Turner and Charlie Cook).

"Ethics Policies and Gratuity Acceptance by Purchasing Agents." International Journal of Purchasing and Materials Management, XXX (3), (1995) 42-47. (with Gregory B. Turner and Stephen Taylor).

"Are You Taking Advantage of the Productivity Incentives in the Tax Reform Act of 1986?." Industrial Management, XXXV (2), 22-24. (with J. Michael Alford and B. Perry Woodside).

"Income Concentration in South Carolina: How Much and Why." Lander College Business Review, II (2), 5-9. (with Tom S. Sale and John D. Jackson).

**Other Publications and Academic Professional Program Presentations:**

"Ethical Issues in Global Purchasing: A Buyer's Guide to Gifts and Bribes Worldwide." Under Review, National Association of Purchasing Management, for Presentation and Proceedings of the 1997 Annual Conference. (with Gregory B. Turner and Wade C. Ferguson).

"Public Sector Attitudes Toward Gratuities and Gift Acceptance." Proceedings of the 81st Annual National Association of Purchasing Management International Purchasing Conference, 390-395. Presented in Chicago, IL at the Annual Conference, April, 1996. (with Gregory B. Turner and Wade C. Ferguson).

"Regional Variations in Ethical Standards and Conduct Among Purchasing Managers." Proceedings of the 81st Annual National Association of Purchasing Management International Purchasing Conference, 362-366. Presented in Chicago, IL at the Annual Conference, April, 1996. (with Gregory B. Turner and Wade C. Ferguson).

"Designing for the Japanese Market." Proceedings of the 1996 Southeast Decision Sciences Institute, 231-234. Presented at Charleston, SC at the Annual Meeting, February, 1996. (with J. Michael Alford and Gregory B. Turner).

"Purchasing's Role in the Development of Corporate Ethics Statements." Ethics Policy Statements for Purchasing, Supply, and Materials Management, 137-141. Tempe, AZ: National Association of Purchasing Management, 1995. Also in Proceedings of the 80th Annual National Association of Purchasing Management International Purchasing Conference, 266-271. Presented at Anaheim, CA at the Annual Conference, May, 1995 (with Gregory B. Turner and Wade C. Ferguson).

"Uncertainty, Effort and Risk Aversion in Sales Force Compensation: What Does Agency Theory Offer?" Proceedings of the 1994 Southeast Institute of Management Science, 319-321. Presented in Myrtle Beach, SC at the Annual Meeting, November, 1994. (with Gregory B. Turner and Wade C. Ferguson).

"Group Decision Support Systems: An Application in the Participative Budgeting Process." Proceedings of the 1994 Southeast Institute of Management Science, 222-224. Presented in Myrtle Beach, SC at the Annual Meeting, November, 1994. Winner, Best Paper Award. (with Gregory B. Turner, Mark Mitchell, and Ron Berry).

"Purchasing's Involvement in Corporate Strategic Planning." Proceedings of the 1994 Atlantic Marketing Association, 187-192. Presented in Atlantic City, NJ at the Annual Meeting, October, 1994. (with Gregory B. Turner, Wade C. Ferguson, and Ed Pierce).

"Purchasing Planning for Disaster - Are You Prepared?" Proceedings of the 79th Annual National Association of Purchasing Management International Purchasing Conference, 259-263. Presented in Atlanta, GA at the Annual Conference, May, 1994. (with Wade C. Ferguson).

"A Content Analysis of Ethical Policy Statements in Purchasing Departments." Proceedings of the 1993 Southern Marketing Association, 171-173. Presented in Atlanta, GA at the Annual Meeting, November, 1993. (with Gregory B. Turner).

"The Impact of Inbound Shipment Tracing Systems on the Expediting Function." Proceedings of the 1993 Atlantic Marketing Association, 435-437. Presented in Orlando, FL at the Annual Meeting, October, 1993. (with Stephen LeMay, Paul T. Nelson, and Gregory B. Turner).

"The Acceptance of Gratuities by Purchasing Agents: Toward the Development of Effective Control Methods." Proceedings of the 1993 Association of Marketing Theory and Practice, 522-525. Presented in Hilton Head, SC at the Annual Meeting, March, 1993. (with Gregory B. Turner and Steve Taylor).

"Teaching Styles and Methodologies: Pitfalls and Suggestions." Symposium for the Graduate Student Workshop of the Southeast Decision Sciences Institute. Presented in Chattanooga, TN at the Annual Meeting, February, 1993. (with Ronald M. Zigli and Robert L. Andrews).

"An Empirical Examination of the Diffusion of Document Imaging Processing Systems." Proceedings of the 1993 Southeast Decision Sciences Institute, 179-181. Presented in Chattanooga, TN at the Annual Meeting, February, 1993. (with Gregory B. Turner).

"Symbiosis: A Theoretical Foundation for the Development of Strategic Procurement Alliances." Proceedings of the 1993 Southeast Decision Sciences Institute, 204-206. Presented in Chattanooga, TN at the Annual Meeting, February, 1993. (with Gregory B. Turner and Mark A. Mitchell).

"An Examination of Political Campaign Pricing Decisions: A Multi-Stage Approach." Proceedings of the 1992 Atlantic Marketing Association, 419-423. Presented in Greensboro, NC at the Annual Meeting, October, 1992. (with Gregory B. Turner).

"Take It Or Leave It?.....The Ethics of Gift Acceptance by Industrial Purchasing Agents." Proceedings of the 1992 Atlantic Marketing Association, 233-237. Presented in Greensboro, NC at the Annual Meeting, October, 1992. (with Gregory B. Turner and Mark A. Mitchell).

"Studying Ethics Within the Purchasing Function: Let's Start by Building Some Theoretical Foundations." Proceedings of the 1992 Southeast Institute of Management Science, 360-364. Presented in Myrtle Beach, SC at the Annual Meeting, September, 1992. (with Gregory B. Turner).

"Inbound Shipment Tracing Systems: A Perspective From the Purchasing Department." Proceedings of the 1991 Southeast Institute of Management Science, 255-256. Presented in Myrtle Beach, SC at the Annual Meeting, October, 1991. (with Paul T. Nelson).

"Discrimination Awards." Symposium on Forensic Evaluations for the 1991 Southeast Institute of Management Science. Presented in Myrtle Beach, SC at the Annual Meeting, October, 1991. (with B. Perry Woodside and Bill Hardy).

"An Update of Statistical Applications in Age Discrimination Cases." Symposium on Forensic Evaluations for the 1989 Southeast Decision Sciences Institute. Presented in Charleston, SC at the Annual Meeting, February, 1989. (with B. Perry Woodside).

"A Review and Applications of Statistical Methodologies Appropriate for Evidence in Age Discrimination Litigation." Symposium on Forensic Evaluations for the 1988 Decision Sciences Institute. Presented in Las Vegas, NV at the Annual Meeting, November, 1988. (with B. Perry Woodside).

"Testing for Model Specification Errors in Income Distribution Research." Proceedings of the 1988 Southeast Decision Science Institute, 99-101. Presented in Winston-Salem, NC at the Annual Meeting, February, 1988. (with John D. Jackson and Tom S. Sale).

"The On-Line Case: A 'Bottom Line' Approach to Statistical Pedagogy." Proceedings of the 1988 Southeast Decision Science Institute, 105-107. Presented in Winston-Salem, NC at the Annual Meeting, February, 1988. (with James Hawkes).

"Age Discrimination: Statistical Evidence and Measurement of Damages." Proceedings of the 1987 Southeast Institute of Management Science, 34-36. Presented in Myrtle Beach, SC at the Annual Meeting, October, 1987. (with B. Perry Woodside).

"An Empirical Investigation of Income Concentration in the South: 1950-1980." Proceedings of the 1987 Southern Regional Sciences Institute, 25-29. Presented in Atlanta, GA at the Annual Meeting, March, 1987. (with John D. Jackson and Tom S. Sale).

"The Direct Mail Simulation Game: Teaching Marketing Research for 'Bottom Line' Results." Proceedings of the 1987 Southwest Institute of Decision Science, 233-235. Presented in Houston, TX at the Annual Meeting, March, 1987. (with James Hawkes and Robert N. Carter).

"Experiment Shows Entrepreneurs Can Benefit from Maturity Training." Proceedings of the 1987 Southwest Small Business Institute, 65-68. Presented in Houston, TX at the Annual Meeting, March, 1987. (with Robert N. Carter).

"Training Retail Computer Sales Personnel." Proceedings of the 1987 Southwest Small Business Institute, 82-84. Presented in Houston, TX at the Annual Meeting, March, 1987. (with Robert N. Carter).

"Level of Personal Maturity Seen as Fuel for Entrepreneurial Spirit." Abstract reprinted in The Journal of Private Enterprise, 2(1), 56. Presented in San Antonio, TX at the Association of Private Enterprise Education Meeting, April, 1986. (with Robert N. Carter).

"The Possible Effects of Firm Size on Case Writing: A Preliminary Investigation." Proceedings of the 1986 Mid-Western Case Writers Association, 53-59. Presented in Chicago, IL at the Annual Meeting, March, 1986. (with Robert N. Carter).

"The Family Medical Center: Marketing Research and Strategic Planning." Proceedings of the 1985 National Decision Sciences Institute, Case Supplement, 39-45. Presented in Las Vegas, NV at the Annual Meeting, November, 1985. (with Robert N. Carter).

"State of Individual Maturity Advanced as Key Determinant of Successful Retail Sales Training." Proceedings of the 1985 Academy of Marketing Science Association, 195-197. Presented in Charleston, SC at the Annual Meeting, October, 1985. (with Robert N. Carter).

"Gap Exists in Manufacturing-Sponsored Training for Retail Computer Sales Personnel: Combined Training in Fundamental Techniques and Skills and Beyond Motivation Concepts Holds Remedy." Proceedings of the 1984 Academy of Marketing Science, 473. Presented in Niagara Falls, NY at the Annual Conference, May 1984. (with Robert N. Carter).

"Advancing the Small Business Computer Marketing Channel Through Training the Retail Salesperson." Proceedings of the 1984 Southwest Small Business Institute, 54-66. Presented in Houston, TX at the Annual Meeting, March, 1984. (with Robert N. Carter).

"Respondent Samples in Marketing Research: A Comparison Study." Proceedings of the 1984 Southeast Decision Sciences Institute, 177-179. Presented in Savannah, GA at the Annual Meeting, February, 1984. (with Albert J. Taylor).

"Salesmanship and Motivation Training: A New Direction." Proceedings of the 1983 Mid-Atlantic Marketing Association, 1-14. Presented in Valdosta, GA at the Annual Meeting, October, 1983. (with Robert N. Carter).

"Predicting Sales Performance: A Literature Review." Proceedings of the 1983 Southwest Decision Sciences Institute, 107-109. Presented in Houston, TX at the Annual Meeting, March, 1983. (with C. Richard Huston and Albert J. Taylor).

**Other Research Published in Professional Trade Journals:**

"Customer Satisfaction Surveys." Golf Business, II (4), 22-25. (June 1996). (with Gregory B. Turner and Jack Kendree).

"Ethical Behavior is No Gimme." Golf Business, II (2), 56-58. (March 1996). (with Gregory B. Turner and Wade C. Ferguson).

"A Comparison of Ethical Standards and Conduct: Purchasing Professionals of PMA-Philadelphia Versus Those of Other Regions." P.M. News, 96-3, 3-4. (March 1996). (with Gregory B. Turner and Wade C. Ferguson).

"Gift and Gratuity Acceptance: Ethical Standards and Conduct Among PMA-Philadelphia's Purchasing Managers." P.M. News, 96-2, 4-6. (February 1996). (with Gregory B. Turner and Wade C. Ferguson).

"Ethical Standards and Conduct Among PMA-Philadelphia's Purchasing Managers." P.M. News, 96-1, 5-6. (January 1996). (with Gregory B. Turner and Wade C. Ferguson).

"Salary Gender Gap Continues to Narrow Among Carolinas-Virginia Purchasing Professionals: Results of the Third Annual NAPM-CV Salary Survey." Southern Purchasor, XXVI, (1), 9-11, (January-February 1996). (with Wade C. Ferguson and Gregory B. Turner).

"Purchasing Planning for Disaster - Are You Prepared?" NAPM Insights, V (11), 42-44, (November 1994). (with Wade C. Ferguson and Gregory B. Turner).

"Carolinas-Virginia Purchasing Salaries Continue to Outpace National Averages: Results of the Second Annual NAPM-CV Salary Survey." Southern Purchasor, XXIV, (6), 22-24, (November-December 1994). (with Wade C. Ferguson).

"Keep Purchasing Functioning in Disaster's Wake." Supplier Selection & Management Report, 94-9, 10-11, (August 1994). (with Wade C. Ferguson).

"How Do Carolinas-Virginia Purchasing Professionals Measure Up in Today's Economy: Results of the First Annual NAPM-CV Salary Survey." Southern Purchasor, XXIII (4), 20-24, 31, (July-August 1993). (with Wade C. Ferguson).

"Gratuity Acceptance: Views of Future Purchasing Agents." Southern Purchasor, XXIII (4), 26-31, (July-August 1993). (with Gregory B. Turner).

"Careful There Partner...They May Be A Gunnin' For You." Southern Purchasor, XXII (5), 20-24, (September-October 1992). (with Gregory B. Turner).

"Let's Compare Ethics Policy Statements: A Study of Purchasing Practices in the PMAC-V Region." Southern Purchasor, XXII (4), 18-21, (July-August 1992). (with Gregory B. Turner).

"Gifts and Favors From Suppliers: A Study of Purchasing Practices in the PMAC-V Region." Southern Purchasor, XXII (3), 18-22, (May-June 1992). (with Gregory B. Turner).

"What's Happening on the Home Front: A Study of Purchasing Ethical Practices in the PMAC-V Region." Southern Purchasor, XXII (2), 38-40, (March-April 1992). (with Gregory B. Turner).

"An Agricultural Product to Bank On: Trees." The Louisiana Banker, XLIX (10), 3-8. (with Lyndon E. Dawson).

"From Pulpwood to Paper: The Channel of Distribution for Louisiana-Produced Paper." The Louisiana Economy, XV (1), 6-8. (with Lyndon E. Dawson).

"The Louisiana Timber Industry: Marketing Channels and Pricing Practices." The Louisiana Economy, XIV (4), 5-8. (with Lyndon E. Dawson).

**Memberships, Offices Held, and Activities in Professional Organizations:**

Coordinator and Publisher, The NAPM-CV Purchasing Manager's Report, published monthly since March 1993 and extensively disseminated throughout the print and electronic media nationally and in the Carolinas-Virginia region. Funded through a yearly grant from NAPM-CV.
Member, Past Professional Development Chairman, Past Board Member, Purchasing Scholarship Coordinator, National Association of Purchasing Management - Carolinas/Virginia (NAPM-CV)
Coordinator, The College of Charleston Purchasing Professional Development Seminar Series
Monthly Meeting Speaker, numerous Local Chapters of the NAPM-CV
Speaker and Participant, The NAPM Annual International Purchasing Conference
Speaker and Participant, The NAPM-CV Annual Purchasing Educators Conference
Annual Convention Speaker, The South Carolina Association of Government Purchasing Officials
Member, Past Vice President for Planning & Development (1992-1993), Past Convention Host and Local Arrangements Coordinator (1989 and 1996), Track Chair, Session Chair, Manuscript Reviewer, Paper Discussant, The Southeast Decision Sciences Institute
Track Chair, Session Chair, Manuscript Reviewer, Paper Discussant, The Southeast Institute of Management Science
Session Chair, Manuscript Reviewer, Paper Discussant, The Southwest Decision Sciences Institute
Session Chair, Manuscript Reviewer, Paper Discussant, The Southern Marketing Association
Session Chair, Manuscript Reviewer, Paper Discussant, The Atlantic Marketing Association

**Personal Employment, Consulting:**

Consultant, 1995, Kiawah Property Owners Group, Kiawah Island, SC
Consultant, 1994, Trident's B.E.S.T. Committee, Charleston, SC
Consultant, 1993-present, Fort Sumter Tours, Charleston, SC
Consultant, 1992-present, The Patriot's Point Development Authority, Mt. Pleasant, SC
Consultant, 1991-1992, Advertising Services Agency, Charleston, SC
Consultant, 1989, Gamble, Givens, and Moody CPA Firm, N. Charleston, SC
Co-Owner, 1992-present, Power Alley Sports Cards, Inc., Mt. Pleasant, SC

**Involvement in Extension and Public Service Activities:**

Vice Chairman of Commissioners, The Charleston County Housing and Redevelopment Authority
Member, The Public Housing Authority Director's Association
Member, Carolinas Council of Housing, Redevelopment, and Codes Officials
Chairman, The Charleston County Republican Party
Sponsor and Volunteer, The Juvenile Diabetes Foundation Walkathon
Volunteer, The American Red Cross Trident Chapter
Volunteer, The Charleston Interfaith Crisis Ministry
Site Coordinator, The South Carolina Adopt-A-Highway Program
Member, Ducks Unlimited, East Cooper Chapter
Speaker, The East Cooper Public Schools After School Adventure Program

**Doctoral Dissertation Committee Assignments:**

Committee Member, An Evaluation of Participation by the Purchasing Function in the Corporate Strategic Planning Process, a dissertation by Wade C. Ferguson, Purchasing Manager, Santee Cooper, Moncks Corner, SC, for Nova University, 1993.

**Major College and Department Committee Assignments Held:**

Member, BA/ECON Faculty, Student, & Alumni Issues Committee
Member, BA/ECON Computer Utilization Committee
Past Member, College of Charleston Judicial Board
Past Coordinator, The College of Charleston Career Festival
Administrator, The NAPM-CV Purchasing Scholarship Program
Administrator, The National Collegiate Business Merit Award Program
Assistant to the Dean, AACSB Accreditation and Reaccreditation Studies
Faculty Advisor, The College of Charleston Varsity Baseball Team
Faculty Advisor, The College Republicans

**Recent External Research Activities Coordinated:**

"A Customer Profile and Opportunity Assessment for the Sports Rock Cafe," performed for the management of the North Charleston based operation, 1995.
"An Awareness Assessment of the Charleston Area Arts Council," performed for the Director of the local agency, 1995.
"A Feasibility Study of Opening an All-Natural Products Store in Americus, GA," performed for a client interested in entering this industry, 1995.
"A Feasibility Study of the Piggly Wiggly Carolina Company's Centralized Bakery," performed for the Vice President of the corporation, 1994.
"An Assessment of the Charleston Trident Business Education Partnership Program," performed for the Trident Chamber of Commerce, 1993.
"A Study of the Ethnic Greeting Card Industry," performed for a client interested in entering the industry, 1993.
"Summary of Light Manufacturing\Distribution Operations in South Carolina," performed for a local business brokerage company, 1992.
"South American Import\Export Study," performed for a local group of future importers, 1992.
"A New Product Development and Current Product Line Expansion Study," performed for a local book retailer, 1991.
"A Temporary Employment Services Attitudinal Survey," performed for a regional temporary employment services company, 1991.
"Medical University of South Carolina Purchasing Department Assessment," performed for the Director of Procurement at the Medical University of South Carolina, 1990.
"A Needs Assessment for the Charleston World Trade Center," performed for the Trident Chamber of Commerce and the Council of Trade, 1990.
"A Peninsular Charleston Fitness Facility Feasibility Study," performed for clients interested in developing such a facility, 1990.
"A Study of the Need for Mortgage Information Services in the Trident Market," performed for clients interested in the start-up of such a business, 1990.
"A Dealership Satisfaction Survey," performed for a local power boat manufacturing company, 1989.
"A Feasibility and Location Study for U-Bake-It Pizza," performed for clients interested in bringing this concept to the Charleston market, 1989.
"A Home Furnishings Consumer Preference Study," performed for a national home furnishings concern, 1989.

**Recent Institutional Research Activities Coordinated:**

"A Program Assessment of the College of Charleston's Center for Entrepreneurship," performed for the Dean of the School of Business and the College's Entrepreneur in Residence, 1995.

"An Assessment of the College of Charleston's Department of Public Safety," performed for the Director of the Department, 1995.

"An Analysis of Student Interest in the Field of Arts Management and Administration", performed for the Dean of the School of the Arts and the Senior Vice President at the College, 1994.

"An Assessment of the College of Charleston's Maymester and Summer Sessions Program," performed for the Director of the Program, 1994.

"The 1994 Student Budget Survey," performed for the Office of Financial Aid and Scholarships at the College, 1994.

"Assessment of Attendance at Men's Basketball Games at The College of Charleston," performed for the Athletic Department at the College, 1994.

"A Risk Management & Insurance Curriculum Program Feasibility Study," performed for the Dean of the School of Business and Economics at the College, 1993.

"An Assessment of the Office of Financial Assistance and Scholarships," performed for the Director of the Office of Financial Aid and Scholarships at the College, 1993.

"An Assessment of the Office of Career Development," performed for the Interim Director Office of Career Development and Placement at the College, 1992.

"The 1992 Student Budget Survey," performed for the Office of Financial Aid and Scholarships at the College, 1992.

"The TQM Initiative: A Study to Determine the Integration of TQM into the Business and Economics Curricula," performed for the School of Business and Economics, 1992.

"The 1991 Student Expenses Study," performed for the Office of Financial Aid and Scholarships at the College, 1991.

"The Feasibility of a Major in Communications at The College," performed for the Office of the Vice President for Academic Affairs and the English Department Faculty, 1991.

"The Masters of Accountancy Program Feasibility Study," performed for the Accounting Faculty in the School of Business and Economics, 1989.

"The 1989 Student Budget Study," performed for the Office of Financial Aid and Scholarships at the College, 1989.

"A Feasibility Study of Off-Campus and Weekend Programs at the College of Charleston," performed for the Office of the Vice President for Academic Affairs, 1989.

"An Internal Audit of the College Campus Shop," performed for the College Bookstore, 1988.

**References:**

Howard F. Rudd, Jr., Ph.D.
Dean, School of Business and Economics
College of Charleston
Charleston, SC 29424
(803) 953-8110

Rhonda Mack, Ph.D.
Chairman, Department of Management & Marketing
School of Business and Economics
College of Charleston
Charleston, SC 29424
(803) 953-6566

Gregory B. Turner, D.B.A.
Assistant Professor of Marketing
Wall School of Business Administration
Coastal Carolina University
Conway, SC 29528
(803) 349-2688

Wade C. Ferguson, D.B.A., C.P.M.
Past President of NAPM - Carolinas/Virginia
Santee Cooper
PO Box 2946101
Moncks Corner, SC 29461
(803) 761-8000, ext. 5498

V. Gilbert Snyder, Jr., C.P.M.
Executive Vice President
NAPM - Carolinas/Virginia
5601 Roanne Way, Suite 312
Greensboro, NC 27409
(910) 292-9228

Henry D. McMaster, Esq.
Chairman, South Carolina Republican Party
c/o Tompkins and McMaster Law Firm
PO Box 7337
Columbia, SC 29202
(803) 799-4499

Montez Martin
Executive Director
Charleston County Housing and Redevelopment Authority
2106 Mt. Pleasant Street
Charleston, SC 29403
(803) 722-1942

# Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 328, Juneau, AK 99801
(907) 586-6942 phone (907) 463-3312 fax
email: seacc@alaska.net

Katie McGinty
Chair, Council on Environmental Quality
360 Old Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20500

July 15, 1996

Dear Katie,

As you know, the topic of granting an extension to Ketchikan Pulp Company has been a hot one in July. SEACC strongly opposes this legislation

At the July 11th hearing on H.R. 3659 Congressman Don Young challenged SEACC's statement that the Governor of Alaska does not support H R 3659 and that the bill doesn't even come close to including the specific minimum conditions set forth by the Governor in his letter to Mark Suwyn, CEO of Louisiana Pacific Corporation

Although Governor Knowles has expressed his support for an extension, it is absolutely clear that there has not been a single written word from Governor Knowles, stating that he supports the proposed HR 3659 extension or the Senate Companion bill

Please see the attached Anchorage Daily News article which confirms our views We are requesting that Congressman Young make this article part of the hearing record

Sincerely,

Bart Koehler
Executive Director
SEACC

Buck Lindekugel
Conservation Director
SEACC

LYNN CANAL CONSERVATION, Haines • FRIENDS OF GLACIER BAY, Gustavus • FRIENDS OF BERNERS BAY, Juneau
WRANGELL RESOURCE COUNCIL • ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • PELICAN FORESTRY COUNCIL
ALASKANS FOR JUNEAU • NARROWS CONSERVATION COALITION, Petersburg • TONGASS CONSERVATION SOCIETY, Ketchikan
CHICHAGOF CONSERVATION COUNCIL, Tenakee • JUNEAU GROUP SIERRA CLUB • SITKA CONSERVATION SOCIETY

Closure threatened
as hearings begin

WEDNESDAY, July 10, 1996

# ntract extension to save

Anchorage Daily News

ture has passed a resolution backing the contract extension.

Gov. Tony Knowles met with Suwyn this spring and then sent him a letter backing a 15-year extension. The congressional delegation has cited the governor's letter as an endorsement of its legislation.

But according to John Katz, the governor's top aide in Washington, Knowles only supports extension of the contract, not relaxation of the 1990 contract reforms. "We're not becoming involved in these other matters of contract modifications," Katz said.

Louisiana Pacific's high-stakes gambit comes
company is staggeri
der mounting losses
its pulp operation
battling back from a
holder revolt over it
cy of pollution and
problems. The revol
year forced out the c
ny's top executive,
Merlo.

According to
spokesman Troy Re
the consequences of
ternal revolt has be
environmental renai
in the company.

269

**GEORGE M. LEONARD**

July 25, 1996

Honorable Don Young
Chairman
Committee on Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter responds to your request at the hearing last week that I submit my suggestions for changes in the Environmental Improvement Timber Contract Extension Act of 1996. My suggestions follow:

Section 2 (a) (1) is not technically correct in that it applies the Scribner Log Rule to utility log volumes. The Scribner Rule is a log rule which measures the portion of a log which is suited for the manufacture of lumber. By accepted definition, utility logs are those not suitable for lumber production. Further, as written the provision would effective preclude a reasonable charge for utility logs. A better approach would be to specify the volume requirements of sections 2 (c) (3) and 2 (e) as 192,500,000 board feet net scribner long-log scale for all logs per year. This would make it clear that the Forest service can charge for utility logs on an appropriate scale.

Section 2 (a) (4) confuses the concept of appraising timber with the concept of offering timber which meets mid-market criteria. The timber offered to KPC under the contract should meet mid-market criteria. However, the appraisal of all timber offered under the contract should be done using normal Forest Service appraisal methods in use on the Tongass. I recommend that section 2 (a) (4) be rewritten to separate and clarify these concepts.

Section 2 (c) (4) should be revised to make it clear that the Forest Service can collect Knutson-Vandenburg (K-V) funds or other agreed deposits. In addition, I would recommend striking the word independent from the appraisal requirement. As noted above, the timber in the long-term contract should be appraised using normal Forest Service appraisal methods in use on the Tongass National Forest.

Section 2 (c) (5) needs to be revised to make it clear that all contiguous management areas are being grouped to measure proportionality. Subsections (B) and (C) should reference the maps and rotation periods used in the current Tongass Land Management Plan.

10909 Paynes Church Dr., Fairfax, VA 22032-2920

Section 2 (c) (6) needs to set a reasonable time period for conversion or replacement of the pulp mill if the company elects to do so. It should also specify what activities under the contract are permitted during the conversion or replacement period.

Finally, KPC has a number of outstanding and potential claims against the Government arising from past contract operations and the Tongass Timber Reform Act. I believe it is appropriate to condition the contract extension on the waiver of these claims, at least as they may accrue from future contract operations.

Continued operation of a pulp mill or other facility to permit economic utilization of utility logs and low quality sawlogs is essential if the timber resource on the Tongass is to continue to contribute to employment and the economic well-being of the communities in southeast Alaska. Please let me know if I can be of further assistance.

Sincerely,

George M. Leonard

# Southeast Alaska Conservation Council

SEACC 419 6th Street, Suite 328, Juneau, AK 99801
(907) 586-6942 phone (907) 463-3312 fax
email: seacc@alaska.net

July 23, 1996

The Honorable Don Young
Chairman of Committee on Resources
U.S. House of Representatives
1324 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Chairman Young:

This letter follows up on your July 11, 1996 hearing in Washington D.C. regarding H.R. 3659, the so-called "Environmental Improvement Timber Contract Extension Act." Instead of improving the environment, this bill only serves to improve the bottom line for Louisiana Pacific Corporation, the Ketchikan Pulp Company's parent corporation, at the expense of the other Tongass-dependent industries, forest resources, and the American taxpayer. After pocketing years of profit from repeated violations of state and federal environmental laws, the Ketchikan Pulp Company now wants the American taxpayer to pay it to cleanup its act. The Ketchikan Pulp Company was also found guilty in 1983 of anti-trust violations including price fixing, collusive bidding, and conspiring to monopolize the Tongass logging industry by driving independent timber operators out of business.

During my oral statement at the July 10, 1996 hearing, I submitted for the record a number of resolutions and letters from Southeast Alaska communities, businesses and organizations opposing your bill. Since the hearing, we have continued to receive resolutions and letters opposing your bill. **We request that you include the enclosed package of 117 resolutions and letters into the official, written hearing record for H.R. 3659.**

We again ask you to stop this outrageous piece of special interest, corporate welfare legislation right now.

Best Regards,

Buck Lindekugel
Conservation Director

LYNN CANAL CONSERVATION, Haines • FRIENDS OF GLACIER BAY, Gustavus • FRIENDS OF BERNERS BAY, Juneau
WRANGELL RESOURCE COUNCIL • ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • PELICAN FORESTRY COUNCIL
ALASKANS FOR JUNEAU • NARROWS CONSERVATION COALITION, Petersburg • TONGASS CONSERVATION SOCIETY, Ketchikan
CHICHAGOF CONSERVATION COUNCIL, Tenakee • JUNEAU GROUP SIERRA CLUB • SITKA CONSERVATION SOCIETY
TAKU CONSERVATION SOCIETY, Juneau • PRINCE OF WALES CONSERVATION LEAGUE, Craig • YAKUTAT RESOURCE CONSERVATION COUNCIL
printed on recycled paper

# Resolutions and Statements From Alaskan Communities, Civic Groups, Businesses and Associations Opposed to Extending Louisiana Pacific's KPC Long Term Contract

**Partial List - Current 7/30/96**

City of Pelican
City of Angoon
City of Tenakee Springs
Gustavus Community Association
Community of Elfin Cove
Port Protection Community Association, Inc
Port Alexander Fish & Game Advisory Committee
Tongass Hunting & Fishing Coalition
Sitka Friends of Southeast's Future
Point Adolphus Seafoods
Alaska Discovery, Inc.
Alaska Wilderness Recreation & Tourism Association
Wrangell Resource Council
Hoonah Indian Association
Alaska Clean Water Alliance
Alaska Center For The Environment
Alaskans For Juneau
Tenakee Historical Society
Sitka Conservation Society
Tenakee Hot Springs Lodge
Juneau Chapter Sierra Club
Toms Place Homeowners Association
Parker / Boyce Hunting Guide Service, Inc
Friends of Glacier Bay
Friends of Berner's Bay
Alaska Skiff Charters
Silver King Marine
Lisianski Lodge
Gustavus Inn
Gustavus Marine Charter
Good River Bed & Breakfast
Glacier Bay Sea Kayaks
Crondahl Bed & Breakfast
Alaska Up Close
Peyton Fisheries Business Consulting, Marketing & Development
Alaska Cruises
Laura Lucas Design
Sockeye Cycle
Dr. Margaret Davidson
Admiralty Island Sightseeing
Northwest Art
Old Harbor Books
Gearing Up
Peterson F.I.S.H.E.S.
Prince of Wales Conservation League
58°22' North Sailing Charters
Glacier Guides, Inc - Alaska Master Hunting Guides, Jimmie C., & Mary Ann Rosenbruch
Alaska Applied Sciences, Inc
Ravens Fire, Inc
Mark Kelley Photography
Inner Harbor Lodge
Rie Munoz, Ltd.
Alaska's Leading Edventures
Northern Keta, Inc
F/V Hansa
Bluejacket Passages
Laughing Raven Lodge
A Sign of Design
Southeast Exposure
The Bakery
The Rainforest Retreat
Icy Strait Adventures
Shearwater Lodge & Charters
Douglas Island Veterinary Service
Juneau Chapter Audubon Society
Boardwalk Bight
Mother Truckers Kayak & Bike Rental
Mountain Gears
Walton Radar Marine
Wild's Alaskan Seafarm
Cougar Productions
Earthtone Huskies
Tenakee Resource Recovery
Juneau Outdoor Center
Gusto Tours & Charters
Glacier Bay Photography
Cross Sound Lodge
Caribou Trails Photography
Starship Fisheries
Starbuck Charters
Annie May Lodge
Water Ouzel Outings
Taku Conservation Society
Johnson Enterprises
Baidarka Boats
Tongass Conservation Society
Lynn Canal Conservation, Inc.
Time Line Cruises, Inc
Manchee & McLean Computer Consultants
Tenakee Towing
Whalers Cove Lodge
Icy Straits Environmental Services
Sabeda, Inc
Association of Forest Service Employees for Environmental Ethics
Alaska Council of Trout Unlimited
Elfin Cove Fish & Game Advisory Committee
Tenakee Springs Fish & Game Advisory Committee
The Fiddlehead Restaurant & Bakery
MacDunnah's Ltd.
Southeast Alaska Land Trust
Alaska Bed & Breakfast Association
Salmon River Smokehouse
Alaska Outdoor Consultants
Pelican Charters
Alaska Rainforest Tours
Mount Juneau Inn
Alaska House Inn
Spirit Walker Expeditions
Puffin Travel, Inc
Angoon Trading Company, Inc
Wales Waterworks
Sea Otter Sound Seafoods, Inc
InterDesign / Mac Design
Southeast Alaska Veterinary Clinic, Inc
Alaska Passages Tours
Sea Fisk Consulting & Management
[illegible]lson Engineering, Inc Consulting Engineers & Project Managers
Bear Track Mercantile
Dennis Hay's Elfin Cove Resort

*More → →*

**Resolutions and Statements Opposed to Extending Louisiana Pacific's KPC Long Term Contract**
**Page 2**

Tongass Cave Project / Project of the National Speleological Society

Fairweather Adventures

The Observatory, ABAA

Bear's Nest Cabins / Gifts / Cafe

Chichagof Conservation Council

Marine Adventure Sailing Tours

Old Harbor Press

Alaska Fly 'N' Fish Charters

Sticks & Stones

Due to the high cost of printing, copies of all 117 resolutions are included in the official Committee files.

○

26-689 - 96 (280)

ISBN 0-16-053778-9

90000

9 780160 537783