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S. HRG. 119–305

PENDING LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, FORESTS, AND MINING

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED NINETEENTH CONGRESS

SECOND SESSION

ON

S. 462	**S. 2787**	**S. 3695**
S. 1349	**S. 2860**	**H.R. 204**
S. 1464	**S. 2968**	**H.R. 677**
S. 1497	**S. 3004**	**H.R. 952**
S. 1981	**S. 3082**	**H.R. 1829**
S. 2417	**S. 3493**	**H.R. 3872**
S. 2554	**S. 3526**	**H.R. 3937**
S. 2754	**S. 3527**	

FEBRUARY 12, 2026



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Committee on Energy and Natural Resources

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PENDING LEGISLATION

THURSDAY, FEBRUARY 12, 2026

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:00 a.m. in Room SD–366, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. I call this hearing to order. Good morning and welcome, all of you, to the hearing today. I appreciate all of you making the trip to be with us. We have a number of bills on today's agenda, priorities across the West. This morning's hearing will look at many pieces of legislation that impact our federal lands.

Families and communities in Wyoming and throughout the West depend on federal lands for energy and mineral development, for grazing, for forest management, and for recreation. Included in the agenda is a bill of my own that is important to those who graze on federal lands. I would like to take a moment to highlight the importance of this legislation, S. 2787, the Grasslands Grazing Act. Livestock grazing on federal lands has a strong tradition in Wyoming and across the West. Federal grazing is a necessary tool for wildfire prevention and for promoting rangeland health. It is widely used by both the U.S. Forest Service and the Bureau of Land Management. The U.S. Forest Service manages both national forests and national grasslands. Livestock grazing is done on both national forest land and grasslands. Obtaining a federal permit for grazing on national forest land is common practice. However, there is a lack of federal certainty and clarity for obtaining the same permits for grasslands.

In Wyoming, cattle graze on the Thunder Basin National Grassland, located in northeastern Wyoming in the Powder River Basin between the Bighorn Mountains and Black Hills. It encompasses a little over a half a million acres. That's a lot of land. My bill helps bring regulatory clarity for grazing permits from the U.S. Forest Service. Ranchers across the West depend on access to grazing on our national grasslands. They deserve to have certainty that their grazing permits will be approved in a timely manner. The Grasslands Grazing Act will give Wyoming's ranching families the stability that they need to keep their operations running strong.

I would like to welcome all four of our witnesses here this morning, especially Ty Checketts, who is always wonderful to have here. He is one of the wonderful Wyoming ranchers who have been back to DC to testify, speaking on behalf of the important work that they do each and every day on their operations. I look forward to hearing your testimony, and from all of you. But first, I would like to turn to Senator Cortez Masto for her opening remarks.

OPENING STATEMENT OF HON. CATHERINE CORTEZ MASTO, U.S. SENATOR FROM NEVADA

Senator CORTEZ MASTO. Thank you, Chairman Barrasso. I also want to thank Chairman Lee and Ranking Member Heinrich for this legislative hearing today. Today is the second legislative hearing held by the Subcommittee, and I look forward to working with my colleagues on planning several more this year. We have a full agenda. As you have heard, there are 23 bills. Several of today's bills were previously processed through the Committee last Congress, and I look forward to working with my colleagues to advance them further.

I also want to welcome all the panelists today. It's great to see everybody, from Jon Raby to Christopher French. Mr. Checketts, welcome, again, and also to the wonderful Julie Regan. I appreciate that Julie has come all the way over from Tahoe. She is Executive Director of the Tahoe Regional Planning Agency. She will be providing testimony specifically in support of S. 3695, which is the Santini-Burton Modernization Act. Thank you so much.

And I, too, want to talk about some of the bills that I have on the agenda today. I so appreciate that there are several of my bills. One of them is S. 1349, which is the Ruby Mountains Protection Act. This bill, which has already been favorably approved by this Committee in each of the previous three Congresses—let me say that again, three Congresses—would prohibit oil and gas development within the Ruby Mountains area of the Humboldt-Toiyabe National Forest, which is located in Elko and White Pine Counties in Nevada. The bill was created after the Forest Service received a request by an out-of-state member of the public to develop 54,000 acres of land within the Ruby Mountains. In 2019, the Forest Service determined the area was not appropriate for leasing due to the low potential for oil and gas resources and due to the extensive involvement of the community in opposition to leasing efforts. This bill codifies the determination that was made by the Forest Service under the first Trump administration, ensuring this great public space is preserved for its recreational opportunities, outdoor economy, rare wildlife and plant life, and the local culture that these mountains support.

The other bill is S. 1981, the Strategic Grazing to Reduce Risk of Wildfire Act. This bill would direct the Interior Department and the Forest Service to work with grazing permit holders to create a strategy to utilize livestock grazing on public lands to mitigate risk posed by wildfires. In states where most of the land is managed by the Federal Government, like my home State of Nevada, ranchers and cattlemen rely on public lands for grazing purposes. Now, more than ever, due to climate change and historic drought conditions,

these lands and the populated areas near them are threatened by wildfires that grow in size and intensity almost yearly.

And then, I would also like to talk about S. 3695, which is the Santini-Burton Modernization Act. This bill is bipartisan, bicameral, and bi-state. It has wide local support from the Washoe Tribe of Nevada and California, local government, and the business community from both sides of Lake Tahoe—California and Nevada. It has the full support from our Tahoe delegation in the Senate, cosponsored by my colleagues, Senators Rosen, Padilla, and Schiff, and my co-lead in the House, Congressman Kevin Kiley from California. This bill modernizes the original Santini-Burton Act of 1980 that utilized revenues from targeted land disposal in Clark County in Southern Nevada to preserve Lake Tahoe from growing threats of environmental degradation and from rapid development through land acquisition and land management on both the Nevada and California sides of the lake. Changes were made to the law in 1998 that limited the use of funds granted by the act, by the land sales. However, preserving the pristine quality of Lake Tahoe requires our everlasting vigilance and ability to adapt evolving practices. Modernizing the Santini-Burton Act would allow Tahoe partners with additional tools to manage public lands and address visitation impacts. The goal here, and I am hoping working with our colleagues, is that we can continue the original intent of the Santini-Burton Act.

I just want to mention two other bills on today's agenda that I am also appreciative of, and they are very important to my home state, and they are sponsored by my colleague, Senator Rosen. That is S. 462, the Truckee Meadows Public Lands Management Act and S. 3493, the Carson City Public Land Correction Act. Both of these bills, like the Southern Nevada Lands bill, received a hearing in December, were favorably reported by the Committee with bipartisan support last Congress, and are community driven. They prioritize locally identified needs, including specific land disposals to facilitate local economic development and residential housing needs, conveyances to facilitate efficient municipal management or support for local tribal communities, and efforts to preserve certain public lands for conservation and outdoor recreation.

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

Senator BARRASSO. Thanks so much, Senator Cortez Masto.

Senator Daines.

OPENING STATEMENT OF HON. STEVE DAINES, U.S. SENATOR FROM MONTANA

Senator DAINES. Chairman Barrasso, Ranking Member Cortez Masto, thank you.

Included in today's agenda is one of my bills, the Montana Sportsmen Conservation Act. Our family roots in Montana go back five generations. My wife and I spend as much time outdoors as we can throughout wilderness areas in Montana, as well as our national forests. Montanans are clear about the importance of their public lands, and count me in as one who believes strongly in that. Local input and the best available science guide land management plan revisions, but unfortunately, congressional inaction has left many areas in Montana in limbo. The original intent of wilderness

study areas was for land management agencies to study and then make recommendations to Congress as to whether an area is suitable and should be made wilderness or should be released to general management and not suitable for wilderness. There is so much misinformation—and frankly, lying—going on on this issue, but I want to set the record very, very straight. Congress, then, must act on these recommendations. Montanans are tired of going through the process of studying, providing input on these areas, and then not seeing any action taken or resolution. The consequence of this inaction is unacceptable, and I am determined to fix it.

Following a multi-year, collaborative process with strong public comment, spanning multiple administrations, the three areas in my bill, covering just over 100,000 acres, have been deemed unsuitable for permanent wilderness. Let me say that again—multiple collaborations, over multiple administrations—have been deemed unsuitable for wilderness designation. These are the Hoodoo Mountain, Wales Creek, and the Middle Fork Judith Wilderness Study Areas. The bill is supported by both the Powell and Judith Basin County Commissions, as well as multiple outdoor recreation, timber, and ag groups. I ask unanimous consent to add the eight letters of support I have received into the record.

Senator BARRASSO. Without objection.

[The letters referred to follow:]

BlueRibbon Coalition
P.O. Box 5449
Pocatello, ID 83202
208.237.1008
brc@sharetrails.org

Ben Burr, Executive Director
BlueRibbon Coalition
P.O. Box 5449
Pocatello, ID 83202

February 11, 2025

Washington, D.C. Office
The Honorable Steve Daines
320 Hart Senate Office Building
Washington, DC 20510-2604
United States Senate

BlueRibbon Coalition (BRC) respectfully submits this statement for the Congressional Record in strong support of S. 3527, legislation to release certain Wilderness Study Areas (WSAs) in the State of Montana from their interim designation and to restore these lands to full multiple-use management.

BlueRibbon Coalition is a national organization representing outdoor recreationists, conservationists, and small businesses who are committed to responsible access, active land management, and the sustainable use of America's public lands. For decades, BRC has advocated for congressional resolution of long-standing WSAs that have remained in administrative limbo far beyond the timeframe originally envisioned by Congress under the Federal Land Policy and Management Act (FLPMA).

Temporary WSAs

When Congress enacted FLPMA in 1976, it directed the Bureau of Land Management (BLM) to inventory and study lands for potential inclusion in the National Wilderness Preservation System. Wilderness Study Areas were meant to be an interim designation—pending congressional action—not a permanent land management classification. Nearly fifty years later, many of these areas remain subject to restrictive, de facto wilderness management despite never being designated by Congress as wilderness.

This prolonged "study" status undermines congressional intent and creates uncertainty for land managers, local communities, and the recreating public. S. 3527 fulfills Congress's responsibility to resolve these designations and provides long-overdue clarity.

Wilderness Characteristics

Over time, on-the-ground conditions in many WSAs have changed significantly. Natural events such as wildfire, insect infestation, and storm damage, as well as historic routes, infrastructure, and patterns of recreational use, have altered the wilderness character of numerous areas. In many cases, BLM inventories and subsequent reviews have documented that certain lands no longer meet the criteria for wilderness designation.

Continuing to manage such areas under restrictive non-impairment standards despite changed conditions is inconsistent with both common sense and sound land management policy. S. 3527 appropriately recognizes these realities and releases lands that are no longer suitable for wilderness designation.

Non-impairments Standards

WSA non-impairment standards often limit the tools available to land managers to address pressing issues. Hazardous fuels reduction and wildfire mitigation, habitat restoration and range improvements, infrastructure maintenance and watershed projects.

By releasing these lands from WSA status, S. 3527 restores the flexibility necessary for active, science-based management consistent with the multiple-use mandate. Releasing a WSA does not eliminate environmental protections. These lands remain subject to NEPA, FLPMA, the Endangered Species Act, and all other applicable federal laws. Rather, release simply allows balanced management decisions that reflect current conditions and local needs.

Multiple Use

BRC strongly supports responsible recreation access, including motorized and mechanized use where appropriate. Prolonged WSA management has resulted in restricted access to historic routes and recreational opportunities that have existed for generations. In some cases, interim policies have been used to close routes or prevent maintenance of established access.

Congressional release restores the ability of agencies to manage these lands for a full range of uses, including outdoor recreation, grazing, wildlife habitat, and other traditional uses, in accordance with resource management plans and public input processes. Multiple use is not incompatible with conservation; it is the balanced approach Congress established for BLM lands.

Economic and Community Impacts

Local communities in Montana depend on access to public lands for recreation, tourism, grazing, and small business activity. Prolonged WSA uncertainty can hinder economic stability and long-term planning. Releasing these lands provides clarity for counties, small businesses, outfitters, and local governments while preserving continued public ownership and responsible stewardship.

Long-Standing WSAs

For decades, BRC has urged Congress to address WSAs that have been studied extensively and found unsuitable for wilderness designation. Allowing these areas to remain in indefinite administrative limbo effectively creates "wilderness by default," without the deliberation and vote required under the Constitution.

S. 3527 represents a lawful and appropriate exercise of congressional authority. It restores the balance intended by FLPMA, respects local input, and ensures that public lands are managed based on current conditions rather than outdated assumptions.

We appreciate Senator Daines' leadership in advancing this common-sense legislation and respectfully request that this statement be included in the Congressional Record.

Sincerely,



Ben Burr
Executive Director
BlueRibbon Coalition



Simone Griffin
Policy Director
BlueRibbon Coalition

GREAT FALLS BICYCLE CLUB

November 20, 2025

Dear Senator Daines,

The Great Falls Bicycle Club is a big supporter of the Montana Sportsmen Conservation Act. We also support the USDA's efforts to rescind the Roadless Rule. As frequent forest trail users and property owners, we appreciate your efforts to better manage our federal forests.

We understand that the bill aims to improve public access, enhance wildlife habitat restoration, and reduce wildfire risk by allowing for more active land management in the Middle Fork Judith WSA and other areas. As bicyclists, we want to pedal in the Middle Fork area and cannot given the current WSA designation.

T H A N K Y O U for your efforts to encourage multiple use in these areas. Our club and bicyclists in general are active supporters of the multiple use of our forests. Please keep up the good work.

Sincerely,

Officers of the Great Falls Bicycle Club

John Juras
President

Matt Matz
Vice President

Bryce Van Overbeke
Treasurer

JUDITH BASIN COUNTY
STATE OF MONTANA
STANFORD

COUNTY
COMMISSIONERS

PO BOX 427
STANFORD, MT 59479

June 1, 2022

Senator Daines
Washington D.C.

Honorable Senator Daines:

The Judith Basin County Commissioners would ask Congress to remove the Wilderness Study Area classification from the Middle Fork of the Judith River in the Little Belt Mountains and have the Forest Service manage the Area as non-wilderness.

Sincerely yours,

Don Hajenga, Chairman
Commissioners

Cody McDonald
Commissioner

Jim Moore
Commissioners



Dear Senator Daines,

Senator, we applaud your efforts to release these three WSA's in your bill. Montana Sportsmen for Fish and Wildlife is a non-profit grassroots Sportsmen's organization with hundreds of members that are hunters, ranchers and loggers, all Montana residents.

In a state often known for its outdoors and larger-than-life wildlife, we often hear a lot of discussion about the need to improve our wildlife's habitats. Recently, through a statewide planning process regarding elk management, much of the discussion by a citizen appointed committee was focused on improving our lands and increasing access to some elk populations that are as much as 300% over the state's objectives. Releasing public land from a Wilderness Study Area designation simply would allow land management agencies (US Forest Service and Bureau of Land Management) to help advance forest management projects for enhancing forest health, and providing habitat improvement for wildlife that all Montanans agree needs to happen. It is refreshing to see Senator Steve Daines, a hunter himself, not just talk the talk, but walk the walk.

Senator Daines' "Montana Sportsmen Conservation Act" removes one of the onerous layers of red tape that impedes the ability of Montanans to properly manage just over 100,000 acres of public land according to the best available science and public input.

Currently, and for nearly 50 years it has been harder or impossible to implement active measures to improve wildlife habitat due to Middle Fork Judith, Hoodoo Mountain and Wales Creek Wilderness Study Areas (WSA) designations, despite the recommendations of the US Forest Service and Bureau of Land Management recommending that these areas are not suitable for Wilderness designation.

This unnecessary designation not only prevents the agencies from doing what's best for the wildlife that call these WSA's home, but it completely silences the voices of Montanan's voices from the managing process.

Senator Daines' bill would return all three WSA's to general management by the controlling land agencies, this would empower Montanan's to be involved in decisions that are best for the lands they know and most of all, improve the habitats of wildlife in the area.

Importantly, under Senator Daines' bill the US Forest Service and the Bureau of Land Management will still be required to follow all existing strong environmental laws including the National Forest Management Act (NFMA), National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA), with federal protections like the Endangered Species Act (ESA) and the 2001 Roadless Rule remaining intact.

Returning these lands to general management, for example, the US Forest Service and the Bureau of Land Management would finally be able to implement vegetation management to restore wildlife habitats in the Middle Fork Judith WSA, specifically benefitting elk herds that are being pushed out of federal forests because of a lack of grazing opportunities onto private lands, which in some cases make the elk unavailable to Montana elk hunters and cause depredation issues on private lands.

If released from the WSA designation, the Hoodoo Mountain and Wales Creek WSA's would be managed as Backcountry Conservation Areas (BCA) or as Areas of Critical Environmental Concern (ACEC), which means that both would retain critical wildlife habitat protections while providing the land management agencies the flexibility to do needed work to manage and improve habitat. A BCA designation would help support wildlife-dependent recreation and hunting opportunities, and facilitate the long-term viability of big game wildlife populations.

These WSA's have become tinder boxes with dead diseased trees and in many cases nearly impossible to traverse because of dead fallen timber. Just this year the Hoodoo Mountain WSA was the source of a fire and thousands of acres burned to ash, this is what happens to these areas. Many counties in Montana such as Beaverhead county have vast amounts of acreage in WSA's, Beaverhead county alone has over 300,000 acres of these WSA's and they are negatively impacting sportsmen, ranchers and the logging industry. NGO's across the country fight these WSA releases, but the people that live here and are most impacted are begging to have them opened up.

Montanans know best on how to manage the wildlife we encounter every day, and not having the ability to manage and maintain habitats according to the best available science is a shame. I'm glad to see Senator Daines fighting to give Montanans the tools we need to manage our lands, manage our wildlife and protect our Montana way of life. MTSFW strongly supports "The Montana Sportsmen's Conservation Act".

Jeff Darrah
Executive Director
Montana Sportsmen for Fish and Wildlife
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MONTANA FARM BUREAU FEDERATION

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November 19, 2025

Senator Steve Daines
320 Hart Office Building
Washington, D.C. 20510

Dear Senator Daines:

The Montana Farm Bureau Federation (MFBF) applauds your efforts to make common sense updates to the management of the federally managed lands in our state. MFBF fully supports your legislative efforts to release the Hoodoo Mountain, Wales Creek, and Middle Fork Judith Wilderness Study Areas (WSA) from WSA status. Montana Farm Bureau Federation is the state's largest general agriculture organization, representing farmers and ranchers from across the state, many of whom make their living stewarding the land on private and public property. Your legislation will have a positive impact on rural communities in Powell, Judith Basin, and Fergus Counties and sets the stage to make even greater impacts statewide.

MFBF members support revoking Wilderness Study Area status on any and all WSAs that have been designated as such for five years or more and have failed to meet wilderness status qualifications. Given that the Hoodoo Mountain, Wales Creek and Middle Fork Judith WSAs have been designated for more than forty years, have failed to achieve wilderness status, and have even been recommended for release by their managing agencies, your bill takes appropriate action that is long overdue.

As you know, when lands are in a Wilderness Study Area status, they are often managed as wilderness, excluding some of the multiple uses federal lands were intended to serve. Our members believe that multiple use and proper management of public lands is in the public interest so returning these lands to a multiple use status is desired and beneficial.

Again, thank you for sponsoring this important legislation. We look forward to continuing the work of updating management of federal lands in common sense ways.

Respectfully submitted,

Cynthia Johnson
President

MONTANA OUTFITTERS & GUIDES ASSOCIATION
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Board of Directors
Chris Francis, President
Rod Paschke, President-Elect
Scott Vollmer, Vice President
Will Israel, Executive Director

November 23, 2025

Senator Steve Daines
U.S. Senate
Washington, DC 20510

Dear Senator Daines,

The Montana Outfitters and Guides Association, representing more than 3,500 licensed outfitters and guides statewide, strongly supports your Montana Sportsmen Conservation Act to release the Middle Fork Judith, Hoodoo Mountain, and Wales Creek WSAs.

For nearly 50 years these designations have blocked common-sense forest management and habitat work on over 100,000 acres of public land that our clients hunt every year. Releasing these WSAs will finally let the Forest Service and BLM treat fuels, regenerate forage, and improve access to elk and deer herds that are well above objective in many of these areas.

Your bill keeps every major environmental law intact while simply removing the one layer of red tape that has stood in the way of better wildlife habitat and better hunting. That's exactly the kind of practical solution Montana's outfitters and guides have been asking for.

Thank you for carrying this legislation and for standing up for Montana's working landscape and hunting heritage.

Sincerely,

Will Israel
Executive Director
Montana Outfitters & Guides Association

INNOVATION • LEADERSHIP • EXCELLENCE

February 9, 2026

Montana Stockgrowers Association

The Honorable Steve Daines
United States Senate
320 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Daines,

The Montana Stockgrowers Association (MSGA) supports the *Montana Sportsmen Conservation Act* (S.3527), which you have introduced to release certain federally designated Wilderness Study Areas (WSAs) in Montana, specifically the Middle Fork Judith, Hoodoo Mountain, and Wales Creek WSAs, from their current study status and return them to general public-land management.

Since 1884, MSGA has been dedicated to finding proactive solutions to the most difficult challenges facing Montana's cattle ranching families and those who graze livestock on public lands. Since the settlement of the West, particularly in Montana, ranchers have been responsible, environmentally conscious land managers in partnership with our state. In turn, these lands help to create many viable ranching operations for rural families, contributing to our local economies and providing excellent wildlife habitat.

Our organizations have historically supported the multiple uses of public lands and worked to develop better management strategies that improve the resource. Areas that have designated Wilderness or Wilderness Study areas create a unique set of management challenges. These designations place restrictions on a number of practices and can inhibit proper vegetation management, controlling noxious weeds and initial attack on range fires. The Middle Fork Judith, Hoodoo Mountain, and Wales Creek WSAs have all gone through a multi-year, science-driven, land management plan revision process, and the management plans recommend full release of the acres within the WSA boundary. Specifically to the Middle Fork Judith, if released, an additional 981 acres of suitable grazing land would become available.

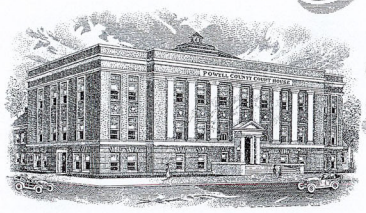
This legislation thoughtfully addresses decades-old study designations that no longer reflect current conditions or management needs. By returning these lands to general management, you are supporting land stewardship that benefits Montana's economy, rural communities, and the outdoor heritage that defines our state.

Thank you for your leadership in advocating for commonsense public-land policy that balances conservation with access, economic opportunity, and scientific land management.

Sincerely,

Raylee A. Honeycutt
Executive Vice President
Montana Stockgrowers Association

420 N California • Helena, MT 59601 • 406-442-3420 • www.mtbeef.org



COUNTY OF POWELL

409 Missouri Avenue, Suite 201
Deer Lodge, Montana 59722

The Honorable Steve Daines
US Senate
320 Hart Office Building
Washington, D.C 20510

Nov. 18, 2025

Dear Senator Daines,

Powell County fully supports your efforts in the management of our Federal Lands. We welcome the release of the Wales Creek Wilderness Study Area, and the Hoodoo Mountain (WSA) that are located in Powell County. These WSAs have been determined unsuitable for wilderness and should have been removed years ago, if Congress would have acted. Please let the BLM, in this particular case, manage our resources to restore a healthy forest that will benefit all citizens.

Thank you again Senator Daines for taking the lead on getting these WSA's released.

The Board of Powell County Commissioners fully support your action.

Respectfully,

Bill Hooker, Presiding Officer

Dan Sager, Member

Leonard Wortman, Member

Senator DAINES. I would also like to note that if this bill would be enacted, the lands included in it, as well as the Forest System as a whole, will continue to enjoy statutory protection from NEPA, the Endangered Species Act, the Clean Water Act, the Clean Air Act, CERCLA, FLPMA, and multiple other conservation and land management statutes and policies. I hope that sets the record straight, because there is a lot of misinformation about this issue. The Forest Service, with public input, also develops forest management plans and travel analysis reports. The Montana Sportsmen Conservation Act does not strip protections, but instead, improves the ability to restore wildlife habitats, enhance sportsmen opportunities, mitigate wildfire risk, and increase multiple-use opportunities for Montanans. Montanans have waited too long for Congress to act on these three WSAs. It's time to listen to the science, listen to those on the ground, respect the collaborative process with massive amounts of public input, and return these areas to general management with multiple conservation protections remaining in place, as I mentioned earlier.

I want to thank our witnesses for their attendance at today's hearing. I look forward to your testimony.

Senator BARRASSO. Thank you, Senator Daines.

Senator Heinrich.

OPENING STATEMENT OF HON. MARTIN HEINRICH, U.S. SENATOR FROM NEW MEXICO

Senator HEINRICH. Thank you, Chairman, and I want to thank both you and Ranking Member Cortez Masto for convening this Subcommittee hearing today. This hearing will add to the significant number of conservation bills ready for markup, and I look forward to working both with you and Chairman Lee to get them marked up, passed, and frankly, signed into law, most importantly.

I would like to highlight two of the bills that I have on the agenda that are widely supported in New Mexico. The first bill would implement a mineral withdrawal for four small parcels in the Placitas area, just north of Albuquerque. The threat of a gravel mine in the area and the particulate pollution that comes with it brought the community together to seek permanent protection for these parcels. The largest area, commonly known as the Buffalo Tract, is valued for hiking and outdoor recreation, but also serves as an important wildlife corridor between the Sandia Mountains to the south and the Sangre de Cristo Mountains to the north. These parcels are adjacent to a neighborhood and a community. There are literally several gravel mines only a few miles from the Buffalo Tract that are not controversial in this community because they are in an appropriate location. Further, the lands in this withdrawal proposal are culturally and ecologically significant to two Pueblos, two Native American tribes in New Mexico, who support this effort. For these reasons, it is an inappropriate location for gravel mining. This has been, literally, a decade-long effort, and I appreciate the support that the community as a whole has provided for this bill in past Congresses, from the local municipality, to the county, to the local tribes, and the neighborhood association. It goes on and on because this is not a controversial bill in my state.

My second bill would establish the Cerro de la Olla Wilderness within the Rio Grande del Norte National Monument, and this parcel encompasses Cerro de la Olla, which is a towering shield volcano over the Taos Plateau where the people of Taos have hunted, gathered herbs, and collected firewood for literally generations. The high elevation of Cerro de la Olla offers solitude and unparallelled views, while the surrounding landscape of the monument offers recreational opportunities, including whitewater rafting, fishing, hiking, and camping. Designating this wilderness will ensure that all the above values are preserved so that future generations can experience them.

In addition, this bill would make some minor adjustments to the boundaries of the Rio Grande del Norte National Monument to include recent Land and Water Conservation Fund acquisitions adjacent to the monument. The acquisitions will allow new public access to the monument, and increase opportunities for both recreation and traditional uses, but most importantly, we are further protecting these acquisitions from commercial development in an area that is renowned in New Mexico for its viewshed. LWCF acquisitions such as these are great examples of a community coming together to build economic development opportunities, to unlock access for pristine hunting opportunities, hiking, recreation opportunities, and provide an opportunity for protecting fragile and valuable landscapes. This bill is a major priority for the Taos community, including both the county, the Pueblo of Taos, the city, and I am proud to be able to offer this bill for consideration today.

Both of these bills have had literally years of support and been processed by this Committee in past Congresses with bipartisan support. Understanding that the Chairman of the overall Committee and I may differ in opinion about this type of conservation legislation, I hope that we will be able to have these bills considered and advanced on a markup short-list soon. And once again, I want to thank you, Chairman Barrasso, and the Ranking Member for having this hearing today.

Senator BARRASSO. Thank you, Senator Heinrich.

We are going to turn to the panel now, and it's an honor to introduce Mr. Ty Checketts this morning. Welcome to the Committee. He is President of the Association of National Grasslands. He is a Wyoming native from Newcastle, Wyoming. His wonderful wife, Becky, is here. She has joined us as well. Thank you, Becky, for being here this morning. Good to have both of you here. Ty ranches on his family operation. They run a thousand head of Black Angus on about 65,000 acres of both public and private land. He is a member of the Wyoming Stock Growers Association. He also holds a seat on the board of the Public Lands Council, and is a member of the National Cattlemen's Beef Association. Ty, I am very grateful that you are here today. I want to thank you for representing the ranchers across the United States.

I also want to take a moment to thank the other witnesses for joining us this morning, especially the Nevada State Director of the Bureau of Land Management, Mr. Jon Raby, and Associate Chief of the United States Forest Service within the U.S. Department of Agriculture, Mr. Chris French, who is a friend and regular witness to the Committee. Thank you both for coming here again. I would

also like to welcome Ms. Julie Regan, who is the Executive Director of the Tahoe Regional Planning Agency, and I look forward to hearing everyone's testimony this morning.

Mr. Checketts.

OPENING STATEMENT OF TY CHECKETTS, PRESIDENT, ASSOCIATION OF NATIONAL GRASSLANDS

Mr. CHECKETTS. Good morning, Chairman Barrasso, Ranking Member Cortez Masto, and other members of the Committee. I am grateful for the opportunity to be here to testify on Senate bill 2787, the Grasslands Grazing Act of 2025.

For background, my name is Ty Checketts. I am President of the Association of National Grasslands, and also serve as a board member on the Public Lands Council, a member of the Wyoming Stock Growers, and also NCBA, like the Senator said. Most importantly though, I am a husband and a father. Our operation is on the Thunder Basin National Grassland. My family and I own and operate the historic Fiddleback Ranch. We run on 65,000 acres. We run a thousand cows. Without our permits, it would be impossible for us to ranch on this scale.

ANG represents 30 national grasslands, grazing associations, and districts. There are 1,275 members that utilize one million AUMs of permitted grazing on four million acres on the national grasslands across the West. We work directly with our Forest Service friends to manage and improve these lands for long-term sustainability. Grazing on federal lands is diverse, but the laws governing it shouldn't create winners and losers. National grassland permittees have fewer rights than our friends on the BLM and National Forest lands. This inequity stems from FLPMA's final language in 1976. It originally included the national grassland permittees, but was later removed in committee, leaving them without due process protections under 43 U.S.C. 1752. As a result, the U.S. Forest Service created two classes of permits. Under 36 CFR 222.3, Forest Service permittees have more rights. National grassland permittees have fewer rights.

It requires a simple change in language to replace the words "lands within national forests" with "National Forest System lands." What this means for us as producers is, it gives us 10-year permits, priority for renewal, the preference system, written notice and opportunity to correct these issues before suspension or cancellation, and two-year notice before cancellation except in emergency. These are basic new process protections that BLM or Forest Service permittees currently enjoy. This bill simply puts national grasslands on equal standing. Long-term permits equals long-term stewardship, and allows us, as ranchers, to develop water, maintain fences, soil and forage improvements, and gives us financial stability. A 10-year permit gives our lenders the confidence so we can borrow the money we need to operate. Producers can plan and invest and stay on the land.

The average age of a rancher is nearly 60 years old. Over the next 20 years, 70 percent of ranch land will change hands. Young producers need predictability and sustainability to stay in the business. Since 2017, the U.S. has lost 17 percent of cattle ranches—more than 150,000 operations. The national herd is at a 75-year

low. Meanwhile, beef demand is up over nine percent from the past decade. We can't afford to lose more ranchers, and ranchers can't afford to lose more AUMs. The USDA's own plan calls for no net loss of AUMs. Sixty percent of the western beef herd grazes on federal lands. Fifty percent of the nation's breeding ewes do as well. Department of Interior estimates $1.5 billion in direct economic impact and $8.5 billion annually in ecosystem services. National grasslands are some of the highest quality of forage available. When you can plan, you can manage better and the land benefits.

Grasslands cover 25 percent of the Earth's surface and they store 34 percent of the global carbon. Grazing supports native grasses, which are so important to our ecosystem. It reduces invasive species, such as cheatgrass, lowers wildfire risk that destroys communities and costs millions, and supports biodiversity in our wildlife. The changes this legislation addresses only extend to U.S.C. 1752 due process rights, not all of FLPMA. The Conservation Practice program stays intact. Prior exemptions stay intact. Grazing associations keep their current structure.

Mr. Chairman, Ranking Member, members of the Subcommittee, Senate bill 2787 is a simple fix with enormous impact. It creates a uniform, equitable, and predictable framework for ranchers who rely on the national grasslands. It helps ensure the long-term viability of rural communities, rangelands, America's food supply, and ultimately, our national security.

Thank you for your time. I am happy to answer any questions.

[The prepared statement of Mr. Checketts follows:]

Testimony
on behalf of the

Association of National Grasslands
and Public Lands Council

with regard to:

Support for S. 2787, to amend the Federal Land Policy and Management Act of 1976 to ensure that ranchers who have grazing agreements on national grasslands are treated the same as permittees on other Federal land

submitted to the Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forestry, and Mining

Chairman John Barrasso
Ranking Member Cortez Masto

submitted by:

Ty Checketts
President, Association of National Grasslands
Owner/Operator, Fiddleback Ranch

Thursday, February 12, 2026
Washington, D.C.

Testimony of Ty Checketts, Owner/Operator of Fiddleback Ranch and President of Association of National Grasslands
Thursday, February 12, 2026
Senate Energy and Natural Resources Subcommittee on Public Lands, Forestry and Mining

Chairman Barrasso, Ranking Member Cortez Masto, and members of the subcommittee, I appreciate the opportunity to testify in support of S.2787, which would create parity across federal lands grazing permits and agreements. Grazing on federal lands is diverse both on the ground and in the laws that govern various kinds of agreements a producer may have with a federal agency. S.2787 recognizes that until now, producers who graze on national grasslands, managed by the U.S. Forest Service (USFS), have faced greater uncertainty and fewer tools when navigating permit renewal and opportunities to graze than their counterparts who graze on forest lands.

Currently, I serve as President of the Association of National Grasslands (ANG), which represents Grazing Associations and direct grazing permittees who work with USFS in the protection, improvement, development, and administration of the National Grasslands. In total, we represent 30 national grasslands, grazing associations, and districts for a combined 1,275 members that utilize one million animal unit months (AUMs) of permitted grazing on 4 million acres.

I also am a member of the Wyoming Stockgrowers, National Cattlemen's Beef Association, and have the privilege of holding a seat on the board of the national Public Lands Council. Most importantly, I am a husband and father trying to carve out a living as a rancher - playing my part to build a legacy for generations to come. My wife and I, with our children, own and operate the historic Fiddleback Ranch in northeastern Wyoming. It consists of rolling prairie with the Cheyenne River running through it. We run about 1,000 head of Black Angus cow/calf pairs on 65,000 acres. I love what I do, and grazing on federal lands makes my dreams - and our operation - viable. The benefit of this setup is that it is positive for both parties: me and the land.

Without the ability to graze on national grasslands, there would not be enough forage for my livestock, nor enough private land to access additional forage, to be able to ranch in Wyoming. Many Western and midwestern states are in the same situation – the federal government owns or controls so much of these states that integrating federal lands grazing allotments is the only way to have cattle and sheep production at scale. This access must be predictable and consistent, which unfortunately has not been the case for grazing associations and direct permittees whose authorizations emanate from the Bankhead-Jones Farm Tenant Act of 1937.

The Federal Land Policy and Management Act of 1976 (FLPMA) provides the guidelines for permits and agreements to be provided to direct permittees and grazing associations on lands managed by the Bureau of Land Management (BLM) and USFS. During the Congressional deliberations around FLPMA's origins, Congress discussed inclusion of National Grassland permittees in the language that provided due process protections of 43 U.S.C. §1752. The final version of FLPMA omitted the National Grassland permittees, granting those due process rights only to the National Forest and BLM permittees. These included the ability to renew permits with a preference position, the ability to engage with the relevant agency in negotiating conditions and grazing levels, and clear expectations that a permit or agreements should only be cancelled with

abundant notice. Each of these are important protections for producers who engage in this contractual agreement with a federal agency who are building businesses and livelihoods based on these agreements.

Because the final version of FLPMA did not afford protections to permittees equally, USFS developed 36 CFR 222.3. This regulation creates two classes of permits: one having more rights (permittees on Forest Service land) and the other having less (permittees and associations on National Grasslands).

S.2787 addresses this longstanding inequity by amending FLPMA to replace the words "lands within National Forests" with the words "National Forest System lands". With this simple change, National Grassland permittees would have access to the following tools:

1.) The ability to have a 10-year permit;

2.) First priority for receipt of new permit upon expiration of an existing permit (this is the "preference" position afforded to USFS and BLM permittees);

3.) Entitlement to written notice of any permit violations and an opportunity to achieve compliance before cancellation or suspension proceedings related to the permit; and

4.) Except in cases of emergency, no permit would be allowed cancelation without two (2) years prior notification.

The ability to have a longer-term permit provides producers the ability to plan for longer-term investments in the land, including water troughs, water pipelines, culverts, fences, soil amendments and forage treatments. This longer-term asset also creates a more stable financial balance so permittees can have access to capital, as a longer-term permit inherently brings more business stability. This business stability is crucial for the health and sustainability of rangelands, grasslands, and rural communities; each of these grazing agreements and permits are tied to management of a base property. Without the ability to plan for a longer-term grazing rotation and business operations, permittees face challenges in whether to continue operations. Loss of an allotment or grazing association permit puts increased pressure on their private land, and can lead to a producer selling out. Lack of predictability affects producer retention, and even the ability to recruit additional, new permittees over time. The average age of ranchers in the United States is 58.1 years old. More than 70 percent of farm and ranch land is going to change hands in the next twenty years, and without long-term predictability, many operations will face the decision of whether to sell, or gamble on future forage availability. Providing tools for grasslands permittees that are already available to BLM and USFS permittees will give the young ranchers more confidence to continue the long legacy of stewardship and continue producing high quality protein as part of our national food security.

The value of grazing on federal lands cannot be overstated. More than 60 percent of the western beef herd and more than 50 percent of the breeding ewes spend some time grazing on federal lands. Grazing generates billions in direct revenues for USFS and BLM, in addition to the billions in ecosystem services on an annual basis. National Grasslands are often some of the highest

quality grazable forage in the federal land portfolio, so the ability to provide greater predictability in grazing on these lands inherently improves management. When you plan ahead, you plan better.

Grasslands are diverse ecosystems, and grazing is the best way to manage them. As an ecosystem, grasslands cover approximately 25 percent of the Earth's surface and store approximately 34 percent of the world's carbon. The National Grasslands managed by USFS are no different, and grazing is the best way to ensure biodiversity and ecosystem resilience. Grazing, and the way we manage our rotations, mimics historic management of the grasslands and promotes retention of native grasses, fights the encroachment of invasive species, and reduces fire risk.

Because of the complex relationship between/among the expectations in regulation, Bankhead-Jones, and FLPMA, ANG wishes to clarify the following and urges the Committee to adopt the following positions when advancing S.2787:

1.) The intent of the amendment is only to make the due process and other rights of 43 U.S.C. §1752 available National Forest System permittees, and rather than extend all expectations of FLPMA to the National Grasslands. Extending other provisions may unintentionally change expectations for USFS administration, which would be disadvantageous for long-term management.

2.) The Conservation Practice program currently administered on the National Grasslands is intended to remain intact, as the Range Betterment Fund program contained in 43 U.S.C. §1751 is not changed or made applicable to the National Grasslands in any way by this amendment.

3.) The National Grasslands exemptions contained in the Public Rangelands Improvement Act (PRIA), specifically 43 U.S.C. §1907, are also intended to remain intact and not changed in any way by this amendment.

4.) The current program of issuing Grazing Agreements to Grazing Associations on the National Grasslands is intended remain intact; the Grazing Associations should continue to assume the privileges and rights of a term permit holder.

Mr. Chairman, the proposed legislation simply seeks to give National Grasslands permittees the same due process rights that the Bureau of Land Management and National Forest permittees currently enjoy. S.2787 will provide for stable and secure ten-year grazing agreements and permits. The modification sought by this legislation will, in fact, create a more uniform, equitable and less confusing framework for the relationship between the Forest Service managers and their rancher partners across the western portion of the United States. I thank you for your consideration and urge the Committee to advance this bill.

Senator BARRASSO. Thanks so much for being here.
Mr. Raby.

OPENING STATEMENT OF JON RABY, NEVADA STATE DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. RABY. Chairman Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee, thank you for the opportunity to testify on the bills on the hearing agenda related to the Bureau of Land Management.

My name is Jon Raby, and I am the State Director for the Bureau of Land Management in Nevada, an agency I have had the pleasure to work for for over 30 years. The BLM manages approximately 245 million surface acres located primarily in 12 western states and approximately 700 million acres of subsurface mineral estate. The Federal Land Policy and Management Act, or FLPMA, sets forth the BLM's multiple-use mission, directing that public lands generally be managed for a broad range of uses, such as energy development, livestock grazing, timber production, hunting and fishing, and recreation. FLPMA also requires BLM to manage public land resources on a sustained-yield basis for the benefit of current and future generations. Under the Trump administration, the BLM is managing the nation's public lands as national assets capable of growing our economy, helping balance the budget, and generating revenue for American taxpayers. These assets benefit all Americans. The BLM is working to fulfill the President's vision while protecting our beautiful lands and ensuring that America's public lands serve the American people.

Many of the bills on today's agenda further the Trump administration's goals and priorities, particularly those related to mineral development, fire management, recreation and access, and supporting local communities. The administration is committed to unleashing American energy as part of the broader agenda of strengthening the economy and lowering the cost of living, and the BLM is working to secure a reliable and resilient domestic supply of minerals.

BLM supports H.R. 3872, as it would expand the federal lands available for hardrock mineral development. This aligns with President Trump's direction to take immediate action to facilitate domestic mineral production to the maximum practical extent.

Wildfires threaten lives and livelihoods and cost our nation hundreds of billions of dollars annually. The current administration is focused on streamlining organizational structures and regulations, including those needed to address today's wildfire crisis. The BLM welcomes the Subcommittee's interest in hazardous fuels reduction and supports S. 1981 and H.R. 204.

Secretary Burgum recently reaffirmed the Department's commitment to expanding public access to the land and waters it manages by issuing Secretary's Order 3447, expanding hunting and fishing access, removing unnecessary barriers, and ensuring consistency across the Department of Interior lands and waters, which among other things, directs agencies to expand access and opportunities where compatible with law, safety, and conservation needs.

Under Secretary Burgum's leadership, the BLM is taking concrete steps to implement and expand access to individuals with disabilities. The BLM supports S. 2968's objective of preserving accessibility and expanding outdoor recreation opportunities for Americans with disabilities and recognizes the importance of ensuring access to public lands in a manner that is safe, predictable, and consistent with applicable law. We welcome the opportunity to work with the sponsor and the Subcommittee on the bill.

S. 3527 furthers the administration's recreation, timber production, and energy dominance goals while providing greater flexibility to manage and balance multiple uses, and the BLM supports the bill.

Several bills on the agenda propose management designations that would restrict motorized vehicle use, decrease public access, prohibit mineral development, and limit the ability of BLM to adequately manage and protect the lands in response to changing conditions, including the growing risk of wildfire and changing public needs. The BLM does not support the special designations, mineral withdrawals, and other restrictions imposed in S. 462, S. 1464, and S. 1497.

The BLM recognizes the challenges presented by irregular land ownership patters and believes that land conveyances are an important tool to ensure management strategies are effective and in the public interest. As such, the BLM supports the land conveyances proposed in S. 2554, S. 3493, and H.R. 952.

Finally, the BLM has no objection to H.R. 3937, and looks forward to working with the Subcommittee and the sponsor to ensure the review directed by the bill includes all relevant agencies and mineral materials.

Thank you for the opportunity to testify on these important bills. I look forward to your questions.

[The prepared statement of Mr. Raby follows:]

Statement of
Jon Raby
Nevada State Director
Bureau of Land Management
U.S. Department of the Interior

Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
Legislative Hearing

S. 462, Truckee Meadows Public Lands Management Act
S. 1464, Buffalo Tract Protection Act
S. 1497, Cerro de la Olla Wilderness Establishment Act
S. 1981, Strategic Grazing to Reduce Risk of Wildfire Act
S. 2554, Alaska Native Landless Equity Act
S. 2968, the Outdoor Americans with Disabilities Act
S. 3004, the Upper Price River Watershed Project Act
S. 3527, Montana Sportsmen Conservation Act
S. 3493, Carson City Public Land Correction Act
S. 3526, Protecting Unique and Beautiful Landscapes by Investing in California Lands Act
H.R. 204, Accurately Counting Risk Elimination Solutions Act
H.R. 952, Reversionary Interest Conveyance Act
H.R. 3872, MERICA Act
H.R. 3937, Wabeno Economic Development Act
S. 1349, Ruby Mountains Protection Act

February 12, 2026

Chairman Barrasso, Ranking Member Cortez Masto, and Members of the Subcommittee, thank you for the opportunity to provide testimony on the bills on the hearing agenda related to the Bureau of Land Management (BLM).

The BLM manages approximately 245 million surface acres, located primarily in 12 western states, and approximately 700 million acres of subsurface mineral estate. The Federal Land Policy and Management Act (FLPMA) sets forth the BLM's multiple-use mission, directing that public lands generally be managed for a broad range of uses, such as energy development, livestock grazing, timber production, hunting and fishing, and recreation. FLPMA also requires BLM to manage public land resources on a sustained-yield basis for the benefit of current and future generations.

Under the Trump Administration, the BLM is managing the nation's public lands as national assets capable of growing our economy, helping balance the budget, and generating revenue for American taxpayers. These assets benefit all Americans. By implementing Executive Order 14154, Unleashing American Energy, Executive Order 14225, Immediate Expansion of American Timber Production, and Secretary's Order 3435, Implementation of the Expanding Public Lands Outdoor Recreation Experiences Act, the BLM is working to fulfill the President's

vision to increase and expand responsible energy, mineral, and timber development, and recreational access, to ensure that America's public lands serve the American people.

The Department welcomes the continued support from Congress to sustain these, and other, critical reform efforts and looks forward to further collaboration on the topics on today's agenda.

S. 462, Truckee Meadows Public Lands Management Act

S. 462 provides direction for the future management of various Federal lands in Washoe County, Nevada. Specifically, the bill designates five wilderness areas; establishes five National Conservation Areas (NCAs); withdraws seven areas from entry and appropriation under the public land laws, from location and entry under the mining laws, and from operation of the mineral leasing, mineral materials, and geothermal leasing laws, subject to valid existing rights; and takes lands into trust for the benefit of three tribes. S. 462 also authorizes the conveyance of over 3,700 acres for public purposes to local communities and directs the sale of certain lands, totaling approximately 15,900 acres, for fair market value, with an additional 33 acres of public lands to be sold at less than fair market value for affordable housing purposes.

Analysis

The Department opposes S. 462 as it would withdraw nearly 950,000 acres of federal lands from multiple-use management through its designation of approximately 223,000 acres of wilderness, approximately 551,000 acres as NCAs, and approximately 174,000 acres in specified "withdrawal areas." The Department opposes broad withdrawals of public lands from future uses such as energy and mineral development, as these actions are contrary to the Administration's priorities of unleashing American energy and minerals and reducing our dependence on foreign sources. In addition, the withdrawal areas, wilderness and NCA designations would restrict some uses in the area, including motorized vehicle use, and would decrease public access. This would impede the BLM's ability to implement its multiple use mandate and fail to adequately protect or utilize the natural resources of this area.

While the Department opposes the bill for the reasons stated above, the Department supports the goals of the provisions in S. 462 conveying lands to local communities as they align with the Administration's priorities to support the economic growth of American communities and address the housing crisis, particularly in states with a high percentage of federal land ownership. In addition, the Department supports the provisions in S. 462 directing the conveyance of public lands for public purposes, noting that the BLM regularly leases and conveys lands to state, local, and tribal governments and nonprofit entities for a variety of public purposes under the Recreation and Public Purposes (R&PP) Act. In addition to minor technical edits to provisions regarding transfer of administrative jurisdiction to facilitate these conveyances, for DOI provisions, the Department recommends language clarifying that receiving entities may acquire the reversionary clause for these transfers at fair market value, and that they would also bear the administrative costs associated with conveying the reversionary interest.

Lastly, regarding the lands to be taken into trust for the benefit of the Pyramid Lake Paiute Tribe, the Reno-Sparks Indian Colony, and the Washoe Tribe of Nevada and California, the Department has no objection to these provisions, as these further the Administration's priority of

supporting tribal self-determination and increased economic opportunities for federally recognized tribes.

The Department defers to the U.S. Department of Agriculture (USDA) regarding provisions in the bill concerning the lands and interests administered by the U.S. Forest Service (USFS).

S. 1464, Buffalo Tract Protection Act

S. 1464, Buffalo Tract Protection Act, seeks to permanently withdraw nearly 4,300 acres of BLM land in New Mexico from mineral development under the mining, mineral, and geothermal leasing laws. It also allows for possible surface rights conveyance while retaining federal mineral rights.

Analysis

The Department opposes S. 1464 as it would limit development of important mineral sources. The permanent withdrawal of lands containing known deposits of construction materials directly conflicts with the Administration's commitment to strengthening domestic energy supply chains and reducing reliance on foreign sources. By withdrawing future access to federally managed resources essential for infrastructure development, the bill undermines energy and materials security while also constraining the BLM's ability to manage public lands for evolving priorities and sets an unnecessary precedent that weakens domestic resource resilience.

The BLM manages public lands under a multiple use framework that recognizes responsible energy and mineral development as a principal use of public lands, while also providing for recreation, grazing, and conservation. Under the leadership of President Trump and Secretary Burgum, the BLM has made environmentally responsible development of domestic minerals a priority. In communities across the country, mineral development of important commodities supports jobs, the American economy, and national security interests.

Additionally, the Buffalo Tract is known to contain large deposits of sand and gravel. The Mid-Region Council of Governments estimates that the population of the Albuquerque, New Mexico, metro area, which includes the community of Placitas, is expected to grow by 20% by 2040. Federal sand and gravel resources will be necessary to meet the future population demands for infrastructure in the area.

S. 1497, Cerro de la Olla Wilderness Establishment Act

S. 1497 would amend the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) to establish approximately 12,300 acres in the Río Grande del Norte National Monument in New Mexico as the Cerro de la Olla Wilderness.

The Río Grande del Norte National Monument lies north of Taos on the border with Colorado, and straddles New Mexico's Taos and Rio Arriba Counties. The area is comprised of rugged, wide-open plains at an average elevation of 7,000 feet marked by volcanic cones. The Department is concerned that the designation in the bill may present management challenges and be inconsistent with traditional uses that are of importance to local communities and the public. The Department opposes S. 1497.

Analysis
The Department does not support the proposed wilderness designation on public lands as we believe it is not the most appropriate mechanism to adequately protect the natural resources of this area. Through the land use planning process directed by FLPMA, the BLM allocates resources and determines appropriate multiple uses for the public lands, provides a strategy to manage and protect resources; and establishes systems to monitor and evaluate the health of resources and effectiveness of management practices over time. The proposed wilderness designation would limit the ability of the BLM to adequately manage and protect the lands in response to changing conditions, including the growing risk of wildfire and changing public needs. Alternative management approaches, outside of a wilderness designation, could conserve sensitive resources while still accommodating other uses and activities permitted within the monument.

S. 1497 would designate approximately 12,300 acres of land administered by the BLM as the Cerro de la Olla Wilderness within the Rio Grande del Norte National Monument. The Cerro de la Olla volcanic cone provides habitat for wildlife including deer, elk and antelope which bring both hunters and wildlife watchers to the area. In addition to providing opportunities for recreation, the area is used for grazing and the collection of firewood and piñon nuts. Local residents have expressed concern that a wilderness designation could diminish these uses, and the BLM is likewise concerned the wilderness designation may negatively impact local residents' abilities to use these lands for those purposes.

The proposed designation overlaps a significant portion, nearly 7,500 acres, of a reserve common grazing allotment that the BLM has set aside for the temporary use of permittees displaced due to wildfire, vegetation treatment, drought, and other issues. If designated, range improvements supporting the health of the reserve common allotment would have to comply with wilderness grazing guidelines. A wilderness designation would also influence the way in which the Department manages fire including hazardous fuels reduction and the use of motor vehicles and motorized tools. Currently, there are significant wildfire risks due to the buildup of hazardous fuels. In managing wildfire risk in the monument, the BLM utilizes fuel-reduction treatments, including mechanical, prescribed fire, and herbicide application, all while considering wildlife habitat, livestock grazing, vegetation, watershed quality, and weed management. The Department cannot support any proposed designation that would limit the necessary and available tools to maintain public lands and protect against wildfire.

S. 1981, Strategic Grazing to Reduce Risk of Wildfire Act
S. 1981 directs the Department and the USDA to develop a strategy to utilize livestock grazing as a wildfire risk reduction tool within 18 months of enactment. The strategy must consider the integrated use of advanced technologies, a workforce development plan, livestock grazing on vacant allotments, using "temporary" grazing permits and leases, and increasing the use of targeted grazing to reduce hazardous fuels, and control invasive annual grasses. The Department and USDA are also directed to provide technical assistance to communities and tribes recommending the use of targeted grazing. In developing the strategy, the Department and the USDA are directed to consult with state and local governments, tribes, utilities, firefighting agencies, outdoor recreation, conservation, and sportsmen organizations, and other interested community members. The Department supports efforts to create fire-resilient landscapes through

fuels management projects and recognizes that prescriptive livestock grazing can be a valuable tool in managing vegetation to reduce the rate of spread, intensity, and severity, of wildfire. The Department supports S. 1981.

S. 2554, Alaska Native Landless Equity Act

S. 2554 would amend the Alaska Native Claims Settlement Act (ANCSA) (P.L. 92-203) to authorize the Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to organize as Urban Corporations under Sealaska Corporation, the regional corporation for Southeast Alaska. The bill also directs the Secretary to convey approximately 23,000 acres of surface estate in the Tongass National Forest to each urban corporation, and to convey the subsurface estate underlying those same lands to Sealaska Corporation. S. 2554 further provides that Congress intends such conveyances to be made within two years from the date the corporations are formed.

Analysis

In 1971, Congress passed ANCSA, which settled aboriginal land claims in Alaska by entitling Alaska Native communities to select and receive title to 46 million acres of federal land. The Act established a corporate structure for Native land ownership in Alaska under which Alaska Natives would become shareholders in one of over 200 private, land-owning Alaska Native village, group, urban, and reserve corporations and/or one of 12 private, for-profit, land-owning regional corporations. Most Alaska Natives are enrolled in two corporations; the corporation representing the community where they lived in 1970 and a regional corporation.

Each regional corporation encompasses a specific geographic area and is associated with Alaska Natives who had traditionally lived in the area. For each corporation, whether village or regional, ANCSA provided at least two potential acreage entitlements through which it could select and receive ownership of Federal lands. Due to a monetary settlement prior to ANCSA (Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States, 182 Ct. Cl., 130, 389 F.2d 778, 1968), land entitlements in Southeast Alaska differ from those in the rest of the state. Section 16(a) of ANCSA withdrew lands for 10 specific Native villages located in Southeast Alaska, which did not include the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

As the Secretary of the Interior's designated survey and land conveyance agent, the BLM is the Federal agency tasked with transferring to federal lands in Alaska to the State of Alaska or to Native Alaskans. The BLM's Alaska Land Transfer program administers the transfer of lands to individual Alaska Natives under the Alaska Native Allotment and Alaska Native Veterans Allotment Acts, the transfer of 46 million acres to Alaska Native communities under ANCSA, and the conveyance of 104.5 million acres to the State of Alaska under the Alaska Statehood Act.

The BLM appreciates the Sponsor's efforts to resolve this long-standing issue regarding ANCSA eligibility for the Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell. The BLM would like to work with the Sponsor on several technical modifications to address potential issues, including ambiguity in Corporation classification based on the referenced section of ANCSA, and the potential conveyance of land with valid existing rights or contaminants to the new Alaska Native Corporations. Additionally, the BLM would like to

ensure all parcels identified are available to be transferred; and that previous and future allocations to regional corporations are unaffected by the bill. The BLM defers to the USFS on issues related to the land designated by the bill to be transferred, as the designated lands are all within the Tongass National Forest.

S. 2968, Outdoor Americans with Disabilities Act

S. 2968, Outdoor Americans with Disabilities Act, aims to increase motorized vehicle access on lands administered by the BLM and the USFS, and it directs the agencies to conduct travel management planning in a manner that prioritizes access to a wide variety of outdoor recreational activities, with input from state, local, and tribal governments.

Under the bill, the BLM and USFS would generally be precluded from closing existing roads on "disability-accessible land," which is defined as having at least 2.5 miles of roads designated as open to motorized vehicles per square mile of land, if such a closure would result in a net decrease in the total amount of road authorized for that use. This limitation would not apply to roads closed for up to one year, to address a temporary need or emergency, or to roads that pose a direct threat to the public health or safety of agency personnel or visitors. For roads closed for public health or safety reasons, the agencies would be required to provide for the nomination of new roads to be opened as alternatives and establish such roads within one year of the closure. Furthermore, road closures and new roads established as alternatives for those closures would be subject to streamlined environmental review.

In addition, the bill requires the BLM and USFS to consider reopening roads closed within the past 10 years on any lands that currently have less than 2.5 miles of road open to motorized vehicles per square mile. On such lands, the bill limits the agencies from closing roads that would be beneficial for fuels reduction treatments, wildfire response, and search and rescue activities and specifies that no other roads may be closed unless they meet the same temporary need, emergency, or public health and safety exceptions that would apply to the disability-accessible land. Finally, S. 2968 would require all roads with pending Revised Statute (R.S.) 2477 claims to remain open to motorized vehicles until those claims have been fully adjudicated by federal courts.

Analysis

The Department supports the bill's objective of preserving accessibility and expanding outdoor recreation opportunities for Americans with disabilities and recognizes the importance of ensuring access to public lands in a manner that is safe, predictable, and consistent with applicable law. Secretary Burgum recently reaffirmed the Department's commitment to expanding public access to the land and waters it manages by issuing Secretary's Order 3447, Expanding Hunting and Fishing Access, Removing Unnecessary Barriers, and Ensuring Consistency Across the Department of the Interior Lands and Waters, which among other things, directs agencies to expand access and opportunities where compatible with law, safety, and conservation needs.

Under Secretary Burgum's leadership, the BLM is taking concrete steps to implement expanded access for individuals with disabilities. These efforts include prioritizing accessibility during travel management planning, directing field offices to identify opportunities to improve

motorized access that supports inclusive recreation, and targeting infrastructure investments to enhance accessibility at high use recreation sites. The BLM is also strengthening coordination with state, local, and Tribal partners to ensure access decisions are informed by on the ground conditions and user needs while remaining consistent with law, safety, and conservation.

The BLM considers accessibility in travel management planning, recreation site development, and facility design, and the agency routinely works with partners to identify and maintain accessible routes. To date, the BLM has incorporated approximately 110,000 miles of roads and trails into its transportation system through the completion of 154 travel management plans. An estimated 400,000 miles of routes remain to be inventoried and evaluated.

Clear guidance is important to ensure the bill's requirements can be implemented effectively while maintaining compliance with existing statutory obligations. The Department notes that certain provisions of the bill would benefit from technical clarification to ensure consistency with the BLM's multiple use mandate under the Federal Land Policy and Management Act. For example, the bill establishes a fixed mileage threshold to define disability-accessible land, which may not adequately account for site-specific conditions such as terrain limitations, resource protection needs, or public safety considerations. While the Department supports the bill's provisions that streamline environmental review for certain road and trail actions, including the use of categorical exclusions where appropriate, other provisions establishing a presumption of management direction without appropriate discretion may unduly constrain agency decision making needed for effective land management.

We look forward to working with the Sponsor and the Subcommittee on technical refinements and also welcome the opportunity to work collaboratively on ways to resolve R.S. 2477 claims more quickly and efficiently.

S. 3004, Upper Price River Watershed Project Act

S. 3004, Upper Price River Watershed Project Act would convey approximately 124 acres of BLM managed public lands in the City of Price, Utah, for public purposes.

Analysis

While the bill does not currently identify the specific public purposes for which the land will be used, the Department's understanding is that the conveyance is intended to facilitate the construction of a reservoir to increase and maintain safe and reliable supplies of water for the local community, increase water conservation, and improve water delivery efficiency in the Upper Price River Watershed in Carbon County, Utah. The USDA Natural Resource Conservation Service (NRCS) is currently evaluating different options for the proposed reservoir and associated infrastructure, including the potential re-routing of a local road, with input from the BLM and Bureau of Reclamation.

The Department supports S. 3004 and would welcome the opportunity to work with the Sponsor and the Subcommittee on a few technical modifications to the bill that we believe would aid implementation and increase consistency with previous legislated public purpose conveyances.

S. 3527, Montana Sportsmen Conservation Act

S. 3257 would release nearly 104,000 acres of public lands managed by the BLM and the USFS from designation as Wilderness Study Areas (WSAs). Under the bill, 22,960 acres of BLM-managed WSAs would be released from management under Section 603 of FLPMA, and 81,000 acres of lands managed by the USFS would be released from management under section 3(a) of the Montana Wilderness Study Act of 1977. The Department supports by the bill, and as a matter of policy supports Congressional action to resolve wilderness designation and WSA release issues on public lands across the West.

Analysis

FLPMA provides direction on the retention and management of lands administered by the BLM. Section 603 of FLPMA directed the BLM to first identify areas with wilderness characteristics – this step was completed in 1980. The second step of the process was to study each of the WSAs and make a recommendation to the President on their suitability or non-suitability for preservation as wilderness – this step concluded in 1991. The President was then directed to send wilderness recommendations to Congress within two years of receiving the Secretary of the Interior's recommendation.

The President's 1992 and 1993 wilderness recommendations to Congress are now over 30 years old; and many WSAs are still pending Congressional action. Today, WSAs are managed by the BLM so as not to impair their suitability for designation as wilderness. The Hoodoo Mountain and Wales Creek WSAs were not recommended for wilderness designation in the 1991 recommendation to the President.

S. 3527 directs the release of the Hoodoos Mountains and Wales Creek WSAs and directs the BLM to manage these lands in accordance with the applicable land management plans upon release. The Missoula Resource Management Plan (RMP) directs that upon release the Hoodoo Mountain WSA, nearly 11,400 acres would be managed as part of the adjacent Hoodoos Backcountry Area (BCA). As a BCA, the lands would be used for dispersed wildlife-dependent recreation opportunities, such as hunting and wildlife-viewing, and to restore and enhance wildlife habitat for big game-species. Leasable and mineral materials could be considered on a more case-by-case basis, active forest management practices could be used to address forest health issues, and the use of heavy equipment to suppress wildland fire would be appropriate under more circumstances. Upon release of the Wales Creek WSA, nearly 6,000 acres would be managed as part of the Wales BCA, which would be managed similarly to the Hoodoos Mountains BCA, and the remaining approximately 5,600 acres would be managed as the Wales Creek Area of Critical Environmental Concern.

The Department does not find that wilderness is the best mechanism for managing the resources on these lands. The Missoula Resource Management Plan provides for resource protection, recreation, development, vegetation management, wildland fire, and resource development upon release of the WSAs. S. 3527 supports the Administration's recreation, timber production, and energy dominance goals while providing greater flexibility to manage public lands under the principle of multiple use and the Department supports the bill.

S. 3493, Carson City Public Land Correction Act

S. 3493 provides for the conveyance of approximately 1,300 acres of BLM-managed lands to Carson City (City), Nevada, subject to valid existing rights and without consideration, for public purposes consistent with the R&PP Act. The legislation also authorizes the city to enter into an agreement with third-parties to sell, lease, or convey at fair market value all or part of about 75 acres of land owned by the City for economic development, recreation, or other public purposes. Under S. 3493, BLM must also conduct one or more sales of approximately 380 acres of federal land to qualified bidders with provisions for the City's retention of certain easements for utilities. Finally, the bill directs the conveyance of less than an acre of land managed by the USFS for the expansion of a roadway.

Proceeds from the sales of the BLM-managed lands would be deposited in the Carson City Special Account, which would be available to reimburse the cost of any surveys and appraisals for lands that are conveyed to the City, conduct wildlife habitat and restoration projects, and complete hazardous fuels reduction efforts, among other activities.

Analysis
The Department supports the goals of the land conveyance provisions in S. 3493 as they align with the Administration's priorities to support the economic growth of local communities and address the housing crisis, particularly in states with a high percentage of federal land ownership. In addition, the Department supports the provisions in the bill directing the conveyance of public lands for public purposes, noting that the BLM regularly leases and conveys lands to state, local, and tribal governments and nonprofit entities for a variety of public purposes under the R&PP Act.

We would like to work with the Sponsor and the Subcommittee on a few modifications to the bill language to address some technical issues, clarify the legislative map, and adjust timeframes. The Department defers to the USDA regarding the proposed conveyance of USFS-managed lands.

S. 3526, Protecting Unique and Beautiful Landscapes by Investing in California Lands Act
S. 3526, PUBLIC Lands Act, would designate nearly 550,000 acres of wilderness, including over 82,000 acres of land managed by the BLM. The bill would designate over 700 miles of wild and scenic rivers (WSR) spread among lands managed by the BLM, NPS and USFS establish the 871,414-acre South Fork Trinity-Mad River Restoration Area on lands managed by USFS and BLM. The Department is concerned that certain designations in the bill may present management challenges and be inconsistent with existing land uses, including resource development and other uses that are of importance to the public. As a result, the Department opposes S. 3526.

The Department defers to the Department of Agriculture regarding provisions in the bill concerning the lands and interests administered by the USFS.

Analysis
The Department opposes the bill's proposed designations that would withdraw resources from development and limit the management flexibilities needed to address the health of public lands including wilderness, wild and scenic rivers, and the restoration area. The proposed

designations are not the most appropriate mechanism to implement the BLM's multiple use mandate and do not adequately protect or utilize the natural resources of this area. The BLM's land use planning process provides the agency with the authority to adequately manage and protect the lands in response to changing conditions, including the growing risk of wildfire, changing public needs, and national security. Alternative management approaches, outside of designations that obstruct the land use planning process, could conserve sensitive resources while still accommodating other uses and activities.

Title I, Forest Restoration

Title I establishes the 871,414-acre South Fork Trinity-Mad River Restoration Area on lands managed by USFS and BLM, withdraws the restoration area from operation of the public land, mining, and mineral leasing laws, subject to valid existing rights, and establishes the California Public Land Remediation Partnership among multiple entities to remediate impacts from illegal marijuana cultivation on public lands. The Department opposes the proposed withdrawal as it runs counter to the Administration's energy dominance goals and would limit potential development of energy and mineral resources.

Title II, Recreation

Title II authorizes a study for the Bigfoot National Recreation Trail. The proposed trail route is primarily on USFS-managed lands, with less than three trail miles crossing BLM-managed public lands. Title II also provides that the Department and USDA may establish a visitor center in Del Norte County, California and directs the study establishing overnight accommodations on Federal lands near Redwood National and State Parks. The Department makes it a priority to provide access to the outdoors and to offer exceptional recreation opportunities on public lands.

Title III, Conservation

Title III creates or expands 32 wilderness areas and creates two potential wilderness areas, including 12 on BLM-managed lands, on over 550,000 acres of Federal land in northwestern California. These designations are on lands managed primarily by the USFS and include approximately 82,000 acres of BLM managed lands. Additionally, Title III would designate nearly 700 miles of new wild and scenic rivers.

The proposed wilderness designations create conflicts with existing uses which makes manageability as wilderness challenging. Recreational use has dramatically increased on public lands throughout the West, including in California. While many recreational activities, such as hunting, fishing, and hiking are compatible with wilderness designation, others, such as mountain biking and off-highway vehicle use, are not. Further, the proposed wilderness designation would increase the risk of wildfire by complicating hazardous fuels reduction and forest management activities. For these reasons, the BLM opposes this provision in the bill and does not find that this wilderness designation is the best mechanism for managing the resources on these lands.

The Department is also concerned that the relatively large number of existing resource uses in these proposed wild and scenic river designations and respective corridors would make it difficult for the BLM to manage them in a manner consistent with the requirements of the Wild

and Scenic River Act. As such, the Department opposes both the proposed wilderness and wild and scenic river designations.

H.R. 204, Accurately Counting Risk Elimination Solutions Act

H.R. 204 would establish new reporting requirements for hazardous fuels and directs the Department and USDA to include information on hazardous fuels reduction activities in the materials submitted in support of the President's budget, as well as on a public website. The bill directs that acres are reported only once regardless of the number of treatments conducted on those acres. Lastly, H.R. 204 directs the Comptroller General of the United States to conduct a study on the implementation of the act two years after enactment.

Analysis

The Department supports the bill and recommends minor technical edits to facilitate implementation and provide greater transparency in reporting.

The Department notes that using "acres treated" as a metric for assessing wildfire risk reduction efforts may not effectively illustrate the intensive work required to successfully treat certain high-risk areas. For example, small areas with dense fuel loads may take multiple rounds of treatment to reduce hazardous fuels but ultimately result in a significant reduction to wildfire risk to people or infrastructure. New models for better assessing the efficacy of fire risk reduction are currently in development and may ultimately provide more useful and informative metrics compared to solely using acres treated. Further, the Department recommends that the Sponsor consider revising the definition of "hazardous fuels reduction activity" to include other methods commonly used, such as manual, chemical, and biological treatments. Finally, while DOI reports on accomplishments annually, there is a delay between the end of the fiscal year and the reporting date to allow for the compilation of the information.

The Department supports reporting improvements to capture the actual, accurate acreage where hazardous fuel reduction activities are conducted and recommends expanding the definition of "hazardous fuels reduction activity" and adjusting the reporting dates accordingly to ensure the Department can provide the most accurate and responsive information.

H.R. 952, Reversionary Interest Conveyance Act

H.R. 952 provides for the conveyance of the Federal reversionary interest in approximately eight acres of land located in Sacramento, California. Under the bill, the conveyance would occur upon payment of fair market value by eligible landowners, the value of which would be determined through an appraisal by the Department of the Interior's Appraisal and Valuation Services Office. The buyer would be responsible for all associated costs including the appraisal. Finally, H.R. 952 directs the proceeds of the conveyance to the Federal Land Disposal Account, as established by section 206(a) of the Federal Land Transaction Facilitation Act (FLTFA).

Analysis

FLPMA, which is the authority under which BLM generally disposes of public land or interests, requires receipt of fair market value for public lands or interests transferred out of public ownership. This serves to ensure that taxpayers are fairly compensated for the conveyance of such lands and interests. Disposing of outdated or unnecessary federal interests, while ensuring

taxpayers are compensated, is a responsible way to prioritize economic development and ensure a fair return to the American taxpayers. As such, the Department supports H.R. 952.

In the mid-19th century, Congress encouraged westward expansion and private investment in infrastructure through measures like the Pacific Railroad Act of 1862, which granted rights-of-way (ROW) to the Union Pacific and the Central Pacific railroad companies. These ROWs included a reversionary interest held by the United States if the land was no longer used for railroad purposes. Over time, this property has transitioned to private, residential, and commercial use. The BLM does not have a programmatic need for the parcels yet retains a future reversionary interest, which is contingent on Union Pacific's abandonment of the entire railroad right-of-way. H.R. 952 would allow for the streamlined disposal of the subject property, providing certainty for eligible property owners and facilitate economic use of the land.

H.R. 3872, MERICA Act

H.R. 3872 amends the Mineral Leasing Act for Acquired Lands (MLAAL) to establish that all lands acquired by the federal government are eligible to be considered for hardrock mineral leasing, including those where leasing authority did not previously exist.

Analysis

The Department's authority to issue prospecting permits and leases for hardrock minerals on lands acquired by the United States is currently limited to certain lands acquired under the authority of just a handful of statutes, all of which are listed in 43 C.F.R. 3503.13. The authority to issue hardrock leases does not extend to other acquired lands beyond those listed. Under the MLAAL, the Department has the authority to issue leases for oil, gas, coal, phosphate, sodium and potassium on all lands acquired by the United States. However, the MLAAL does not include the authority to lease hardrock minerals on lands acquired by the United States. This creates barriers for the recovery of minerals needed for economic and national security. For example, lithium – currently in high demand for a variety of industrial, medical, and everyday uses – has been identified in the Smackover Formation in the southeastern United States, including parcels acquired by the United States on which the Secretary is not currently authorized to issue hardrock leases or prospecting permits on acquired lands because there is no statutory authority to do so.

As stated by President Trump in EO 14241, Immediate Measures to Increase American Mineral Production, it is imperative for our national security that the United States take immediate action to facilitate domestic mineral production to the maximum possible extent. The Department supports H.R. 3872, which would expand the federal lands available for hardrock mineral development, further supporting the President's discretion. The Department recommends that the Sponsor consider adjusting the definition of hardrock minerals so that it specifically excludes deposits of phosphate and gilsonite to align the bill with established statutory and regulatory definitions. We look forward to working with the sponsor and the subcommittee to address this and other technical issues with the bill.

H.R. 3937, Wabeno Economic Development Act

H.R. 3937 would convey approximately 14 acres of National Forest System lands to Tony's Wabeno Redi-Mix, LLC, located in the Chequamegon-Nicolet National Forest in Wisconsin.

The bill also directs the Secretary of the Interior, in consultation with the heads of other relevant Federal agencies, industry stakeholders, and State permitting authorities, to conduct a comprehensive review of and submit a report to Congress on the Federal permitting processes for the development of stone, sand, and gravel on Federal lands.

Analysis

Non-energy mineral development on Federal lands is essential to the American economy and mineral materials, such as sand, gravel, soil, and rock used in everyday construction are some of our most basic natural resources. These mineral materials are generally bulky and have low unit prices, while their weight makes transportation costs very high. This makes adequate local supplies of these basic resources vital to the economic life of any community.

In implementing President Trump's Memorandum on Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis, the BLM is developing a Community Pits Mapper that provides a mobile friendly map showing the location of existing community pits, available materials, pricing and contact information. The tool also highlights areas where mineral materials may be available outside community pits, allowing the public to use the new tiered system or request the opening of new pits. By expanding access to common construction materials and simplifying the process, the Department is helping lower construction costs, support local economic growth and advance the administration's goal of making housing and infrastructure more affordable.

The authority for disposal of mineral materials is generally within the jurisdiction of the federal land management agency that holds these common minerals. The BLM manages these minerals under the Materials Act of 1947, as amended by the Surface Resources Act of 1955, on BLM lands and sells them to the public at fair market value, but gives them free to states, counties, or other government entities for public projects. The Surface Resources Act also provides the Secretary of Agriculture with equivalent and independent authority over common minerals on U.S. Forest Service lands.

The BLM has no objection to the bill and recommends that the bill's provision directing a review of the permitting process for these materials be directed to both the Secretary of the Interior and the Secretary of the Agriculture because the Department of Agriculture has distinct authority and implementing regulations, and maintains data regarding internal processing times and workflow. The BLM also recommends expanding the scope of the review to cover all mineral materials, which also include common varieties of pumice, pumicite, cinders, and clay, rather than limiting the review to only stone, sand, and gravel. In addition, the BLM notes that the bill's requirement to meaningfully engage other stakeholders, such as industry groups, State agency groups through the Association of American State Geologists, and other interested parties within 180 days may be challenging. Lastly, the BLM would like to work with the Sponsor on a minor technical edit regarding the submission of recommendations for actions following the review.

The BLM defers to the Forest Service regarding the bill's land conveyance provision which applies to U.S. Forest Service lands.

S. 1349, Ruby Mountains Protection Act

S. 1349 provides for the withdrawal from the operation of mineral leasing laws of approximately 309,272 acres of land managed by the USFS in the Ruby Mountains Subdistrict of the Humboldt-Toiyabe National Forest and approximately 39,926 acres of land managed by the U.S. Fish and Wildlife Service (Service) as part of the Ruby Lake National Wildlife Refuge (Refuge), subject to valid existing rights and with an exception for noncommercial refuge management activities by the Service.

The Department appreciates the Sponsor's interest in the Refuge, which provides wildlife habitat and high-quality hunting and fishing opportunities for the American people. However, the Department does not support S. 1349 as it is not necessary for the continued successful management of these public lands. The Service currently possesses sufficient authorities for appropriate management of the Refuge to increase opportunity for use and enjoyment of all Americans.

The Department defers to USFS regarding the bill's provisions affecting lands under their jurisdiction.

Conclusion

As the Department carries out its mission, we remain committed to meeting the high standards of this Administration and Congress. Thank you for the opportunity to testify and I'm happy to answer any questions the Subcommittee might have.

Senator BARRASSO. Thanks so very much.
Mr. French.

OPENING STATEMENT OF CHRISTOPHER FRENCH, ASSOCIATE CHIEF, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. FRENCH. Good morning. Thank you, Chairman Barrasso, Ranking Member Cortez Masto, and other members of the Subcommittee. It is my pleasure to be here today. Today, I will present the views of the U.S. Department of Agriculture on 16 bills that pertain to the U.S. Forest Service.

I am Chris French. I am the Associate Chief of the U.S. Forest Service, and in the wide-ranging nature of the bills we are discussing today, I think that when you look at all of them, it really demonstrates the breadth of the work that we do at the USDA Forest Service. The American people use national forests and grasslands for essential activities that support economies, ways of life, and American prosperity. Ranchers, loggers, miners, and recreationists, among others, rely on accessing these lands for their families, businesses, livestock grazing, timber harvesting, hunting and fishing, recreation, and mineral and energy development, all of which we will be discussing today in these bills.

While the work we do on behalf of the American taxpayer is largely focused on delivering services locally, we recognize that management of our lands has broader regional and national impacts. So, I hope that today's discussion showcases the many ways in which national forests and grasslands provide benefit and opportunity to the entire country. While our positions vary across the bills, our testimony expresses our willingness to sit down and work with bill sponsors and the Subcommittee on the ideas they put forward. As always, I defer to the Department of the Interior for its views on the elements of these bills that would impact lands under its jurisdiction. Many of the bills included in today's hearing align with the Forest Service's commitment to ensuring the National Forest System lands are accessible and productive to the American people.

S. 2968 updates the Forest Service travel management and motor vehicle use plans in order to facilitate access to a variety of recreation opportunities for all Americans. H.R. 3872 expands opportunities for hardrock mineral leasing on federal lands. S. 2787 and S. 1981 promote grazing on national forests and grasslands, ensuring streamlined implementation of permitting and the use of grazing as a strategic wildfire risk reduction tool. We support the goal of all of these bills and we hope to work further with the bill sponsors on any technical adjustments.

H.R. 204 supports the Agency's ongoing efforts to build trust with the American public around the work we do, and in this case, our efforts to reduce wildfire risk. We support this bill and would like to work with the sponsor to ensure the bill's reporting requirements fully capture wildland fire risk to communities, the scope and effectiveness of our treatment efforts, and the associated cost to the American people.

The remaining 11 bills under discussion today direct land-based changes in specific geographies. Across these bills, the Forest Serv-

ice is committed to working with communities, tribes, and other local entities to resolve issues related to land uses. The Agency is similarly committed to working with you, Congress, to ensure that the bills' text achieves your intent. Across these bills, we do not support actions that limit our management flexibility or conflict with executive orders and other administration policies. To this end, the administration does not support further mineral withdraws from the federal, state and/or additional wilderness or wild and scenic river designations that limit our management.

While our written testimony details some local concerns, in general, we support land conveyances, transfers, and disposals that make sense for our communities. In my experience, the legislative language directing these actions can often directly affect the agency timelines to complete them. We want to make sure that we are responsive and we meet your expected time frames established in the bills. So, for that reason, we hope to work with you to ensure that the bill language directing these actions facilitates prompt execution through the use of consistent language that streamlines our process requirements, reduces burden on agency resources, and effectively achieves the congressional intent.

That concludes my testimony. I look forward to your questions and the opportunity to testify here today.

[The prepared statement of Mr. French follows:]

STATEMENT OF

CHRISTOPHER FRENCH, ASSOCIATE CHIEF

U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS, FORESTS AND MINING

REGARDING:

H.R. 204 – ACCURATELY COUNTING RISK ELIMINATION SOLUTIONS (ACRES) ACT

S. 462 – TRUCKEE MEADOWS PUBLIC LANDS MANAGEMENT ACT

S. 1349 – RUBY MOUNTAINS PROTECTION ACT

H.R. 1829 – APACHE COUNTY AND NAVAJO COUNTY CONVEYANCE ACT OF 2025

S. 2554 – ALASKA NATIVE LANDLESS EQUITY ACT

S. 2787 – GRASSLANDS GRAZING ACT OF 2025

S. 2968 – OUTDOOR AMERICANS WITH DISABILITIES ACT

S. 3493 – CARSON CITY PUBLIC LAND CORRECTION ACT

S. 3526 – A BILL TO PROVIDE FOR THE PROTECTION OF AND INVESTMENT IN CERTAIN FEDERAL LAND IN THE STATE OF CALIFORNIA, AND FOR OTHER PURPOSES

S. 3527 – MONTANA SPORTSMEN CONSERVATION ACT

H.R. 3937 – WABENO ECONOMIC DEVELOPMENT ACT

S. 2417 – STAR-SPANGLED SUMMIT ACT OF 2025

S. 2754 – CRYSTAL RESERVOIR CONVEYANCE ACT

S. 1981 – STRATEGIC GRAZING TO REDUCE RISK OF WILDFIRE ACT

H.R. 3872 – MERICA ACT OF 2025

S. ___ – SANTINI-BURTON MODERNIZATION ACT OF 2026

FEBRUARY 12, 2026

Chair Barrasso, Ranking Member Cortez Masto, and Members of the Subcommittee, thank you for the opportunity to appear before you today to provide testimony on 17 bills: H.R. 204 "Accurately Counting Risk Elimination Solutions Act," S. 462 "Truckee Meadows Public Lands Management Act," S. 1349 "Ruby Mountains protection Act," H.R. 1829 "Apache County and Navajo County Conveyance Act of 2025," S. 2554 "Alaska Native Landless Equity Act," S. 2787 "Grasslands Grazing Act of 2025," S. 2968 "Outdoor Americans with Disabilities Act," S.

3493 "Carson City Public Land Correction Act," S. 3526 "A Bill to Provide for the Protection of and Investment in Certain Federal Land in the State of California," S. 3527 "Montana Sportsmen Conservation Act," H.R. 3937 "Wabeno Economic Development Act," S. 2417 "Star-Spangled Summit Act of 2025," S. 2754 "Crystal Reservoir Conveyance Act," S. 1981 "Strategic Grazing to Reduce Risk of Wildfire Act," "H.R. 3872 "MERICA Act of 2025,) and S. __ "Santini-Burton Modernization Act of 2026."

A number of these bills include U.S. Department of the Interior (DOI) equities. We defer to DOI for its view on elements that would impact federal lands under its jurisdiction.

H.R. 204, "Accurately Counting Risk Elimination Solutions (ACRES) Act"

H.R. 204 requires the U.S. Department of Agriculture (USDA) and Department of the Interior (DOI) to include a publicly available report on hazardous fuels reduction activity acres in the yearly President's Budget. This report must account for each acre only once regardless of whether multiple hazardous fuels reduction activities were carried out on that acre during the year. In addition, the report must identify the following: the location of the acres and if they are in the wildland-urban interface; the level of wildfire risk on the first and last day of the reporting period; the types of hazardous fuels activities completed; the cost per acre by treatment type; and the effectiveness of the hazardous fuels reduction activities on reducing wildfire risk.

The bill also requires the USDA and DOI to implement standardized procedures for tracking data related to hazardous fuels reduction activities. These procedures must include standardized data reviews of the accuracy and timely input of data used to track hazardous fuels reduction activities; verification methods that validate the data; an analysis of the effectiveness of the hazardous fuels reduction activities on reducing the risk of wildfire; and methods to distinguish which acres are located within and outside of the wildland-urban interface.

Further, the USDA and DOI are required to provide a report within two weeks after implementing the standardized procedures required describing the procedures and program and policy recommendations to address any limitations in tracking data related to hazardous fuels reduction activities. Not later than two years after the date of enactment, the Government Accountability Office shall conduct a study on the implementation of this Act, including any limitations with respect to reporting hazardous fuels reduction activities or tracking data related to hazardous fuels reduction activities.

The USDA agrees that accurately tracking hazardous fuels treatments and the reduction of wildfire risk to communities is important for accountability to the American public and will help provide a comprehensive understanding of wildfire risk reduction. Tracking each dollar spent improves our understanding of the funding needed to achieve the desired risk reduction to communities and better maintain our landscapes. Reducing risk often requires multiple treatments, such as mechanical thinning followed by prescribed fire, over a short period of time to achieve the desired risk reduction. Each treatment contributes to reducing risk. Once this phase is complete, treated

acres can be moved to a longer-term maintenance strategy to ensure risk is maintained at a reduced level through low-cost thinning or burning treatments conducted at the appropriate time scales, on average every 10 to 15 years. The USDA agrees that tracking risk reduction on an acre-by-acre basis provides essential information on how effective our treatment strategies are in protecting communities and creating resilient landscapes. The USDA also sees benefit in tracking and reporting on how many acres are treated with prescribed fire and how many acres have been thinned with mechanical or other treatments. We believe this approach enhances the ability of decisionmakers and the public to understand the connection between risk reduction and financial accountability.

The USDA supports the reporting of treatment locations, type of treatment, and cost of treatment across the landscape annually. The timing outlined in the bill on the first and last day of the reporting cycle will require continued development of metrics. Currently, the Forest Service has metrics to evaluate fire risk to communities, and these metrics continue to evolve with scientific testing, evaluation, and analysis. The sensitivity of these metrics to detect change in vegetative conditions at fine scale is continuing to be evaluated. Fine scale detection is critical to evaluate treatment effectiveness in reducing fire risk to communities. As our knowledge improves, we expect our metrics will also improve over time. Development of the standard structure and procedures will take time and coordination both internally and with DOI.

Finally, the USDA supports the ability to account for acres improved or maintained by wildfire because the maintenance of acres by wildfire will be critical to the long-term success of fire risk reduction to communities.

We want to ensure that reporting requirements will have the desired effect of both improving fiscal accountability and serving as a tool that can improve the health and resilience of our forests and communities to the threat of wildfire. USDA and DOI are diligently working toward a unification of Federal wildfire response and activities into a unified U.S. Wildland Fire Service within DOI, where practical and consistent with applicable law, and look forward to working with Congress to quickly implement this unification in support of a more efficient national wildfire response. As such, the USDA supports the intent of the bill and would like to work with the Subcommittee and bill sponsors to ensure the reporting requirements in the bill provide a full understanding of wildland fire risk to communities, the scope and effectiveness treatment efforts, and the costs of those efforts to the American people.

S. 462 – "Truckee Meadows Public Lands Management Act"

S. 462, "Truckee Meadows Public Lands Management Act" contains multiple provisions that impact management of National Forest System lands on behalf of the American public, including conveyance, disposal and transfer of land and legislated withdrawal. USDA supports the intent of the bill for several provisions that provide for economic development and conservation in Washoe County, Nevada would like to work with the subcommittee and sponsor

to clarify language and resolve outstanding issues, of which we describe here. USDA defers to DOI as to the effects of this bill on any DOI bureaus and the federal lands under their jurisdiction.

Title I – Public Purpose Conveyance and Disposal

Section 101 would convey parcels managed by the Humboldt-Toiyabe National Forest and Lake Tahoe Basin Management Unit to local and state government entities for a variety of public purposes. USDA would like to work with the subcommittee and sponsor to clarify the terms and processes to protect public interest.

The parcel proposed for conveyance to the Washoe County School District contains a small amount of critical habitat for Webber's Ivesia, a threatened plant species. USDA does not support conveyance of partial parcels due to the management challenges this creates. We recommend engaging U.S. Fish and Wildlife Service to discuss whether this parcel could be conveyed in its entirety. Additionally, there may be other provisions that appear to convey partial parcels.

Section 101 would convey multiple Santini-Burton Act (Public Law 96–586) parcels managed by the Lake Tahoe Basin Management Unit to local and state government entities. These environmentally sensitive lands were acquired by the Forest Service under the Act to maintain undeveloped open space, public access, to conserve wildlife habitat, and protect Lake Tahoe's water quality. USDA would like to work with the sponsor and subcommittee to address Incline Village General Improvement District's interests administratively. We have the authority to issue permits to local and state governments for purposes consistent with the Act.

Section 101 would also convey two large parcels of National Forest System land managed by the Lake Tahoe Basin Management Unit to the State of Nevada. These lands retain their national forest character, and the Department recommends pursuing administrative options rather than conveyance of either parcel. The parcel surrounding Thunderbird Lodge includes a large lakefront section contiguous with other National Forest System land on the west and south sides. It was acquired to provide public recreation access and is heavily used. It includes a developed recreation site with a paved parking lot, information kiosk, a historic road with high integrity, and Forest Service system trails and a Class 1 bike path is planned adjacent to the Lake Tahoe National Scenic Byway. The second parcel is adjacent to the southeast section of Marlette Lake and includes a portion of the Tahoe Rim Trail. The Forest Service and the Tahoe Rim Trail Association manage the trail under formal agreement, and the Forest Service and Nevada State Parks cooperate to facilitate access and maintenance. The parcel is not an inholding; it is adjacent to National Forest System lands to the east and the south. If this parcel were conveyed, the Forest Service would retain the historic Thunderbird Lodge property as an inholding, resulting in new management challenges.

Section 102 would require the Secretary of Agriculture to transfer administrative jurisdiction of lands identified for disposal or affordable housing to the Secretary of the Interior. The Secretary of the Interior would be required to conduct sales of federal land to qualified bidders subject to valid existing rights and sections 202 and 203 of the Federal Land Policy and Management Act of 1976. It would also require the sale of up to 33 acres of BLM and Forest Service lands for affordable housing.

USDA has worked for years with stakeholders to identify lands that could help generate proceeds for important natural resources and public purposes. We do not object to the disposal of the NFS lands identified in this section to support economic development and affordable housing and would like to work with the subcommittee and sponsor to clarify the terms and processes in this section to protect the public interest.

Title II – Tribal Trust Land

Section 204 authorizes the transfer of certain lands to be held in trust by the U.S. Government for the benefit of the Washoe Tribe of Nevada and California. The bill includes two parcels of National Forest System lands totaling approximately 495 acres. Most of this acreage was added to the Humboldt-Toiyabe National Forest by proclamation of Congress in 1950 and the remainder was acquired through a land exchange with a private citizen. These lands retain their national forest character and transfer will complicate rather than streamline land management and jurisdiction in the area, which is characterized by additional national forest, state parks and private holdings.

USDA has concerns related to wholistic management of National Forest System lands, access to energy infrastructure, continued public recreation access, checkerboarded jurisdiction, and the need to manage for sensitive species. USDA recognizes the interest of the Washoe Tribe of Nevada and California in obtaining tribal trust lands. USDA has generally supported land exchanges and transfers with federally-recognized Tribes and has a policy of honoring our trust relationship. USDA seeks to retain the lands in the National Forest System and work with the Washoe Tribe toward their goals through Tribal shared stewardship agreements. We would also be happy to work with the sponsor and the Tribe to identify other parcels in Washoe County such as Forest Service parcels near Mt. Rose.

Title VI – Withdrawal of Certain Land

Section 601 would withdraw approximately 58,383 acres of NFS lands on the Lake Tahoe Basin Management Unit and the Carson Ranger District of the Humboldt-Toiyabe National Forest from entry, appropriation, or disposal under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral and geothermal leasing laws and mineral materials laws, subject to valid existing rights. This provision would address further expansion of the wildland urban interface and related impacts to the Lake Tahoe Basin Management Unit and the Humboldt-Toiyabe National Forest, including the Mt. Rose Wilderness.

USDA does not support the withdrawal of public lands. Any future management actions' impact on resources must be fully evaluated and analyzed, including National Environmental Policy Act compliance and additional public involvement, prior to development decisions. If any development actions were proposed, the comprehensive terms, conditions, and mitigation measures reflecting Federal and State environmental laws would ensure protection of the values and resources described in the legislation. Additionally, we would like to clarify that the Lake Tahoe Basin Management Unit is already withdrawn under the Water Infrastructure for Improvements to the Nation (WIIN) Act (Public Law 114–322) and a new legislative mineral withdrawal would be duplicative and unnecessary.

S. 1349 – "Ruby Mountains Protection Act"

S. 1349 would withdraw certain National Forest System and U.S. Fish and Wildlife Service lands in Nevada from leasing under the mineral leasing laws, subject to valid existing rights.

Section 2 requires DOI to withdraw approximately 309,272 acres of Forest Service lands located in the Ruby Mountains subdistrict of the Humboldt-Toiyabe National Forest in Nevada. Section 3 requires DOI to withdraw approximately 39,926 acres of U.S. Fish and Wildlife Service lands located in the Ruby Lake National Wildlife Refuge. S. 1349 also requires DOI to withdraw any lands acquired after the date of enactment within the boundaries of the Ruby Mountains subdistrict and Ruby Lake National Wildlife Refuge. The bill requires that USDA and DOI make maps available to the public at appropriate agency offices.

The Department does not support S. 1349. The objectives set forth in the legislation can be achieved without a withdrawal. Specifically, the resource protections from the legislation are duplicative of those provided by applicable Federal laws. Mapping of the area has determined that there is little to no potential for oil or gas resources because of unfavorable geologic conditions. In addition, the Humboldt-Toiyabe National Forest Land Management Plan would regulate the environmental effects of energy and mineral development activities on National Forest System lands to ensure cultural and natural resources are protected and sustainably managed. Any future management actions' impact on resources must be fully evaluated and analyzed, including National Environmental Policy Act compliance and additional public involvement, prior to development decisions. If any development actions were proposed, the comprehensive terms, conditions, and mitigation measures reflecting Federal and State environmental laws would ensure protection of the values and resources described in the legislation. In 2019, the Forest Service completed an environmental assessment determining that 52,533 acres in the Ruby Mountains were unavailable to oil and gas leasing.

Additionally, permanent withdrawal of federal lands from mineral leasing conflicts with President Trump's Executive Order 14154, "Unleashing American Energy." USDA believes these lands will be better managed to achieve evolving national policy objectives under the

existing laws and land management plan and that withdrawal of these lands is unnecessary. The USDA defers to DOI on portions of the bill pertaining to the U.S. Fish and Wildlife Service.

H.R. 1829 – "Apache County and Navajo County Conveyance Act of 2025"

H.R. 1829 directs the Forest Service to convey three parcels of the Apache-Sitgreaves National Forest to two Arizona counties in order to expand existing cemetery sites: a 2.5-acre parcel to Navajo County, and both 2.5-acre and 8-acre parcels to Apache County. The bill directs that the counties pay for all costs associated with conveyance, including surveying and environmental analysis, and that the parcels revert to the Forest Service if they are not used as cemeteries.

Both the cemeteries in question have reached capacity, and the respective counties have engaged in communication and coordination with the Forest Service for many years to resolve the issue. While all parties agree on the need for cemetery expansion, 36 CFR 251.54 (ii)(e)(iv) prohibits the Forest from re-issuing a special use permit that authorizes expansion. The Counties and Forest attempted to resolve this issue administratively under the Townsite Act; however, this option, which requires the Counties to purchase the parcels at fair market value, was cost-prohibitive and did not move forward.

USDA supports the intent of this bill to resolve a long-standing local need to expand two cemeteries through conveyance without consideration to neighboring Counties. However, we would like to work with the Committee and bill sponsor to consider full or partial waiving of traditional cost-recovery efforts for internal analysis and survey work to ensure that these costs do not stand in the way of the conveyance moving forward.

S. 2554 – "Alaska Native Landless Equity Act"

S.2554 would amend the Alaska Native Claims Settlement Act of 1971 (ANCSA) to authorize Alaska Native residents of five Southeast Alaska communities (Haines, Ketchikan, Petersburg, Tenakee, and Wrangell) to form urban corporations. The legislation directs conveyance of specifically identified surface estate lands within the Tongass National Forest in the amount of 23,040 acres to each corporation, totaling approximately 115,202 acres. The bill directs conveyance of the subsurface estate of these parcels to the Sealaska Regional Native Corporation.

The ANSCA effected a final settlement of the aboriginal claims in Alaska through payment of $962.5 million and conveyances of more than 44 million acres of Federal land. There was a distinction made in ANCSA between the villages in the southeast and those located elsewhere. Prior to the passage of ANCSA, Alaska Natives in the southeast received payments from the United States for the taking of their aboriginal lands. Because Alaska Natives in the Sealaska region benefitted from an additional cash settlement under ANCSA, the eligible communities received less acreage than their counterparts elsewhere. Congress named the villages in the

southeast that were to be recognized in ANCSA; the five communities addressed in S.2554 were not among those listed.

When three of the five Alaska Native communities applied to receive benefits under ANCSA they were determined to be ineligible. Notwithstanding the determination of ineligibility, Alaska Natives in these five communities were enrolled as at-large shareholders in the Sealaska Corporation, of which they comprise more than 20 percent of the enrolled membership.

The proposed conveyance of 23,040 acres to each new corporation conforms with the acreage provided to the ten Southeast Alaska communities that were recognized and determined to be eligible under the Alaska Native Claims Settlement Act (ANCSA). Unlike ANCSA, S.2554 does not require that the selected acres include the township in which all or part of the community is located, nor that it be contiguous and in reasonably compact tracts. The selected National Forest System lands are in 61 named parcels, including some that are split into distinct parts or include adjacent islands. The parcels range in size from 17 to 9,092 acres and are located across seven Forest Service Ranger Districts on the Tongass National Forest.

USDA recognizes the special relationship that Alaska Natives have to the lands of southeast Alaska. We acknowledge the Tongass National Forest plays a significant role in the economic health and prosperity of the region's local communities. USDA looks forward to further discussing with the Subcommittee and sponsor the implications of the bill particularly to the timber program on the Tongass National Forest as over 20 percent of the proposed conveyance is within the suitable timber base.

S. 2787 – "Grasslands Grazing Act of 2025"

S. 2787 would modify the Federal Land Policy and Management Act (FLPMA) to ensure that policies under 43 U.S.C. 1752 pertaining to ranchers who have grazing permits are applied consistently across national forests and grasslands in the sixteen contiguous Western states. As currently worded, 43 U.S.C. 1752 applies to permits for domestic livestock grazing on only the National Forests, while the bill language would extend this to the "National Forest System" which would include the National Grasslands. Importantly, both the current language and bill language restricts application of 43 U.S.C. 1752 to the sixteen contiguous Western States. This would notably exclude permits for domestic livestock grazing in Eastern states including Texas where there are several National Grasslands.

Over the last several years there have been annual appropriations riders that have recognized this disparity of policy for permits and leases for domestic livestock grazing between National Forests and National Grasslands and between the Western and Eastern states. These riders have in effect brought consistency, one year at a time, in application to permits for domestic livestock grazing. Modifying S. 2787 to additionally strike "sixteen contiguous states" would eliminate the need for one of these annual appropriations riders and would provide needed predictability for the Agency and Forest Service grazing permittees across the National Forest System.

USDA supports the intent of the bill and would like to work with the Committee on technical changes in the bill language. USDA recommends applying these authorities consistently not only across national forests and grasslands, but also across the eastern and western states. This would mean first priority for permittees for renewal of expiring permits, continuation of terms under new permits or leases, and availability of a statutory categorical exclusion to issue grazing permits that continue current grazing management not only on National Forests and Grasslands in the sixteen contiguous Western states, but across the entire National Forest System.

We would like to thank the bill sponsor and Committee for helping in our efforts to streamline and expand grazing on federal lands.

S. 2968 – "Outdoor Americans with Disabilities Act"

S. 2968 directs the Forest Service to prioritize the updating of Forest Service travel management plans and motor vehicle use plans. The bill also directs the agency to account for the total length of traversable approved roads per square mile, establishes new procedures for road closures, and prioritizes the inclusion and approval of roads in travel management plans for recreation activities. Furthermore, the bill directs coordination with other government and tribal entities to ensure that public land is disability-access land, ensure appropriate authority to change travel management plans after routes are designated, and ensure compliance with the Federal Land Policy and Management Act of 1976, as amended. Finally, the bill establishes a categorical exclusion from the National Environmental Policy Act (42 U.S.C. 4321 et seq) for road closure determinations made in accordance with the Act.

Road systems and conditions across U.S. National Forests and Grasslands vary widely. However, the agency is moving forward with increasing and improving National Forest System accessibility by rescinding and revising the Travel Management Rule to streamline planning, add exemptions for Other Power-Driven Mobility Devices (OPDMDs) and e-bikes, and use digital mapping platforms to connect Americans to motor vehicle access opportunities.

USDA supports the intent of this bill and lauds the authors' commitment to providing access for individuals with disabilities. The Forest Service is interested in working with the Chairman to ensure that, as the agency pursues the president's deregulatory agenda, this legislation will remain clear and authoritative. We are happy to work with the sponsor to provide technical assistance to ensure consistent implementation across the National Forest System. The Forest Service defers to the Bureau of Land Management on the aspects of the bill that impact their agency.

S. 3493 – "Carson City Public Land Correction Act"

Section 4 of S. 3493, "Carson City Street Connector Conveyance," would require USDA to convey a portion of the land occupied by the Carson Ranger District Office, Humboldt-Toiyabe National Forest, to Carson City, Nevada, for a roadway. The bill would require Carson City to

pay the administrative costs of conveying approximately 0.45 acres of USDA land, without consideration. The bill also requires Carson City to construct a crosswalk across South Curry Street to the Forest Service Carson Ranger District Office within 90 days of the conveyance, in consultation with USDA. The bill does not require USDA to remediate or abate hazardous waste or materials or to remove improvements. The bill requires a survey to determine the acreage and legal description, as determined by the Secretary of Agriculture, as soon as practicable after enactment and authorizes minor corrections.

Section 7 specifies how proceeds generated from the bill may be distributed and requires the Bureau of Land Management (BLM) to develop an intergovernmental agreement with Carson City to manage the account. The funds shall be used for reimbursement of administrative costs associated with land adjustments; conducting wildlife habitat conservation and restoration projects; implementing hazardous fuels projects; acquiring environmentally sensitive land in Carson City; protecting and processing wilderness designations; capital improvements on BLM and Forest Service lands in Carson City; and for educational purposes.

The Department recognizes this is a long-standing issue and is committed to working with the delegation to continue towards a solution that works for all interested parties.

S. 3526 – "A Bill to Provide for the Protection of and Investment in Certain Federal Land in the State Of California, and for Other Purposes"

The Forest Service appreciates the Committee's continued focus on improving forest health, reducing wildfire risk, enhancing recreation opportunities, and addressing long-standing remediation challenges on Federal lands in California. USDA supports many of the bill's objectives related to forest restoration, fuels management, remediation of lands impacted by illegal activities, recreation access, and Tribal engagement. Our testimony focuses on provisions of S. 3526 affecting lands administered by the Forest Service; we defer to the Department of the Interior on provisions affecting lands under its jurisdiction.

Title I – Restoration

Title I of S. 3526 advances large-scale forest restoration, wildfire risk reduction, and remediation of Federal lands impacted by illegal activities. It establishes the South Fork Trinity-Mad River Restoration Area, requires collaborative restoration and fire management planning, and continues the California Public Land Remediation Partnership.

Specifically, the bill directs the Forest Service to produce fire management plans. The Forest Service does not currently utilize this specific tool; instead, it relies on the Fire Management Reference System (FMRS) to document plans, guides, and operating procedures for fire management across each Forest. Implementing the bill would require incorporation of the new direction into FMRS for all affected forests. The Forest Service also uses spatial fire planning within the Wildland Fire Decision Support System (WFDSS) to document land designations,

response strategies, and other requirements tied to agency policy and forest management plans. These spatial plans would need to be updated to reflect any new land designations and associated fire-response direction. The Forest Service would use these tools to satisfy the requirement to produce fire management plans.

Sec 101(h) would withdraw the restoration area from public land entry, mining activities, and mineral or geothermal leasing, except where valid existing rights already apply. It would also modify the existing Trinity County agreement by changing how gravel is extracted for road maintenance and by removing the ability to issue local permits for decorative stone extraction. Sec 103 would revise the Shasta-Trinity and Six Rivers forest plans without the analysis and public engagement required under the 2012 Planning Rule. USDA does not support the permanent withdrawal of federal lands from mineral and energy development as it conflicts with President Trump's Executive Order 14154, "Unleashing American Energy."

USDA shares the bill's commitment to restoring resilient landscapes and reducing wildfire risk and looks forward to working with the Committee to ensure the bill's direction can be implemented effectively and in alignment with existing planning requirements.

Title II – Recreation: Bigfoot National Recreation Trail, Trinity Lake Trail

Title II promotes recreation access and connectivity across National Forest System lands through the designation and study of trails, a visitor center in Weaverville, California, and partnerships intended to expand public recreation opportunities. The Forest Service is deeply committed to enhancing recreation opportunities and connecting all Americans to the outdoors. We look forward to working with the Committee to ensure these provisions complement existing programs.

Title III – Conservation: Designation of Wilderness and Wild and Scenic Rivers

Title III would designate new Wilderness, potential Wilderness, Wild and Scenic Rivers, Scenic Areas, and Special Management Areas on Federal lands in California.

Section 301 would add substantial acreage across the Shasta-Trinity, Six Rivers, Mendocino, Angeles, and Los Padres National Forests – and certain BLM lands – to the National Wilderness Preservation System. Several of these areas fall within the Wildland Urban Interface, which would limit the Forest Service's ability to reduce wildfire risk and manage for public safety. Many proposed additions also contain roads, trails, plantations, and other developments that might not meet established wilderness criteria and would benefit from further evaluation.

Section 304 designates roughly 216 miles of stream in and around the Shasta-Trinity National Forest as Wild and Scenic Rivers. These designations would constrain active management, and many stream segments have not been fully assessed for eligibility, free-flowing condition, or outstanding remarkable values required under the Wild and Scenic River Act.

The Administration does not support Wilderness or Wild and Scenic River designations due to their inconsistency with priorities for economic growth, energy development, and sustained-yield, multiple-use management of Federal lands.

S. 3527 – "Montana Sportsmen Conservation Act"

The Montana Sportsmen Conservation Act proposes releasing three Wilderness Study Areas (WSAs) in Montana to general federal land management. Two WSAs are on federal lands managed by the BLM. The Forest Service comments focus on the third WSA, the Middle Fork of the Judith Wilderness Study Area, located in the Helena-Lewis and Clark National Forest in central Montana.

The Act would release all 81,000 acres originally identified as a WSA under the Montana Wilderness Study Act of 1977. In accordance with the Montana Wilderness Study Act, in 1982 the Forest Service completed a Final Environmental Impact Statement and study of the Big Snowies and Middle Fork Judith WSAs. The Act required that these areas be monitored to ensure the WSAs' potential for inclusion in the National Wilderness Preservation System was retained. At that time, the Forest Service recommended the Middle Fork of the Judith WSA be managed as non-wilderness primarily due to the presence of 14 miles of primitive roads and 36 miles of low-standard road, with motorized and mechanized use predating the 1977 Montana Wilderness Study Act. Subsequent land management plans, including the 2021 Helena-Lewis and Clark National Forest Plan, maintained this recommendation.

USDA supports S. 3527. The action proposed for the Middle Fork of the Judith WSA in the Montana Sportsmen Conservation Act aligns with historic agency recommendations dating back nearly four decades. If released, the wilderness study area direction would no longer apply, and management would follow the Forest's 2021 land management plan forest-wide direction, and applicable area plan direction. Releasing the area would give land managers more flexibility to improve forest health, mitigate wildfire risk, and provide for multiple use values while retaining certain protections for the area.

H.R. 3937 – "Wabeno Economic Development Act"

H.R. 3937, the Wabeno Economic Development Act, would require the Secretary of Agriculture, acting through the Chief of the Forest Service, to convey a parcel of approximately 14 acres of National Forest System (NFS) land located in the Chequamegon-Nicolet National Forest to Tony's Wabeno Redi-Mix, LLC. The parcel, located on the Lakewood-Laona Ranger District, is adjacent to and southwest of the Town of Wabeno and can be accessed off Smith Rd. The parcel is surrounded on three sides by private land and adjacent to other Forest Service land on the fourth side to the south. It contains upland northern hardwood with a year of origin of 1927.

Subject to provisions in this Act, if the Tony's Wabeno Redi-Mix, LLC offers to acquire the NFS property for market value, the Secretary shall, not later than 180 days after receiving the offer,

convey to Tony's Wabeno Redi-Mix, LLC all right, title, and interest of the United States in and to the property as described in the Act. As a condition of the conveyance, Tony's Wabeno Redi-Mix, LLC would be required to pay an amount equal to the market value of the land to be conveyed and all costs associated with the conveyance including for surveys, appraisals, and any environmental analysis required by Federal law.

The Act would also require the Department of Interior (DOI), in consultation with other federal agencies, industry stakeholders, and states to review federal permitting processes related to stone, sand, and gravel development on federal land, and to submit a report on this topic to the committee within 180 days of enactment. This report would overview current federal permitting processes and associated economic impacts, identify inefficiencies, and recommend legislative or administrative actions to streamline processes.

We have some minor technical concerns and look forward to working with the Committee as H.R. 3937 moves forward. We recommend the Committee seek DOI input on provisions under their jurisdiction.

S. 2417 – "Star-Spangled Summit Act of 2025"

S. 2417, Star-Spangled Summit Act of 2025 would require the Secretary, acting through the Chief of the Forest Service, to issue a special use permit to Provo, Utah, resident Robert S. Collins for the purposes of placing and maintaining a flagpole on ''Kyhv Peak Lookout Point'' in the Uinta National Forest. If Mr. Collins declined the permit the Forest Service would be required to issue the permit to another individual, nonprofit entity, or volunteer organization who has experience placing and maintaining a flagpole. S. 2417 would exempt the permittee from paying any associated fees and would authorize the Secretary to apply appropriate terms and conditions. S. 2417 would authorize the Secretary to issue, renew and terminate the permit early and exempts the action from NEPA.

USDA supports the intent of the bill and recommends revising the renewal language to require the permittee or covered entity to apply to renew the permit 180 days prior to the termination of the original permit instead of 180 days after the termination. This will minimize the need to remove and replace the flagpole during the 180 days following the termination. USDA also recommends changing "placing" to "installing" when referring to the approved activity. Access to the currently unauthorized flagpole site occurs via a user-generated trail. Therefore, USDA recommends an additional provision requiring that any access deemed necessary to install or maintain related flagpole infrastructure shall be constructed and maintained by the permittee and subject to Uinta National Forest Land and Resource Management plans, as well as the terms of the special use permit. USDA notes that the Forest Service currently has the authority to issue a flagpole permit to a qualified entity and would welcome the opportunity to proceed administratively in lieu of legislation. In either an administrative fix, or in H.R. 4684, as written, USDA would need to comply with consultation requirements under the Endangered Species Act and the National

Historic Preservation Act when reviewing the application. Additionally, we would also need to comply with NEPA.

S. 2754 – "Crystal Reservoir Conveyance Act"

S. 2754 directs the Secretary of Agriculture to convey approximately 45 acres of Grand Mesa, Uncompahgre, and Gunnison National Forest Lands comprising the Crystal Reservoir and surrounding lands to the City of Ouray, Colorado as soon as practicable after the date of enactment. The bill requires the USDA to convey the land at no cost to the City, with the exception that the City would be required to pay all costs associated with any surveys conducted for the purpose of accomplishing the conveyance.

Subject to a reversionary clause, the bill would require the city to grant an easement for each trail and road in existence on the date of the conveyance, to assume responsibility for the costs of Full Moon Dam and related infrastructure, and to maintain the land in perpetuity for public access for recreational activities. Further, the bill would prohibit any development, commercial operations, or construction, other than as needed for the operation and maintenance of Full Moon Dam, Crystal Reservoir, and related infrastructure, and would prohibit expanding the historical footprint of Crystal Reservoir in a manner that would harm any wetlands located upstream of the Federal land.

Following the conveyance, the bill directs the Secretary to allow the structure known as "Red Mountain Ditch" to continue to be used by the City for all decreed purposes under Colorado water law, including the diversion and delivery of water for storage in Crystal Reservoir. Finally, H.R. 5911 authorizes the City to use Crystal Reservoir for the storage of water and in-reservoir uses or releases of water for augmentation and other beneficial use, consistent with any water rights, and directs the City to manage all water rights associated with the Federal land in accordance with applicable water laws of the State.

The Forest Service acquired Crystal Reservoir, also known as Full Moon Dam, and its associated water rights in 2003. These rights authorize use for domestic, mining, milling, and irrigation of adjacent lands. Full Moon is a Forest Service-owned high-hazard dam. The reservoir is a highly visited, locally beloved, recreational opportunity off Highway 550 near Ironton Park.

We understand that this has been a long-standing interest of members of the community and are committed to pursuing a solution that works for all interested stakeholders. We look forward to working with the bill sponsor and the Committee as this bill moves forward.

S. 1981 – "Strategic Grazing to Reduce Risk of Wildfire Act

S. 1981, Strategic Grazing to Reduce Risk of Wildfire Act requires the Secretaries of Agriculture and the Interior to develop a strategic grazing strategy as a wildfire risk reduction tool within 18 months of enactment, consistent with applicable laws. The strategy would consider the use of vacant grazing allotments when permitted allotments are disrupted by drought, wildfire and other natural disasters and use of targeted grazing to reduce hazardous fuels, including on wildland

urban interface lands and other critical areas. S. 1981 also requires that the strategy consider recommending targeted grazing to communities and Tribes when providing technical assistance on reducing wildfire risk and implementing wildfire management strategies. The strategy also must consider the use of temporary grazing permits to reduce fuels, cheatgrass, and other invasive species as well as grazing outside of permitted animal use months for reducing fuels and invasive grasses. The strategy also must consider the use of targeting grazing for postfire recovery; the use of virtual fencing and other technology; the use of grazing in a way that avoids conflicts with other multiple uses; a workforce development plan; and the use of cooperative agreements. The Secretaries must develop the strategy in consultation with States, local governments, Tribes, utility authorities, firefighting agencies, NGOs, and other interested members of the community.

USDA supports S. 1981 and recognizes that livestock grazing can be used as a viable vegetation and resource management tool, including for wildfire risk reduction. USDA and DOI are diligently working toward a unification of Federal wildfire response and activities into a unified U.S. Wildland Fire Service within DOI, where practical and consistent with applicable law, and look forward to working with Congress to quickly implement this unification in support of a more efficient national wildfire response. We welcome the opportunity to look for ways to apply livestock grazing more strategically across Federal lands. We would like to work with the sponsor and committee on technical corrections as well as extending the deadline. USDA notes that the consultation and coordination requirements require additional time to complete such a strategy and we recommend extending the deadline to 3 years following enactment. We would also like to work with the sponsor to clarify some of the references to permits and grazing in the bill. USDA supports using emerging technologies such as virtual fencing that can be critical when applied in post-fire scenarios where rangeland infrastructure may be destroyed and recommends developing both a workforce and infrastructure plan that would include technology.

H.R. 3872 – "Merica Act of 2025"

H.R. 3872 would direct the Secretary of the Interior to make hardrock minerals available for lease in those lands covered by the Mineral Leasing Act for Acquired Lands (MLA). Hardrock minerals leases are currently available on other Federal lands under other Acts, as noted below.

The intent of H.R. 3872 is to make hardrock minerals – that is, minerals found in sedimentary or other rocks, base metals, precious metals, industrial minerals, and precious and semi-precious gemstones – available for lease under the MLA. The Secretary of the Interior would be directed to lease hardrock minerals for those acquired lands, under the same conditions as other minerals covered by the MLA such as coal, oil, and gas.

USDA supports H.R. 3872, which would have limited impacts on National Forest System lands. Most of the lands acquired by the Forest Service have been acquired under the Weeks Act, or authorities that have Weeks Act status, which provide leasing authority for hardrock minerals.

As such, H.R. 3872 is consistent with existing authorities and would have a limited impact on National Forest System lands. We defer to DOI on provisions under their jurisdiction.

S. – "Santini-Burton Modernization Act of 2026"

The Santini-Burton Modernization Act of 2026 amends Public Law 96–586 to expand the Forest Service's authority in the Lake Tahoe Basin beyond land acquisition to include active land management. The bill acknowledges the cultural significance of the Basin to the Washoe Tribe of Nevada and California and authorizes transfers of land and funding to the Tribe and local governments for preservation and management purposes. It provides flexibility to use funds for forest health, water quality, recreation impact mitigation, cultural site protection, and scientific research, while enabling partnerships with federal, state, local, and tribal entities to implement projects that enhance environmental thresholds and public access. The Act requires an annual spending plan aligned with the Lake Tahoe Environmental Improvement Program and ensures funds remain available until expended, supplementing – not replacing – existing resources. These updates promote collaborative stewardship, cultural preservation, and ecological resilience in one of the nation's most sensitive and iconic landscapes.

USDA supports the purpose and intent of the Act to continue the acquisition of sensitive parcels, increase effectiveness in managing National Forest System lands in the Lake Tahoe Basin, provide a mechanism and criteria for land transfers, and include the Washoe Tribe of Nevada and California alongside state and local agencies to support stewardship of the Tahoe Basin. We would like to work with the sponsor and subcommittee to clarify and refine certain elements of the Act, including ensuring that criteria for the annual spending plan are not only consistent with the Act's purpose and intent but also in alignment with the goals and objectives of the Lake Tahoe Basin Management Unit's Land Management Plan.

Senator BARRASSO. Thanks so very much.

Ms. Regan.

Ms. REGAN. Thank you. Good morning, Chairman Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee. As I am Julie Regan, the Executive Director of the Tahoe Regional Planning Agency, I am prepared for S. 3695. So, I will cede my time to others until that is called for further in the program.

Thank you.

Senator BARRASSO. Senator Hyde-Smith, would you like to talk about your bill before we go to the questions?

Senator HYDE-SMITH. I would, thank you, Mr. Chairman, and thank you to these witnesses for being willing to do what you are doing, and all the services that you provide, but definitely for your dedication. It is much appreciated. And I do appreciate the opportunity to speak on the American Shores Protection Act of 2025 that would codify the 2020 memorandum that placed a moratorium on oil and gas leasing in the eastern Gulf of America. The moratorium still remains in effect today, and the bill comes as the Bureau of Ocean Energy Management (BOEM) continues to advance the draft proposed program for the 11th National Outer Continental Shelf Oil and Gas Leasing Program.

The proposal fulfills BOEM's statutory responsibilities and it aligns with President Trump's executive order "Unleashing American Energy"—what I have been so anxious to do. The proposal considers all potential options in federal waters that could benefit the American people. Expanding opportunities in the Gulf could help meet growing energy demand, create jobs, and support refineries along the Gulf Coast. Additionally, sales will help fund the Land and Water Conservation Fund, benefiting states across the country, not just Mississippi. Congress should allow BOEM's process to proceed without restricting the administration's authority.

Thank you again, Mr. Chairman. I hope Congress continues exploring policies that strengthen American energy production on behalf of all Americans, and again, thank you guys for being here.

Senator BARRASSO. Thank you, Senator Hyde-Smith.

Senator Murkowski, would you like to make an opening statement, or would you prefer that we proceed to the questioning? It's up to you, your choice.

Senator MURKOWSKI. Let's go ahead and proceed with the questioning, please.

Senator BARRASSO. All right, thank you.

Mr. Checketts, if we can talk about some of the things you mentioned in your testimony, you know, almost half the land in Wyoming is owned by the Federal Government. In most of our states the Federal Government is the number one landlord for all of us here—public places that people from Wyoming depend on, accessing their livelihoods. Congress directed grazing, timber harvesting, and recreation to occur on these federal lands. National grasslands fall under a different authority, and therefore, there is no certainty when it comes to grazing permittees and the certainty that you talked about in your testimony. So, can you please describe the importance of certainty for you and other permittees on the national grasslands?

Mr. CHECKETTS. Senator Barrasso, it's so important that this bill passes. Let me explain. Currently, our grazing agreements can be canceled within 30 days—30-day notice. Imagine running a business where all you have is a 30-day guarantee. Many ranchers, such as myself, have debts. Many ranchers have obligations. We all have families to feed and cows to take care of. Think about the local economies, the schools, the hardware stores, the dealerships. Our local economies require ranching. We have to have ranching to support our rural way of life. It's the backbone of America. Some of the finest people I know are those who work every day out there, taking care of our lands to make them better for generations to come.

Senator BARRASSO. In a second, I am going to ask you what you actually have to go through each time a permit comes up for renewal because national grasslands and national forests fall under the jurisdiction of the Forest Service. They are not required to renew permits or allow grazing on the national grasslands. So, tell me what you have to go through.

Mr. CHECKETTS. Thank you, Senator. I am going to tell you a personal story. In 2022, when with the Thunder Basin Grazing Association went to renew our permits, there was a disagreement between our friends with the Forest Service, and we were simply told that if we did not sign, that we would be trespassing. So, we signed under duress. And I tell you, it is a stressful time for us, it is a stressful time for the Forest Service. Passing this bill will help us so that we have long-term sustainability on the 10-year deal, but that is something else that we should work on too.

Senator BARRASSO. So, you talked about the benefits to the local communities of the ranching and the agriculture. Could you also talk about how cattle grazing helps the national grasslands?

Mr. CHECKETTS. I would love to do that. I will tell you what, ranchers are the original conservationists. Nobody loves the land more than we do. Every day we work to protect the land, to preserve it, to make it better, to make it sustainable for our cattle, for our families, for our livelihoods, for the sportsmen that enjoy it. It helps with invasive species. As we graze, it protects against cheatgrass. Grazing protects us against the wildfires that destroy our local economies and cost millions of dollars each year.

Senator BARRASSO. So now that I have Chief French here, I am asking you, following up on what we have just heard, federal grazing permits from the U.S. Forest Service can be obtained for both national forest land and national grassland. Currently there is a lack of certainty that we are hearing about for the communities and for the ranchers and a lack of clarity for the permittees who wish to renew or obtain permits. How does the Forest Service undergo permit renewals for national forest land compared to the grasslands?

Mr. FRENCH. It's under two different statutes. Mr. Checketts is right. There shouldn't be two different standards. They should be treated the same, and we would like to administer them in the same ways.

Senator BARRASSO. Great.

And then in terms of wildfire, the United States Forest Service manages, what, 193 million acres of land, 154 national forests, 20

national grasslands, including, of course, the Thunder Basin National Grassland in my home State of Wyoming. Wildfires across the United States burn millions of acres every year—land at risk, homeowners at risk, the ranchers. How does grazing on Forest Service land actually help mitigate fire risk?

Mr. FRENCH. It reduces fine fuels that carry those fires. It reduces dead fuels that often are carrying those fires, and most of those grassland systems, they evolved over time with fire as a part of them, and with heavy grazing. And so, it's a natural part of the system.

Senator BARRASSO. Great.

Mr. FRENCH. It helps.

Senator BARRASSO. Mr. Checketts, anything else you would like to add?

Mr. CHECKETTS. This is so important, Senator, to take care of the ranchers, the local economies. I am so passionate about ranching. I mean, it is the backbone of America. As you know, in our home State of Wyoming, there are 500,000 people and a million cows. And everything that people use each day has beef in it, whether it's the makeup, whether it's our shampoo. Everything that has glycerin—I mean, beef is important.

Senator BARRASSO. It's what for dinner—and breakfast and lunch in Wyoming.

Mr. CHECKETTS. Beef, beef, beef, beef.

[Laughter.]

Senator BARRASSO. Thank you.

Senator Cortez Masto.

Thanks for being here.

Mr. CHECKETTS. Thank you.

Senator CORTEZ MASTO. Thank you. Thank you to the panelists as well.

Ms. Regan, let me ask you a couple questions. I appreciate that you are here to talk about the Santini-Burton Modernization Act. To start with, why is the Santini-Burton Modernization Act necessary? If you would address that, and then also how it differs from the original act from 1980?

Ms. REGAN. Thank you, Senator Cortez Masto. Again, good morning, Chairman Barrasso and Ranking Member, and members of the Subcommittee. Julie Regan here, Executive Director of the Tahoe Regional Planning Agency. I will give you some brief introductory remarks and then continue to fine tune point the question.

OPENING STATEMENT OF JULIE REGAN, EXECUTIVE DIRECTOR, TAHOE REGIONAL PLANNING AGENCY

Ms. REGAN. Our agency was formed by an interstate compact between California and Nevada, and ratified by Congress in 1969. Our mission is to protect Lake Tahoe, a federally designated Outstanding National Resource Water, while supporting our local communities and economy. I do appreciate the opportunity to address your questions and the Committee today in support of the Santini-Burton Modernization Act, S. 3695, a bi-state, bipartisan bill that is of the utmost importance to Lake Tahoe. The Tahoe Basin is the ancestral and current home of the Washoe people—the Washoe Tribe of Nevada and California, as they are known today. Tahoe is

also the second deepest lake in the United States and one of the clearest large lakes in the world. Tahoe's nearly 200-square-mile surface straddles the border of California and Nevada at more than 6,200 feet in elevation in the Sierra Nevada Mountain range.

Tahoe welcomes millions of visitors every year to our public lands. Outdoor recreation and tourism drive our $5 billion annual economy. This, in turn, supports our very small year-round population of 55,000 people. Tahoe also boasts a sizable community of second-home owners, who hail from nearly every state in the nation. Today, nearly 80 percent of the Tahoe Basin is owned and managed by the United States Forest Service, but it has not always been like this. The first public lands in the Lake Tahoe Basin were established in 1899, as the Lake Tahoe Forest Reserve, and totaled 37,000 acres with no access to Lake Tahoe's beaches. By 1960, just 50 percent of the Tahoe Basin was publicly owned. The 1980 Santini-Burton Act was essential to Lake Tahoe's conservation and public lands success story.

Under the law, funds from the authorized sales of federal lands in Clark County, Nevada were appropriated to the Forest Service to acquire more than 16,000 acres of land in the Tahoe Basin. Through conservation and ongoing management, these public lands protect Lake Tahoe's famed clarity, are critical in community forest health and wildfire prevention, and offer world-class recreation opportunities. However, changes to the law decades ago inadvertently limited the law's scope so funds could only be used to acquire lands, but not to manage them. The lack of management funding contributes to negative environmental, community, and economic impacts across the region. If enacted, modernization would free up existing funding for ongoing land management, allowing the Tahoe Basin to complete more lake-saving environmental improvement projects—projects that protect Tahoe's famed clarity, improve recreation access, manage forests, and reduce wildfire risk. The modernized bill enables the Washoe Tribe of Nevada and California to make a meaningful step toward advancing traditional knowledge for forest health management and restoring tribal stewardship on their lands.

Finally, the bill maintains the 1980 federal land sale boundaries in Clark County, and adds no new cost to taxpayers. The Santini-Burton Modernization Act is the product of a multi-year collaboration by our agency, Tahoe's state and local governments, the public, the Washoe Tribe of Nevada and California, non-profits, and the private sector. The bill also requires ongoing local input through an annual spending plan and partnerships with state and local jurisdictions.

In 1980, Congress had a bold vision—transforming Tahoe into the national treasure that it is today. Thanks to Santini-Burton, Tahoe's unique character continues to be of national significance. But the threats to the lake require new solutions, solutions that the Santini-Burton Modernization Act can help deliver. I appreciate the consideration of this Committee today. Hopefully, you all have the opportunity to visit Tahoe soon. Samuel Clemens, the American author better known as Mark Twain, is a local legend in Nevada and the Tahoe Basin. He described the power of spending time at Lake Tahoe when he wrote, "three months of camp life on Lake

Tahoe would restore an Egyptian mummy to his pristine vigor and give him an appetite like an alligator." Quite a description.

[The prepared statement of Ms. Regan follows:]

WRITTEN TESTIMONY FOR THE RECORD

OF

JULIE W. REGAN

EXECUTIVE DIRECTOR

TAHOE REGIONAL PLANNING AGENCY

ON

S. 3695 (Sen. Cortez Masto), *"Santini-Burton Modernization Act of 2026"*

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON ENERGY AND NATURAL RESOURCES'

SUBCOMMITEE ON PUBLIC LANDS, FORESTS, AND MINING

FEBRUARY 12, 2026



JULIE W. REGAN
EXECUTIVE DIRECTOR
TAHOE REGIONAL PLANNING AGENCY

Good morning, Chairman Barrasso, Ranking Member Cortez Masto, and members of the subcommittee:

I am Julie Regan, Executive Director of the Tahoe Regional Planning Agency. Our agency was formed by an interstate compact between California and Nevada and ratified by Congress in 1969. Our mission is to protect Lake Tahoe, a federally-designated Outstanding National Resource Water, while supporting our local communities and economy.

I appreciate the opportunity to address the committee today about the importance of the Santini-Burton Modernization Act.

Lake Tahoe is the ancestral and current home of the Washoe people, or the Washoe Tribe of Nevada and California as they are known today.

Tahoe is also the second deepest lake in the United States and one of the clearest large lakes in the world. Tahoe's nearly 200 square-mile surface straddles the borders of California and Nevada at more than 6,200 feet in elevation in the Sierra Nevada mountain range.

Tahoe welcomes millions of visitors every year to our public lands. Outdoor recreation and tourism drive our five-billion-dollar annual economy. This in turn supports our small, year-round population of 55,000 people. Tahoe also boasts a sizeable community of second homeowners who hail from nearly every state in the nation.

Today, nearly 80 percent of the Tahoe Basin is owned and managed by the United States Forest Service. But it has not always been like this...

The first public lands in the Lake Tahoe Basin were established in 1899 as the Lake Tahoe Forest Reserve and totaled 37,000 acres with no access to Lake Tahoe's beaches. By 1960, just 50 percent of the Tahoe Basin was publicly owned.

The 1980 Santini-Burton Act was essential to Lake Tahoe's conservation and public lands success story. Under the law, funds from the authorized sales of federal lands in Clark County, Nevada were appropriated to the Forest Service to acquire more than 16,000 acres of land in the Tahoe Basin. Through conservation and ongoing management, these public lands protect Tahoe's famed clarity, are critical in community forest health and wildfire prevention, and offer world-class recreation opportunities.

However, changes to the law in in the 2000s inadvertently limited the law's scope so funds could only be used to acquire land, but not to manage them. The lack of management funding contributes to negative environmental, community, and economic impacts across the region.

If enacted, modernization would free up existing funding for ongoing land management, allowing the Tahoe Basin to complete more lake-saving Environmental Improvement Program projects. Projects that protect Tahoe's famed clarity, improve recreation access, manage forests, and reduce wildfire risk. The modernized bill enables the Washoe Tribe of Nevada and California to take a meaningful step toward advancing traditional knowledge for forest health management and restoring Tribal stewardship in their ancestral and current homeland.

Finally, the bill maintains the 1980 federal land sale boundaries in Clark County and adds no new costs to taxpayers.

JULIE W. REGAN
EXECUTIVE DIRECTOR
TAHOE REGIONAL PLANNING AGENCY

The Santini-Burton Modernization Act is the product of a multi-year collaboration by our agency, Tahoe's state and local governments, the Washoe Tribe of Nevada and California, non-profits, public, and the private sector. The bill also requires ongoing local input through an annual spending plan and partnerships with state and local governments.

In 1980, Congress had a bold vision, transforming Tahoe into the national treasure that it is today. Thanks to Santini-Burton, Tahoe's unique character continues to be of national significance, but the threats to the lake require new solutions – solutions that the Santini-Burton Modernization Act can help deliver.

Thank you for your consideration today. Hopefully you all have the opportunity to visit Lake Tahoe soon. Samuel Clemens, the American author better known as Mark Twain, is a local legend in Nevada and the Tahoe Basin. He described the power of spending time at Lake Tahoe when he wrote "three months of camp life on Lake Tahoe would restore an Egyptian mummy to his pristine vigor, and give him an appetite like an alligator."

Thank you for the opportunity to address the committee today.



The 1980 Santini-Burton Act was essential to Lake Tahoe's early conservation success story. Under the law, funds were appropriated to the USDA Forest Service to acquire more than 16,000 acres of land in the Tahoe Basin. Today, 90 percent of the Tahoe Region is publicly owned. Through conservation and ongoing management, these public lands protect Lake Tahoe and offer world-class recreation opportunities. Changes to the Santini-Burton Act in the 2000s inadvertently limited the law's scope so funds could only be used to acquire land, but not to manage those lands.

If enacted, modernization would free up existing funds for ongoing management, allowing the Tahoe Basin to complete more lake-saving Environmental Improvement Program projects to protect Tahoe's famed clarity, improve recreation access, manage forests, reduce wildfire risk, and expand the presence of the Washoe Tribe of Nevada and California.

Specifically, the Santini-Burton Modernization Act:

- Maintains the USDA Forest Service's existing authority to facilitate land acquisitions in the Tahoe Basin.
- Allows existing funds to be used for land management, prioritizing water quality, forest health, and recreation.
- Designates the Washoe Tribe as an eligible entity to receive transfer of acquired land for environmental purposes, a designation already afforded to state and local governments.
- Maintains the 1980 federal land sale boundaries in Clark County, Nevada.
- Adds no new costs to taxpayers.

The Santini-Burton Modernization Act is the product of a multi-year collaboration by Tahoe's state and local governments, the bi-state Tahoe Regional Planning Agency, the Washoe Tribe of Nevada and California, non-profits, and the private sector.

Thanks to Santini-Burton, Tahoe's unique character continues to be of national significance, but the threats to the lake require bold solutions. Modernization would free up existing, but currently restricted, resources to manage public lands and address visitation impacts at Tahoe.



Photo by: First Track Productions. Mountain bikers ride the ridge above the East Shore of Lake Tahoe. The Santini-Burton Modernization Act would help maintain and improve public lands in the Tahoe Basin.

Published by the Tahoe Regional Planning Agency - February 2026

Lake Tahoe
ENVIRONMENTAL IMPROVEMENT PROGRAM

Mail
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Location
128 Market St
Stateline, NV
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February 10, 2026

The Honorable John Barrasso
U.S. Senate, Wyoming
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Catherine Cortez Masto
U.S. Senate, Nevada
309 Hart Senate Office Building
Washington, DC 20510

Dear Subcommittee Chairman Barrasso and Ranking Member Cortez Masto:

The purpose of this letter is to express Team Tahoe's, the more than 80 public and private partners implementing the Lake Tahoe Environmental Improvement Program, support for the Santini-Burton Modernization Act of 2026 (S. 3695). At its core, this legislation will unlock existing funding to protect Tahoe's famed crystal-clear waters and provide world-class recreation on public lands.

The original law was foundational to Lake Tahoe's early conservation success story. Under the Santini-Burton Act (P.L. 96-586), the USDA Forest Service has acquired more than 16,000 acres of land in the Tahoe Basin. Today, 90 percent of the Tahoe Region is publicly owned. These lands protect Tahoe's famed clarity and offer world-class recreation opportunities on public lands.

Changes to the Santini-Burton Act in the 2000s inadvertently limited the law's scope so funds could only be used to acquire land, but not to manage those lands. Modernization would allow Tahoe partners to manage public lands, reduce wildfire risk, and address visitor impacts, all of which were threats outlined in the original law.

Unlocking existing funding for ongoing land management, would allow the Tahoe Basin to complete more lake-saving Environmental Improvement Program projects. Projects that protect Tahoe's famed clarity, improve recreation access, manage forests, and reduce wildfire risk. The modernized bill enables the Washoe Tribe of Nevada and California to take a meaningful step toward advancing traditional knowledge for forest health management and restoring Tribal stewardship in their ancestral and current homeland.

The Santini-Burton Modernization Act is the product of a multi-year collaboration by Tahoe's state and local governments, the bi-state Tahoe Regional Planning Agency, the Washoe Tribe of Nevada and California, non-profits, and the private sector.

Lake Tahoe benefits from the successful collaboration of the federal, state, regional, and local governments, Washoe Tribe, non-profits, and the private sector. The Santini-Burton Modernization Act is the critical investment in Tahoe that is needed to protect the Jewel of the Sierra for future generations.

Lake Tahoe
ENVIRONMENTAL IMPROVEMENT PROGRAM

Mail
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Location
128 Market St
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Sincerely,

Tahoe Regional Planning Agency
League to Save Lake Tahoe
Washoe Tribe of Nevada and California
Supervisor Brooke Laine, El Dorado County, CA
Commissioner Alexis Hill, Washoe County, NV
Washoe County, Nevada
Placer County, California
Nevada Department of Conservation and Natural Resources
Nevada Division of State Lands
Tahoe Chamber
Tahoe Fund
Tahoe Prosperity Center
North Tahoe Community Alliance
Tahoe Resource Conservation District
Travel North Tahoe Nevada
Tahoe Transportation District
South Tahoe Public Utility District

Ms. REGAN. I appreciate the opportunity to now answer your direct question, and the main difference that I would like to point out, as a summary of my testimony, Senator Cortez Masto and members of the Committee, is that the challenges are very different today in 2026 than they were in 1980. I will use a prop to demonstrate the power of the iPhone, which did not exist in 1980, and now with Instagram and social media, people descend in certain places all at one time, too many places and too many impacts to our natural resources. We are actually having resources degraded on our public lands, and the funds that were used to acquire those lands cannot be used to maintain those lands and to take care of those natural resources. So, that is a main difference.

Another issue is our wildfire protection and the ability to actively manage lands that were purchased under the sale of Santini-Burton funds for defensible space and fire safety.

Senator CORTEZ MASTO. Thank you.

Let me just ask you one final question here. Discuss the difference between the funding that the Lake Tahoe Restoration Act provides versus what the Santini-Burton Modernization Act provides.

Ms. REGAN. Thank you, Senator, for the question. Julie Regan, TRPA's Executive Director, Tahoe Regional Planning Agency. The Lake Tahoe Restoration Act, which you championed along with our colleagues across the delegations in California and Nevada, has been vital to the protection of lake clarity, our forest health, fighting aquatic invasive species, and these programs are very large capital investment programs and projects. The Santini-Burton Modernization Act would allow maintenance to support those investments, making good on those investments, and it is a different suite of impacts that we are seeing. The Restoration Act will not address the recreational impacts. The Santini-Burton Modernization Act funds would support maintenance and protection of our recreation assets to allow more public access in the future.

Senator CORTEZ MASTO. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman, and I appreciate you and the Ranking Member for holding the hearing, and including S. 2554, which is the Alaska Native Landless Equity Act, on the agenda. This is legislation that has been co-sponsored by the entire Alaska delegation. Congressman Begich has introduced a companion in the House.

This is legislation that we dub our "landless legislation," and we are seeking to resolve an injustice that has been around for about a half a century now in Southeast Alaska. For reasons that are perhaps unknown and still debated, there are five communities—the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—that were omitted from ANCSA's authorizations to form village corporations back in 1971. And as a result, the Alaska Natives in these communities have not received the lands that they were entitled to under ANCSA that other Alaska Natives received a long time ago. And that has left a situation that has just been unfair—wrong, in my view, and something that needs to be ad-

dressed. And it's our responsibility in this Committee to attempt to do that. That is what this bill does.

It allows formation of five urban corporations. It specifies the exact parcels of land that they have selected to fulfill the land entitlement. And importantly, it does so while fully protecting public access, valid existing rights, including for fishing, hunting, recreation, subsistence. It's about 115,000 acres of land for the landless communities. Now, some of you may say that seems like a lot, but in Alaska, or the Southeast region, or even the federal holdings in Southeast, which total about 21.9 million acres, what we are talking about here for this landless group is about one half of one percent going to rightful native ownership while about 190 times more stays under federal control.

We have worked really hard over the years to bring this legislation to a place where people who are looking at it can say this is fair and this is something that I can support. We refined it. We worked it over and over again. This Committee has seen this issue before us multiple times. We have held Committee hearings on it over and over—in 2015, 2023, today. So, this is a little bit of a rerun here. But the changes that we have incorporated have been based on what we have heard from many, identifying the challenges, turning them around and really turning opponents into supporters—among them, believe it or not, the Nature Conservancy.

They wrote us a letter back in 2023, which we reported to the bill with its passage. And as part of that letter, they say, "Too often, advocacy in the United States has intentionally sought to undermine the rights of indigenous peoples in the name of conservation. This has caused tremendous harm to Alaska Native peoples and their traditional homelands, and the legacy of this power dynamic continues to this day. With this history in mind, TNC publicly affirms our support for resolution for the landless communities in Southeast Alaska. In assessing this legislation, we hope the voices that are most important to this Committee are not those of conservation groups, but rather, those of the sovereign nations in Southeast Alaska for whom this has been a generation-long injustice." That is from the Nature Conservancy.

The Wilderness Society also wrote us a letter apologizing to the landless people for the hurt caused by their past opposition and declaring their support for the bill. So, we have come a long way, colleagues.

I am going to ask unanimous consent to add those letters from the Nature Conservancy and the Wilderness Society to the hearing record.

Senator BARRASSO. Without objection.

[The letters referred to follow:]

December 13, 2023

The Honorable Joe Manchin
Chairman
Senate Energy & Natural Resources Committee
Washington, D.C. 20515

The Honorable John Barrasso
Ranking Member
Senate Energy & Natural Resources Committee
Washington, D.C. 20515

Dear Chairman Manchin, Ranking Member Barrasso, and members of the Senate Energy and Natural Resources Committee:

We thank the committee for considering S. 1889, the *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act.* We write to share our perspective on this legislation.

The Nature Conservancy (TNC) is a non-profit organization whose mission is to conserve the lands and waters on which all life depends. Our on-the-ground and in-the-water conservation work is carried out across the states and territories of the United States and in 70+ countries around the world. We are known for our science-based, collaborative approach to developing creative solutions to conservation challenges. For over three decades, TNC has undertaken work in Southeast Alaska – in and around the Tongass National Forest – in partnership with various Tribes and Alaska Native regional and village corporations.

When the Alaska Native Claims Settlement Act (ANCSA) settled land claims in 1971, five communities in Southeast Alaska were excluded from this agreement. Research by the Institute of Social and Economic Research (ISER) at the University of Alaska shows there is no clear reason as to why these five communities were excluded. Emil Notti, an Alaska Native leader who was critical to the land claims agreement, has stated ANCSA will "remain unfinished until the five landless communities are recognized."

The Nature Conservancy supports efforts to right the injustice of exclusion for the five landless Alaska Native communities in Southeast Alaska. We see S. 1889, sponsored by Senator Lisa Murkowski, as an opportunity to correct for this inequity.

The Nature Conservancy recognizes Indigenous Peoples as vital leaders in the pursuit of lasting solutions to the world's most pressing environmental and human well-being challenges. As a conservation organization, we are keenly aware that the conservation movement has not always taken this perspective. Too often, advocacy in the United States has intentionally sought to undermine the rights of Indigenous Peoples in the name of conservation. This has caused tremendous harm – to Alaska Native peoples and their traditional homelands – and the legacy of this power dynamic continues to this day. With this history in mind, TNC publicly affirms our

support for resolution for the landless communities in Southeast Alaska. In assessing this legislation, we hope the voices that are most important to this committee are not those of conservation groups, but rather, those of the sovereign nations in Southeast Alaska for whom this has been a generation-long injustice.

Thank you for the opportunity to weigh in on this critical issue.

Sincerely,



Ivy Spohnholz
Alaska State Director



November 14, 2023

The Honorable Joe Manchin
Chairman
Senate Energy & Natural Resources
Committee
Washington, D.C. 20515

The Honorable John Barrasso
Ranking Member
Senate Energy & Natural Resources
Committee
Washington, D.C. 20515

Dear Chairman Manchin, Ranking Member Barrasso, and all members of the Senate Energy and Natural Resources Committee:

On behalf of our more than one million members and supporters, we write to share our views on S. 1889, the *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act*.

The Wilderness Society has a long, established history of advocating for the conservation and protection of our country's invaluable, natural places, including areas like Alaska's Tongass National Forest. Our advocacy has evolved to include prioritizing inclusivity and intersectionality, as well as Tribal Sovereignty and Tribal Self-determination, acknowledging that Indigenous Peoples are a foundational partner in stewardship and conservation of our public lands.

While our defense of the Tongass continues, we must correct the injustices faced by certain Native communities in Southeast Alaska. We acknowledge that the Tongass is the ancestral homelands of the Tlingit, Haida, and Tsimshian peoples. We acknowledge the fact that five Native communities were wrongfully excluded from the *Alaska Native Claims Settlement Act* when the bill was passed in 1971, and we must, at a minimum, support efforts to correct this. As a result, we support S. 1889, the *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act*, sponsored by Sen. Lisa Murkowski, in recognition of important equity issues that must be addressed.

We ask Congress to ensure proper capitalization of these corporations at the outset to avoid forcing the corporations to rely on extractive industries to fund their startup costs. Adequate initial funding will also attempt to compensate these five communities for the earning potential they were denied for the past 50 years.

We apologize to our Native partners for the hurt our past opposition to this bill has caused; we continue to do the necessary work of centering our Native partners and reflecting on how we can better support them; and we trust in the communities of Haines, Ketchikan, Petersburg, Tenakee Springs and Wrangell to continue to steward this land as they have since time immemorial through their newly formed corporations.

Despite this long-standing injustice, several Southeast Alaska Tribes, including some of the Alaska Native communities affected by this issue, continue to partner with us, including in

defense of Roadless Rule protections in the Tongass. We hope this shift from The Wilderness Society is the first step in restoring balance in Southeast Alaska, and we hope we can continue to build trust with our Native partners, both in Alaska and across the country.

Sincerely,



Meda DeWitt, MA., TH, (hú/du)
Naanya.aayí Tlingit
Senior Specialist, Alaska
The Wilderness Society
Anchorage, Alaska
mdewitt@tws.org

Senator MURKOWSKI. But I would ask colleagues, take a look at them. See the legislation through the eyes of some of these conservation groups that have really been following this issue for a long time. I think we have worked to strike the proper balance and we are doing right by a special place, by the Tongass. We know that every acre in the Tongass is important to somebody, and particularly to those who have lived there since time immemorial.

I want to ask one quick question to you, Mr. French. You know this issue very, very well. You have been around it a long time. In your testimony, you acknowledge the special relationship. You acknowledge the role that the Tongass plays in the economic health and prosperity of the region's community, and you point out that you are looking forward to discussing with the Subcommittee and the sponsor the implications of the bill, particularly to the timber program on the Tongass. I guess the direct question is, does the U.S. Forest Service, does USDA support our landless legislation?

Mr. FRENCH. Thank you, Senator, for the question. And you are right, we have spent years working through the details.

Senator MURKOWSKI. Yes.

Mr. FRENCH. On the individual parcels, and we completely understand the need and the whole delegation's approach on this, and we are very appreciative. We don't oppose the bill. We want to make sure that everybody does understand there are parts of this that will impact some planned timber sales. And as long as everybody knows that, we look forward to working with you as it goes forward.

Senator MURKOWSKI. Well, again, I would just remind that the parcels that have been identified have gone through a very laborious, thorough, open process in terms of identification. So, I would like to think that we can work with the Forest Service to deconflict in these areas. So, you have committed to working with us, and I appreciate that. BLM has also committed to working with us on some technical modifications. We think that we are in pretty good shape because you have been working with us, again, whether it's technical modifications or with regard to actual selection. So, my goal is to finally bring this home, that after decades of a longstanding injustice, that the people in these communities are finally able to have the equity that they deserve. And I would like to think that our agencies are going to be partners with us in achieving just that, along with this Committee.

Thank you, Madam Chair.

Senator CORTEZ MASTO [presiding]. Thank you.

Senator Heinrich.

Senator HEINRICH. Thank you, Ranking Member.

Mr. French, we have seen a pretty substantial cut in the workforce in New Mexico in the Forest Service. We have seen that on the Santa Fe. We have seen it on the Carson National Forest, the Cibola, the Lincoln, the Gila. It has been felt across the system, from issues like trail maintenance, to processing permits for outfitter guides, to wildfire preparedness. The bills that we are talking about today direct your agency to do a number of things—to take actions and undertake new endeavors and new policies, all of which require an adequate workforce. How many National Forest System staff would actually be needed to fulfill your mission, all of the

things that the Congress has tasked the National Forest System to do and to properly manage the roughly 193 million acres of land that the U.S. Forest Service manages?

Mr. FRENCH. That's a big question.

Senator HEINRICH. And I bet the Forest Service has looked at this.

Mr. FRENCH. We have.

Senator HEINRICH. I bet there's an answer.

Mr. FRENCH. So, I mean, the reality is, if you look at the requirements of statutes of what we are told and asked to accomplish, the needs for funding and staffing far exceed the requirements that are placed on us to manage those to standard, and we manage the largest trail system in the country, 165,000 miles of trails. And yet, the staffing that we have, and the budgets that we have, we struggle to maintain up to a third of it a year. Now, I mean, we are working to overcome the things you just talked about. Today, we are announcing 2,000 summer hires, recreation hires to assist us in overcoming that work. We have been in a place of getting our workforce to a more sustainable level to the budgets we have, but we have done that work. We can certainly share it with you. I am not prepared, today, to give you——

Senator HEINRICH. I would appreciate it if you can share that work with us.

Do we pay our firefighters enough?

Mr. FRENCH. In my opinion?

Senator HEINRICH. Yes, in your opinion.

Mr. FRENCH. No. I think that—I want to be thoughtful here, because I don't have with me a particular position from the administration, but as a past firefighter, myself——

Senator HEINRICH. Yes.

Mr. FRENCH. When I look at what we ask them to do, and watching over the last 20 years, our fire seasons becoming larger and larger, putting more and more demands on them and their families, and when I look at what is being compensated at state levels, I think there is work to do there.

Senator HEINRICH. Mr. Raby, same question. The BLM manages 246 million acres. How many folks would we need to adequately manage that?

Mr. RABY. Senator, thank you for the question. And of course, in the Bureau of Land Management, we have an organization of about 9,000 employees to manage 245 million acres. We receive about $5.75 per acre to manage these lands, which, we have always been a lean organization. We have been very focused, again, on our mission delivery, and at the same time, ensuring that we have organizational efficiency and workforce optimization. So, we have these, you know, again, we have always had these sort of competing objectives at times, but they are complementary objectives as well. And so, while, again, we may not have always received what we may have desired, we can't look on ourselves and say we are going to be woeful about what we don't have. We are very focused on what we do have, and then we set our priorities accordingly, and of course, we are fully staffed in our wildland fire organization, as well as law enforcement, and energy and minerals. And then, we

certainly rely on a lot of partners to help us, between state and local organizations as well.

Senator HEINRICH. The parcels that were identified for withdrawal in the Buffalo Tract Protection Act make up roughly a little over 4,000 acres. One of my concerns is that they are kind of scattered through residential neighborhoods. So, the impacts of a gravel mine amongst a residential community would be felt pretty acutely, and residents are rightly worried about health impacts, noise, particulate pollution, as well as disruption to wildlife in the area. I mean, that's kind of the reason why there is, to my knowledge, no real opposition to this legislation. There is literally a gravel mine just down the road that is very successful and people are okay with because it's not in the middle of a residential community. Do you think that a suburban neighborhood is the appropriate place for a gravel mine?

Mr. RABY. Senator, thank you again for the question. And when we look at the proposal for mineral withdrawals, that can preclude opportunities and options for, again, what we believe is responsible development that can take into account local considerations.

Senator HEINRICH. I'm sorry, Mr. Raby. How is it responsible to put a very noisy, very particulate-heavy industrial activity in the middle of a suburban neighborhood? I don't understand the responsible part of that statement.

Mr. RABY. We go through a lengthy process between the environmental reviews.

Senator HEINRICH. I know the process. Because I heard about it from all of the community members in that area. I don't know of anyone who supports this. Your position—the BLM position—has literally no community support. Do you listen to the community before you make a decision like that?

Mr. RABY. Well, Senator, of course we listen to the community. We have our local line officers, our district managers, field managers who absolutely are engaged with the community, and they have to also account for the national policy direction when we have a declared national energy emergency, which, by reference, includes a mineral emergency. We have to——

Senator HEINRICH. How does producing gravel solve the national energy emergency?

Mr. RABY. Yeah, it's a mineral resource that, again, provides——

Senator HEINRICH. Right.

Mr. RABY. Opportunity for development and——

Senator HEINRICH. Which we produce five miles away in abundance.

Mr. RABY. Your point is well taken. I understand.

Senator HEINRICH. My point is that your policy in this case is completely disconnected from the local community, and while we have very wide opinions on this Committee, where we get crosswise is when there is a federal policy dictated from Washington, DC that is completely disconnected. And this is where Senator Murkowski and I actually agree. It's where Senator Daines and I actually agree. When we get in trouble is when we don't listen to the local community, and in this case, it is my view that the administration and the BLM are completely ignoring the local community.

And so, Ranking Member Cortez Masto, I want to enter into the record, if there is no objection, all of the community groups, from local tribes, to the county, to the local municipality, to the neighborhood association that this would impact, their views on the Buffalo Tract Protection Act.

Senator CORTEZ MASTO. Without objection.

Senator HEINRICH. Thank you.

[Letters and statements of support for the Buffalo Tract Protection Act follow:]

MARTIN HEINRICH U.S. SENATOR FOR NEW MEXICO

Endorsements for the Buffalo Tract Protection Act

The Buffalo Tract Protection Act permanently withdraws minerals from development on four parcels of Bureau of Land Management (BLM) lands in southern Sandoval County, including the Buffalo Tract and the Crest of Montezuma.

For years, local communities, Tribes, and homeowners have advocated for the protection of the Buffalo Tract and Crest of Montezuma. These lands hold ancestral and spiritual significance for the Pueblos of San Felipe and Santa Ana, and also provide accessible outdoor recreation opportunities, including hiking, sightseeing, and hunting.

The Buffalo Tract Protection Act is led by U.S. Senator Martin Heinrich (D-N.M.), Ranking Member of the Senate Energy and Natural Resources Committee, and U.S. Representative Melanie Stansbury (D-N.M.). U.S. Senator Ben Ray Luján (D-N.M.) and U.S. Representative Teresa Leger Fernández (D-N.M.) are original cosponsors.

The Buffalo Tract Protection Act is endorsed by Santa Ana Pueblo, San Felipe Pueblo, Land Use Protection Trust, New Mexico Wild, Eastern Sandoval Citizens Association, Sundance Mesa Homeowners Association, La Mesa Homeowners Association, Anasazi Homeowners Association, Pathways: Wildlife Corridors of NM, and Sandoval County Commission.

Statements of Support:

"The Buffalo Tract is a place of immense cultural significance to the Pueblo of Santa Ana, located along our ancestral migration route from Paak'u to Middle Rio Grande. Since 2008, the Pueblo has worked closely with the Bureau of Land Management to assist in the stewardship of these lands. We wish to thank Senator Heinrich for bringing this legislation forward to protect the land from any future mining development. The Pueblo of Santa Ana strongly supports the Buffalo Tract Protection Act," **said Santa Ana Pueblo Governor Myron Armijo.**

"The Pueblo of San Felipe is in full support of the work being done by so many to protect the Buffalo Tract. The land known as the Buffalo Tract is ancestral San Felipe land, rich in history and vital to the preservation of pueblo cultural values including wildlife corridors and functioning mountain systems. Preservation of cultural sites and resources is part of the solemn responsibilities Pueblos must fulfill to steward the land.

Today more than ever it is important to work together to protect land, watersheds and cultural values to ensure high quality of life for all New Mexicans so that our way of life will continue for this and future generations. The Pueblo of San Felipe gives our full support to the legislation and permanent protection for the Buffalo Tract," **said Pueblo of San Felipe Governor Anthony Ortiz and Lieutenant Governor James Tenorio.**

"The Buffalo Tract provides critical habitat connectivity for species like mule deer, allowing for seasonal migration and genetic diversity. As a hunter who relies on healthy wildlife populations, I support protecting this wildlife corridor to maintain the ecological balance that sustains both game species and the broader ecosystem," **said Jeremy Romero, Regional Connectivity Coordinator for Western Lands, National Wildlife Federation.**

"The longstanding team of Las Placitas Association and Eastern Sandoval Citizens Association, representing half of Sandoval County, applauds Senator Heinrich and Rep. Stansbury's reintroduction of the Buffalo Tract Protection Act, whose passage will protect not only the public health, air and water resources, wildlife, cultural heritage and recreation opportunities of Placitas/Sandoval County but the local and state economies as well. ES-CA sincerely appreciates the Department of Interior for removing the Buffalo Tract from further gravel mining. Now we must adopt this legislation to permanently remove the Buffalo Tract from any mineral extraction, which is vitally important to our culturally diverse, high-desert residential community in the greater metropolitan Albuquerque area," **said George Franzen, President, Eastern Sandoval Citizens Association.**

"The Buffalo Tract Protection Act protects a vulnerable landscape from the increasingly aggressive activities of extractive industries. Our nation's mining laws haven't been updated since the Ulysses S. Grant administration, so it's refreshing to see Senator Heinrich and Representatives Stansbury and Leger Fernández use their offices to address unchecked development here in New Mexico. It's time to withdraw more of our federal public lands from mineral leasing," **said Mark Allison, Executive Director, New Mexico Wild.**

"Only legislation can ensure permanent protection and sustainable stewardship of the Buffalo Tract consistent with the community vision for wildlife connectivity and conservation of natural resources, sacred and cultural sites, and outdoor recreation potential. The diverse Placitas/Sandoval County community – including the Pueblos, the Land Grant, and dedicated citizen groups – is deeply grateful to Sen. Heinrich for his unflinching leadership and support for the public land known as the Buffalo Tract," **said Mary-Rose de Valladares, Chair, Land Use Protection Trust.**

The Las Placitas Association

Preserving and Protecting the Quality of Life in the Placitas Area

Representative Debra Haaland
1237 Longworth HOB
Washington, D.C. 20510

January 4, 2021

Dear Representative Haaland,

The Las Placitas Association (LPA), representing the Placitas community, continues to support the Buffalo Tract Protection Act (H.R. 2640, 116th Cong.). We are deeply grateful for your past support in introducing and successfully shepherding this legislation though the House Committee approval process. We continue to look forward to passage of this act. As you know, the Buffalo Tract Protection Act enjoys the support of Sandoval County, both San Felipe and Santa Ana Pueblos, as well as the State of New Mexico.

We are delighted to again extend congratulations on your recent nomination as Secretary of the Interior. Although we are sorry to lose you as our Congressional Representative, we are certain that the diverse American peoples and all of our federal lands will greatly benefit from your leadership. In view of your upcoming new role, we urge you to reintroduce the Buffalo Tract Protection Act as early as possible in the 117th Congress.

The Buffalo Tract continues to be at risk because the unreleased draft Resource Management Plan (RMP) allows mining on the Buffalo Tract. Moreover, while the draft RMP is pending, BLM has told us that new leases for mining purposes may be authorized under the existing plan. Exploratory drilling has already taken place.

Please let us know if there is anything we can do to facilitate re-introduction of the Buffalo Tract Protection Act or its quick passage into law. Once again, thank you for your continuing efforts on behalf of our community.

Sincerely,

Sandy Johnson
President, LPA
theboard@lasplacitas.org

The Las Placitas Association

Preserving and Protecting the Quality of Life in the Placitas Area

May 13, 2019

Honorable David Bernhardt
Secretary, U.S. Department of Interior
1849 C Street, NW Washington, D.C. 20240

ES-CA
EASTERN SANDOVAL CITIZENS ASSOCIATION

Dear Secretary Bernhardt:

We, the Eastern Sandoval Citizens Association (ES-CA) and the Las Placitas Association (LPA) of New Mexico, write to respectfully request that you use your authority under the Federal land Policy and Management Act (FLPMA) to withdraw certain Bureau of Land Management (BLM) land in Unit 5 of the Rio Puerco Resource Management (RMP) area from all forms of mineral development under all laws pertaining to mineral leasing or mineral materials, including locatable minerals, in aid of pending legislation: the Buffalo Tract Protection Act (S. 526 and H.R. __).

The subject BLM land is labeled as Tracts A through D on BLM's "Placitas, New Mexico Area Map," dated March 11, 2016. For Sandoval County planning purposes, Tract A is considered part of "Indian Flats." Today, it is commonly referred to as "the Buffalo Tract"—for which the legislation is named—while Tract B is commonly called the "Crest of Montezuma."

Withdrawal of all tracts from mining is urgently needed in view of (1) the risk associated with the outdated RMP, which allows mining on all four tracts; (2) the uncertainty associated with the contents of a new RMP and the delays in its review and adoption; (3) the devastating impact on public health, economic conditions, and the environment from existing mines in this vicinity; and (4) the cumulative adverse impact that would result from any additional mining on the Buffalo Tract and the three other subject parcels in Unit 5.

About the Placitas Community

The ~3,000-acre BLM Buffalo Tract and the three sister parcels are situated within Unit 5 of the Rio Puerco Planning area in Placitas, an unincorporated area. Rich with over 11,000 years of Puebloan, Spanish and Anglo-American history, Placitas is part of the Las Huertas Basin, which extends from the north Sandia Mountains to the Rio Grande. While Placitas is located in Sandoval County, it is also part of metro Albuquerque, which is home to half of New Mexico's population. Today, most of Placitas, including all the land abutting and neighboring the Buffalo Tract and other Unit 5 parcels is zoned RRA: Rural Residential/Agricultural. Mining is not allowed in this zone to deter adverse impacts on adjoining landowners.[1] Sandoval County first adopted such zoning for Placitas in 1990.[2]

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[1] "This zone district maintains a rural character of land use with low-density residential and agricultural development, ideally on large lots that do not rely on or require connections to centralized water and sewer systems. Certain other uses are allowed, provided they are compatible with the rural residential and/or agricultural nature of the district. "Sandoval County, New Mexico, art. I, § 9(1) (2018) (RRA Rural Residential/Agricultural District), https://goo.gl/yT1k4F.

[2] "Sandoval County had no comprehensive zoning until January 20, 1988, when the first comprehensive zoning ordinance went into effect, limited to the community of Algodones. ... On February 7, 1990, the

In a letter to former New Mexico Sen. Jeff Bingaman dated May 13, 1999, Sandoval County requested a Congressional appropriation for BLM to update the 1992 RMP, noting that the County had prohibited mining in Placitas in 1990, and concluding that "an amendment is needed to bring the RMP into substantial compliance with Sandoval County's Comprehensive plan."[3]

The *Placitas Area Plan* (PAP), adopted by the Sandoval County Commission in 2009, builds on the 1990 zoning ordinance in protecting the existing semi-rural character of Placitas.[4] Mining conflicts with what the County has determined to be the highest and best uses that protect Placitas's existing semi-rural character. The PAP specifically encourages the BLM to maximize open space opportunities and to set aside an identified wildlife corridor. The San Felipe and Santa Ana Pueblos, which abut the Buffalo Tract, are similarly opposed to gravel mining on these BLM lands in favor of other uses, such as open space for sacred ceremonies and, in the case of Santa Ana, a wildlife corridor.[5]

The existing BLM Rio Puerco Resource Management Plan (RMP) was originally approved in 1986, prior to adoption of the Sandoval County Zoning Ordinance in 1990.[6] In 1992, BLM updated the RMP—without, apparently, conducting a new local consistency review.[7] The updated RMP simply repeated the statement of the 1986 RMP that "[n]o inconsistencies [with other Federal, state, local or tribal resource-related plans] have been noted."[8] The revised RMP failed to mention Sandoval County's 1990 zoning ordinance, which banned mining throughout Placitas and its surroundings.

Since 1986, Placitas has been transformed into a key anchor of the Albuquerque region's economy. The population of Placitas more than *quintupled* from less than 1000 in 1980 to nearly 5000 in 2010 out of a total state population of just over 2,000,000. The number of occupied housing units in Placitas grew by over 50% from 2000 (1,606) to 2013 (2,431).[9] The 2009 *Sandoval County PAP* reports potential for an additional 1,200 large lot homes on private land in the Placitas West area alone.[10] Placitas has become a magnet for the affluent retired and semi-retired—many of whom are drawn there from out of state, bringing significant financial resources with them. Placitas households with

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Sandoval County Commission zoned the remainder of Sandoval County ... by amending the existing comprehensive zoning ordinance to designate the rest of the county, outside the municipal areas, as a Development Review (DR) district. That designation permitted only residential and agricultural uses.... " *Gary Miles & Patience O'Dowd v. Board of County Commissioners of the County of Sandoval* (N.M. Ct. App. 1998), https://goo.gl/e1RKEL.

[3] Letter from Debbie Hays, County Manager, Sandoval County, New Mexico, to Sen. Jeff Bingaman (May 13, 1999).

[4] Sandoval County Commission, New Mexico, *Sandoval County Placitas Area Plan*, 38 (2009) (*Sandoval County PAP*) ("The Placitas Plan should protect the existing semi-rural character of the Placitas region and the character and the identity of specific neighborhoods"), https://goo.gl/vv1KD5.

[5] Santa Ana officials expressed their opposition to mining in PowerPoint presentations given at public and private gatherings in 2015-2016, and have restated their opposition in meetings with community groups.

[6] Bureau of Land Management, U.S. Department of the Interior, *Rio Puerco Resource Management Plan* (1986).

[7] Bureau of Land Management, U.S. Department of the Interior, *Update to Rio Puerco Resource Management Plan* (1992), https://goo.gl/SVA3K1.

[8] *Id.* at 12.

[9] 2010 U.S. Census of Population and Housing; U.S. Beacon.

[10] Sandoval County PAP, *supra* note 4 at 11.

at least one member aged 65+ are estimated to add $57-91 million annually to New Mexico's economy.[11] In general, new Placitas residents support job creation in the greater Albuquerque area, contributing to the prosperity of the community, county and state.

Longstanding Opposition to Mining

Sand and gravel mining operations have also expanded greatly since 1986. Their growth threatens both the Placitas environment and public health—and thus the economic sustainability of Placitas as an anchor for the Albuquerque economy. Today, Placitas has four of the thirteen largest gravel pits in the state.[12] The addition of a mine of *any* size on the BLM Buffalo Tract would further imperil Placitas' health and economic wellbeing.

In the late 1990s, the Placitas community began organizing to oppose expanded mining on BLM land, including the Buffalo Tract, and to support revision of the existing Rio Puerco Resource Management Plan (RMP), which allows mineral extraction on the entire Buffalo Tract and nearby BLM tracts in Unit 5. The community seeks to disallow mineral mining in these areas.

For over two decades, the Placitas community has worked diligently—but without success—to revise the existing Rio Puerco RMP to reflect the transformed character of the area. The BLM initiated the process of revising the RMP in 2008. Despite overwhelming opposition to gravel mining during the public scoping phase, the proposed BLM draft RMP (dated August 2012) allowed mining on much of the Buffalo Tract. During the public comment period that followed release of the draft RMP, public response was overwhelming: there were 50,000 comments, united in their opposition to mining. Sandoval County opposed mining unequivocally.[13] After the public comment period ended, the draft was revised; it has been kept in-house at BLM's local field office since 2013 and has not been released

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[11] *See* Eastern Sandoval County Citizens Association & Las Placitas Association, *Land of Enchantment or Gravel*, 5 (2015) ("the results indicate an order of magnitude economic effect ranging from $74,962,268 - $91,362,268, " using a 2012 defined benefit pension expenditure multiplier of 1.64), https://goo.gl/p428qK. The underlying source for pension expenditure multipliers, updated every two years, uses a multiplier of 1.47 for 2014, Nari Rhee, *Pensionomics*, 22 (2014), https://goo.gl/bBNsse, and 1.24 for 2016, Nari Rhee, *Pensionomics*, 20 (2016), https://goo.gl/vNsDLv. Using these adjusted multipliers produces total estimate ranges of $67.2-81.2 million for

2014 and $56.7-69.1 million for 2016. Pension multipliers will continue to vary from year to year, making precise estimates difficult.

[12] Grevey Liberman/La Farge/Vulcan Mine (initially a 1000-acre site, then reduced to 821 acres) has been under a gravel lease since 1973. In 1988, the mine was granted rights to operate 5 days/week, 8 hours/day under a certificate of non-conformance. The lease was set to expire in 2015, at which time the public was given to understood that the mine would close permanently. However, the mine violated the conditions associated with the certificate of non-conformance by operating 7 days/week 24 hours/day. Therefore, Sandoval County sent LaFarge a notice of violation in June 2013 and filed a lawsuit. While the lawsuit was pending, the new owner Vulcan negotiated a new lease for the property (now owned by Seattle based Mt. Adams), much to the distress of the community, which had relied on mining company representations about the 2015 sunset for decision-making. The case was referred for mediation, resulting in a settlement that will extend the life of the operation, including a nine-month reclamation period, until May 2027. *Settlement Agreement between Sandoval County, New Mexico, and Lafarge North America et al.* Case No. D-1329-CV-2014-00589 (Aug. 10, 2017), https://goo.gl/4njCEr.

[13] Sandoval County, New Mexico, Resolution No. 8-6-15.7 (approved Aug. 6, 2015), https://goo.gl/8qiiM9.

to the public. At this pre-decision stage, the community does not know what the final proposed RMP contains with respect to mining — or anything else. Meanwhile, the outdated RMP, which allows gravel mining on the 3,000 acres of the Buffalo Tract, remains in effect.

These circumstances led Senators Udall and Heinrich to introduce the Buffalo Tract Protection Act (S.390) in the U.S. Senate and Rep. Lujan Grisham to introduce an identical companion bill (H.R.1085) during the 115th Congress. The legislation has been reintroduced in the 116th Congress as S.526; no House bill number has yet been assigned. The proposed legislation seeks to bar mining on the Buffalo Tract and related parcels in Unit 5.

However, because the sorely outdated 1986 RMP remains in effort, permitting mining, BLM received an application by Vulcan/Baca in late spring 2018 to drill 80 test wells on the Buffalo Tract. If the test wells produce the results desired by these mining concerns, an application to BLM for a mining permit on the Buffalo Tract will likely follow quickly. There are more than 325 homes (improved residential property) and a similar or greater number of platted and approved residential lots adjacent to the proposed mine. Notably, even test mining has degraded the environment: test holes from previous rounds of testing were never mitigated—despite being large enough to be clearly visible from Google Earth satellite photos.[14] (As we understand it, BLM effectively can no longer require mitigation of these test holes because the mining companies have changed ownership multiple times.)

There is huge uncertainty associated with the revised RMP, both with respect to what it says about mining and the timing of plan approval. There are also acute risks associated with the outdated existing RMP, given the certain and grave threat posed by additional gravel mining. Therefore, our community has concluded that administrative action to withdraw the Buffalo Tract from all forms of mineral development is crucial, lest the issuance of new mining permits under the thirty-two-year-old RMP defeat the intent of the proposed legislation—to protect the community from mining. This action would resolve the administrative stalemate over the issuance of a revised RMP of uncertain content and protect the community while our legislation is pending.

Impact of Mining

Gravel mining would harm the Placitas community, Sandoval County and adjoining tribes in three levels: (1) public health and the environment; (2) reduction of property values, and thus Sandoval County's tax base, which supports public services in Placitas and throughout the county; and (3) cultural and historic value

Public Health & Environmental Risks

The adverse impact of aggregate mining on public health and the environment is significant and clear.

Aggregate mining (of gravel and sand) is specifically excluded from the New Mexico Mining Act of 1978 and from its excellent mining controls. This exclusion leaves it to each county to protect public

[14] Eastern Sandoval Citizens Association, *Land Use Protection Trust* (last visited Oct. 29, 2018), Las Placitas Association, *Gravel Mining* (last visited Oct. 29, 2018), https://goo.gl/tULS34.

health by keeping mining at a safe distance, as the *2009 PAP* requires. But Placitas is in an unusual situation, with BLM-owned land immediately abutting a residential community. Because the Supremacy Clause of the U.S. Constitution denies Sandoval County the power to apply its zoning ordinance to federally owned land, Placitas residents are left unprotected from uses that both the state and county recognize as harmful.

Particulate Matter. The New Mexico Department of Health reports that New Mexicans are twice as likely to die from silicosis as the national average. Industry-related deaths from silicosis are, by a significant margin, in those jobs related to mining where human exposure is greatest. Silica dust particles are in a class of particulate matter (PM) referred to as PM 2.5. Both PM10 (big) and PM2.5 (small) particles can cause health problems, specifically respiratory health (lungs and airway) and secondary issues such as heart problems. PM10 exposure poses a special risk to sensitive populations that already have heart and lung disease, especially the elderly,[15] a disproportionately large share of the Placitas population.

PM2.5 is potentially lethal because these tiny particles can embed themselves deeply in the lungs. However, PM10 is also among the most harmful of all air pollutants. Both size particles are associated with desert winds and disturbed soil, and *both can travel great distances*. The smaller PM2.5 particles are lighter: they remain in the air longer and travel farther than PM10 particles. PM2.5 particles can stay in the air for days or weeks, while PM10 particles can stay in the air for minutes or hours. PM10 particles can travel as much as 30 miles;[16] PM2.5 particles travel many hundreds of miles.

The cumulative risk from so many existing gravel mines—which violate, but predate, Sandoval County's 1990 zoning ordinance and 2009 plan—exacerbates the public health threat. Four of New Mexico's thirteen largest gravel mines are within a four-mile radius of Placitas, posing clear health risks to Placitas residents. Given the distances both PM2.5 and PM10 can travel, these mines necessarily affect neighboring communities as well. The prospect of additional mining compounds this public health risk. Yet, bafflingly, no truly comprehensive and cumulative analysis of surface mining impacts in the vicinity of the BLM tracts was conducted to inform the RMP revision.

Consumption of Scarce Water. The only way for the gravel mining industry to mitigate the public health risks from mining (other than conducting it at a safer distance from residential areas, of course) is to spray disturbed ground with water. This makes gravel mining hugely water-intensive, consuming *three-to-four times* as much water per acre as residential uses in Placitas. Water is the most limited and precious resource in this area. While mining is not a sustainable use, it can last long enough to reduce the supply of water that will be needed to support the residential population in the long-term.

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[15] American Lung Association, *Learn about Silicosis* (last visited Oct. 29, 2018), https://goo.gl/NoqW1V; Department of Public Health, New Mexico, *Silicosis in New Mexico* (last visited Oct. 29, 2018), https://goo.gl/ZVp6hU.

[16] *Land of Enchantment or Gravel*, *supra* note 11, at 10-11.

Other Environmental Impacts. Mining on the Buffalo Tract would also negatively impact the area in terms of soil management, plant and animal habitat and wildlife corridors, resulting in irretrievable losses of public resources.

Reduction of Residential Property Value

Sandoval County reports that mining in Placitas (conducted on private land, out of conformance with the County's plan) has already reduced the County's property tax base due to decreased valuations.[17] One economist, Diane Hite at Auburn University, studied the loss of value sustained by a residential community based on proximity to gravel mining operations ranging from 0.5 to 5.0 miles distance from residence to mine.[18] Her study found that home values 0.5 miles from the mine were 36% lower than those 5 miles away, and even home values 3 miles from the mine were 20% lower than those 5 miles away. Her study clearly demonstrates the potentially enormous economic consequences of gravel mining for homeowners far beyond the range of immediate visibility.

Any mine permitted on the Buffalo Tract would immediately border the existing residential community (and lots platted for future residents), causing economic damage to the value of private property and therefore the Sandoval County tax base. Moreover, the mine would subject property within a five-mile range—in other words, most of Placitas—to economic damage from loss of property value.

Although Placitas has built a reputation as a destination location for the retired/semi-retired from out of state, extensive mining activities are eroding its residential market position. With the proposed expansion of mining on the Buffalo Tract, a significant economic asset to Sandoval County and the State of New Mexico is at greater risk.

Cultural and Historic Values

The BLM Buffalo Tract contains cultural resources, notably archeological sites that would be permanently lost or significantly damaged if surface or subsurface disturbance (and certainly mining) were allowed. Moreover, the adjacent tribes consider the Buffalo Tract to be sacred and essential to their sacred ceremonies. On this basis, both San Felipe and Santa Ana Pueblos have opposed new mining

Alternatives for the Mining Industry in this Market Area

BLM itself acknowledges ready alternatives to destroying the Placitas community as an attractive, safe residential community—and premiere retirement destination. The BLM's 2010 mineral resource report was prepared as part of the RMP process. The report identified a 60-mile band between Los Lunas and Santa Fe as sand- and aggregate-rich areas that fall into the BLM "salable"

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[17] Eastern Sandoval County Citizens Association and Las Placitas Association representatives report that the Sandoval County Assessor's Office informed them on August 27, 2018 that many Placitas homeowners have requested a reduction in their residential property valuation, citing the unexpected continuation of mining through 2027. *See supra* note 12.

[18] Diane Hite, Auburn University, *Summary Analysis: Impact of Operational Gravel Pit on House Values, Delaware County, Ohio*, (2006), https://goo.gl/gi4YKV.

category, providing a 90-year supply of gravel for the region at the current rate of consumption. The report characterizes the aggregate potential in most of these areas as being *higher* than in Placitas. The other areas of high aggregate potential are as close as—or even closer than Placitas—to the prime market, Albuquerque. [19]

Hence, the Rio Puerco area outside Placitas offers the mining industry attractive sand and gravel mining alternatives at a reasonable distance to market. Such opportunities might actually be welcomed by other communities that would be at a safer distance from such mines and might value the creation of even the mere handful of jobs associated with each mine.

Benefits from Preferred Community Approaches

The Placitas community has consistently encouraged use of the Buffalo Tract as an *urban interface* for metropolitan Albuquerque. Population growth in the metropolitan area clearly calls for increased recreation opportunities, which the Buffalo Tract could provide—via low impact recreation such as hiking, cycling and horseback riding—without negative environmental and cultural impacts. Mindful of these recreation needs, as well as the FLPMA principles of multiple use and sustained yield, the community has consistently encouraged use of the Buffalo Tract for recreation, open space and wildlife corridors. Such approaches to the urban interface could serve as a *replicable national model* for BLM in its management of public lands that abut residential communities.

Moreover, the Placitas community has garnered a reputation for volunteerism that is recognized by BLM and could support BLM's management of Unit 5 of the Rio Puerco Management area. Specifically, the Las Placitas Association (LPA) traditionally sponsors bird and plant hikes on the Buffalo Tract and the City of Albuquerque Open Space (owned by BLM and adjoining the Buffalo Tract). In 2018 LPA sponsored the Michael Crowfoot lecture series on erosion and the history of the Placitas ecology. Also this year, LPA volunteers have been cleaning up the illegal trash dumps on BLM land in Placitas. The Eastern Sandoval Citizens Association (ES-CA) holds regular Adopt-A-Highway Cleanups. The Pathways organization routinely performs animal surveys to assess the health of the corridors on BLM land in Placitas. Enhanced volunteer cooperation with BLM could also serve as a national model for BLM in its management of public lands, particularly those abutting residential communities.

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Withdrawal of these lands from mineral mining is essential to allow Congress to properly consider its pending legislation. So long as this public land remains under the controls of an RMP developed for a dramatically different community and a dramatically different time, only withdrawal of mining rights can prevent the irreparable, long-term harm to the Placitas community that mining would inflict—harm that caused Sandoval County to prohibit mining nearly thirty years ago. The fact that BLM is currently in the process of revising the Rio Puerco RMP makes withdrawal of mining rights more, rather than less, urgent —given that the RMP's final preferred alternative on mining in the

[19] Intera, Inc., prepared for Bureau of Land Management, Department of the Interior, *Mineral Resource Potential and Reasonably Foreseeable Development for Planning Units 1-5*, 79 & plate 58 (2010), https://goo.gl/Na6d7v.

Buffalo Tract, as well as the timing on release of the final RMP and Environmental Impact Statement (EIS), all remain unknown.

In addition to the damage and risks enumerated here, it must also be said that gravel mining is not a sustainable activity. Moreover, the prospect of additional destructive mining on the BLM Buffalo Tract at the urban interface is inconsistent with County, Tribal and community planning objectives. All segments of the community, including the Santa Ana and San Felipe Pueblos, oppose gravel mining on the Buffalo Tract.

Ultimately, only legislation can protect the Placitas community. Even under the most optimistic RMP scenario—in which the preferred BLM RMP alternative on the Buffalo Tract disallows all mining—the threat would only be averted until the next revision of the RMP in 15-20 years,[20] when the community will again face the risk of mining on the Buffalo Tract. With a future RMP revision, the community will again confront the resource intensive challenge of defeating gravel mining. Therefore, the community intends to pursue passage of legislation at the earliest possible opportunity.

Administrative action to withdraw this land from mineral mining is essential to protect the Buffalo Tract and the community of Placitas until Congress can address the New Mexican Delegation's legislation. We would be happy to answer any questions and thank you for your consideration.

Sincerely,

George Franzen
President, Eastern Sandoval Citizens Association (ES-CA)

Sandy Johnson
President, Las Placitas Association (LPA)

Mary Rose Szoka-Valladares
Member, ES-CA & LPA

Richard Ulmer
Chair, Land Use Protection Trust

cc: Senator Martin Heinrich
Senator Tom Udall
Rep. Debra Haaland
Rep. Ben Ray Lujan
Rep. Xochitl Torres Small
Dr. Brian Steed, BLM Deputy Director, Policy and Programs

[20] This process of RMP development began with a Notice of Intent (NOI) published in the Federal Register in February 2008. When approved, this RMP will replace the 1986 Rio Puerco RMP and subsequent amendments, and will guide the management of public lands administered by the Rio Puerco Field Office into the future... decisions made will determine how publicly-owned and administered lands and resources will be used for the next 15 to 20 years." BLM, *Rio Puerco Resource Management Plan* (last visited Oct. 29, 2018), https://goo.gl/1A7jxR.

PUEBLO OF SANTA ANA

OFFICE OF THE GOVERNOR

13 July, 2016

Hon. Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

Re: Buffalo Tract Protection Act.

Dear Senator Heinrich,

The Pueblo of Santa Ana strongly supports, the Buffalo Tract Protection Act, which will ensure that Santa Ana Pueblo and our neighbors in southern Sandoval County are protected from additional gravel mines on the Buffalo Tract.

The people of Santa Ana use the Buffalo tract area for collecting items for religious use, make offerings to our ancestors, and as a route to places of reverence and worship. We hope this legislation will bring a solution in line with the BLM's mission to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.

The Pueblo of Santa Ana has repeatedly asked the BLM to protect the Buffalo Tract through appropriate and available administrative means. We sincerely appreciate your ear toward our concerns and taking action on this important matter, but we are disappointed that legislation is necessary.

Sincerely,

Pueblo of Santa Ana
Myron Armijo, Governor

02 DOVE ROAD ♦ SANTA ANA ♦ NM 87004

TEL: 505-771-6700 ♦ FAX: 505-771-6745 ♦ EMAIL: GOV@SANTAANA-NSN.GOV

PUEBLO OF SANTA ANA

Timothy Menchego, Governor of the Pueblo of Santa Ana, New Mexico
"Testimony for the Record: S. 526 Buffalo Tract Protection Act"
Senate Public Lands, Forests and Mining Subcommittee Legislative Hearing
May 14, 2019

Dear Chairman Lee, Ranking Member Wyden, and Members of the Subcommittee,

Thank you for the opportunity to submit written testimony for the record on S. 526, the "Buffalo Tract Protection Act." My name is Timothy Menchego and I serve as the Governor of the Pueblo of Santa Ana (Pueblo), located due north of Albuquerque, New Mexico. On behalf of the Pueblo, I would like to share our strong support for S. 526, as introduced by U.S. Senators Martin Heinrich and Tom Udall. This bill would protect four Bureau of Land Management tracts located in southern Sandoval County, New Mexico, from all forms of mineral development. Of great importance to the Pueblo is the inclusion of an existing wildlife corridor connecting the Jemez and Sandia mountains that we refer to as the "Buffalo Tract."

The Buffalo Tract is home to several cultural sites that are directly linked to the Tamayame – or the People of Santa Ana. For countless years, the Tamayame used camps within the Buffalo Tract as they traveled between their historical village of Paak'u on the east side of the Sandia Mountains to their farm fields located in the fertile Rio Grande Valley, as well as to their ancestral village of Tamaya, which we continue to inhabit today along the banks of the Rio Jemez.

The Pueblo is deeply concerned with the negative impacts that potential mineral development could have not only on the Pueblo, but on the region as a whole. The area already supports multiple mining operations, and any additional mining would only further degrade the quality of nearby natural resources, habitats, and living conditions – for both wildlife and people. Expanded mineral development in Sandoval County would adversely affect local and regional air quality (adding to emissions from existing highways and a railway) and water quality (due to soil erosion and contaminants). Mineral development will also cause harmful narrowing and fragmentation of an already constrained wildlife corridor that links the Jemez Mountains to the Sandia Mountains along Las Huertas Creek.

S. 526's withdrawal of the Buffalo Tract and three associated parcels from future mineral development is a critical step in ensuring that the Pueblo's natural and cultural resources

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would not be further negatively impacted by mining operations directly adjacent to the Pueblo's land. It is essential to protecting our ancestral lands and maintaining the integrity of our shared public resources in Sandoval County.

Thank you for considering the Pueblo's concerns in this matter. We fully support S. 526 and we respectfully ask that this written testimony be included in the hearing record.

P.O. Box 4339
San Felipe Pueblo, NM 87001

Phone: (505) 867-3381/3382
FAX: (505) 867-3383

Office of the Governor

July 13, 2016

Hon. Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

Dear Senator Heinrich:

I write in support of your legislation, the Buffalo Tract Protection Act, which will ensure that communities in southern Sandoval County are protected from gravel mining on nearby lands managed by the Bureau of Land Management (BLM).

The draft Rio Puerco Resource Management Plan, published in July 2012, opened the Buffalo Tract and other nearby public lands to gravel mining. I am concerned that a mine in this area would be of risk due to health related issues within the community of Placitas and as well as surrounding area.

Your legislation would withdraw the Buffalo Tract and other public lands in the vicinity from any mineral sale, lease, or patent. This will protect Pueblo of San Felipe from unwanted impact from mining. I hope to see this legislation advance quickly, and thank you for your work on behalf of Pueblo of San Felipe.

Sincerely,
PUEBLO OF SAN FELIPE

Michael T. Sandoval, Governor

Merced De Comunidad De San Antonio De Las Huertas

Mailing Address • PO Box 625 • Placitas, New Mexico 87043 • 505.867.1782

Fax number 867.7691• Physical Address • 41 B Camino de las Huertas • Placitas, New Mexico

July 13, 2016

To Whom It May Concern,

We the San Antonio de Las Huertas Land Grant oppose mining on the BLM Land also known as the Buffalo Tract in Placitas, NM.

The proposed mining area will environmentally and economically impact Placitas and the surrounding communities.

1. The changing of the contours of the land by removing the natural vegetation will increase flooding to Algodones. We have seen the impact by the current mines located in this area.
2. The mining in the Placitas area also increased large trucks coming and going off of 165 and I-25. With large amounts of residential traffic this can become a concern in the future.
3. The home values will decrease which will impact the community, especially the Land Grant Community because of the lower income individuals who live in the area.
4. This is a well-known historical area for both the SADLHLG and the surrounding tribes. Archeological evidence can be destroyed and lost forever.

If you have any further questions, please don't hesitate contacting me.

Sincerely,

Wayne Sandoval, President

SANDOVAL COUNTY

RESOLUTION NO. 8-6-15.7

WHEREAS, the Bureau of Land Management owns a tract of land commonly referred to as the "Buffalo Tract" located in eastern Sandoval County adjoining the communities of Placitas and Algodones; and

WHEREAS, those areas of Sandoval County that are contiguous to the Buffalo Tract are currently zoned RRA (Rural Residential Agricultural); and

WHEREAS, on April 16, 2009, the Sandoval County Commission adopted the Placitas Area Plan, which states that one of the county's goals for this area is to, "[e]ncourage the BLM to maximize open space opportunities on the roughly 3,500 acre tract to the north of the Plan Area as open space, and to set aside any part of this tract identified as a wildlife corridor for use by wildlife", page 66; and

WHEREAS, the Sandoval County Commission is concerned by the possibilities of the adverse effects of additional sand and gravel mining in the Placitas and Algodones areas.

NOW THEREFORE BE IS RESOLVED, that the Board hereby states, it would not support any new sand and gravel mining on the BLM Land known as the Buffalo Tract that adversely affects the citizens of Sandoval County on the BLM Land known as the Buffalo Tract.

BE IT FURTHER RESOLVED that the Board hereby encourages the BLM to maximize open space opportunities on the Buffalo Tract to include setting aside a part of this tract as a wildlife corridor.

BE IT FURTHER RESOLVED that the Board hereby requests that the BLM provide the County Manager notice of any planned development of the Buffalo Tract or any hearing involving the development of the Buffalo Tract, utilizing the following contact information:

Phillip Rios, Sandoval County Manager
P.O. Box 40
Bernalillo New Mexico 87004

APPROVED AND ADOPTED by the Governing Body of Sandoval County, New Mexico, this 6th day of August 2015.

BOARD OF COUNTY COMMISSIONERS OF SANDOVAL COUNTY

Darryl F. Madalena, Chairman

James Dominguez, Vice Chairman

Nora Scherzinger, Member

Don G. Chapman, Member

Glenn Walters, Member

ATTEST:

Eileen Garbagni, County Clerk

APPROVED AS TO FORM:

Patrick Trujillo, County Attorney

SANDOVAL COUNTY ADMINISTRATIVE OFFICES
BOARD OF COUNTY COMMISSIONERS
DAVID J. HEIL
District 4, Chairman
JAY C. BLOCK
District 2, Vice Chairman
KATHERINE A. BRUCH
District 1
MICHAEL MEEK
District 3
F. KENNETH EICHWALD
District 5

DIANNE MAES
County Manager

August 22, 2019

Rep. Alan Lowenthal
Chairman, Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Rep. Paul Gosar
Ranking Member, Chairman, Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Lowenthal and Ranking Member Gosar:

We write to urge Congress to adopt the Buffalo Tract Protection Act introduced by Representatives Debra Haaland and Ben Ray Lujan as H.R. 2640 and by Senators Heinrich and Udall as S.B. 526. The Buffalo Tract Protection Act would withdraw from gravel mining and mineral development four federally owned parcels in Sandoval County: the Buffalo Tract, the Crest of Montezuma and two other small parcels. These parcels are simply not appropriate sites for gravel mining because they immediately abut the residential (unincorporated) community of Placitas as well as the San Felipe and Santa Ana Pueblos. This legislation is urgently needed to avert ill-considered federal action that would cause serious economic harm to Sandoval County.

The current Rio Puerco Resource Management Plan (RMP), which allows mining on the Buffalo Tract in Area 5 of the Rio Puerco Planning Area, dates back to 1986. When the Bureau of Land Management (BLM) last updated that plan in 1992, it was required by law to ensure ongoing consistency of the plan with local zoning ordinances — yet failed to do so. The time has come for Congress to correct that mistake. Indeed, BLM could authorize new mines at any time under the existing RMP. Exploratory drilling has already taken place on this parcel, which could become the largest gravel mine in Placitas. The proposed draft RMP, whose release may be imminent, continues to allow gravel mining despite strenuous community opposition throughout the ongoing planning process. These possibilities makes passage of the Buffalo Tract Protection Act urgent.

Sandoval County has been trying to redirect gravel mining away from residential areas since January 1989, when the County adopted its first zoning ordinance, which views gravel mining as an industrial use which requires approval of a Special Use (SU) zone district, and mining use is discouraged in its placement near existing residential areas in the County as a whole. The 2009 Placitas Area Plan (PAP) calls for protection of the semi-rural character of the region as well as the character and identity of the

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LETTER Pg.1 of 3
Eileen Garbagni, Sandoval County Clerk B: 422 P: 19182

specific neighborhoods. As residential development in Placitas has increased, gravel mining in and around Placitas has become even more incompatible with the area's character.

Today, Placitas still hosts four of New Mexico's largest gravel mines, which operate on long-term leases. When the lease for one of the largest mines expired as planned in 2015, the mining company unexpectedly originated a new lease. The County and community organizations sued to block further mining at this site, around which significant residential development had occurred in anticipation of the mine's closing. While the negotiated settlement did not prevent continued mining at this site, it did shorten the time horizon and require remediation. Sandoval County invested limited taxpayer resources in this matter to preserve the County's opportunity for continued economic growth from residential development.

Gravel mining on the Buffalo Tract and related parcels makes no economic sense for Sandoval County. The County stands to lose far more in tax revenues than it would gain from new gravel mining. Each new gravel mine would create only a few new jobs. Moreover, the County would see little additional gross receipts tax because (i) minerals are taxed at the point not of origin but of sale and (ii) most gravel extracted from the Buffalo Tract is expected to be sold outside of Sandoval County. Moreover, gravel mining involves heavy truck traffic, which burdens road infrastructure.

Of course, a ready supply of affordable gravel also has economic benefits. The BLM's own mineral resource studies indicate not only that there is ample gravel supply available from existing mines for decades-long regional development, but also that there is enormous gravel resource potential in both Bernalillo and Sandoval Counties (the greater Albuquerque metropolitan area markets). This includes supply on federal lands. We would welcome gravel mining on other federal lands in our County, but *not* in the Buffalo Tract and related parcels.

Migration to Sandoval County — from across New Mexico and across the country — has helped fuel the economic growth of the County. Placitas has been an especially attractive destination, notably for retirees and the semi-retired, because of its natural beauty. Such natural beauty is precisely why New Mexico's nickname is the "Land of Enchantment." Preserving the Buffalo Tract for recreation and wildlife, as well as an urban interface with lands to the north, would make Sandoval County a more attractive place to live and a more desirable location to do business.

Gravel mining produces particulate matter that creates significant health risks within a range of several miles. Most notably, such particulates are a leading cause of silicosis. New Mexicans already suffer some of the highest silicosis rates of any Americans. Even the perception — and especially the reality — of public health impacts from gravel mining will depress property values in nearby areas and deter new in-migration. In fact, such impacts have already occurred.

SANDOVAL COUNTY ADMINISTRATIVE OFFICES

Gravel mining consumes three times per acre the amount of water consumed by residential development in Placitas. Water is the most precious resource in the high desert. All economic activity — all *life* — in Sandoval County depends on sustainable water supplies.

We thank the Committee for its attention to our concerns and appreciate the opportunity to explain our support for the Buffalo Tract Protection Act. In closing, we urge expeditious passage of this legislation.

Sincerely,

SANDOVAL COUNTY COMMISSION:

David J. Heil, Chair

Jay C. Block, Vice Chair

Michael Meek, Member

F. Kenneth Eichwald, Member

Katherine Bruch, Member

cc: Chairman Grijalva

Ranking Member



September 11, 2019

Rep. Alan Lowenthal
Chairman Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1324 Longworth House Office Building Washington, DC 20515

Rep. Paul Gosar Ranking Member
Chairman, Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
1329 Longworth House Office Building Washington, D.C. 20515

Dear Chairman Lowenthal and Ranking Member Gosar:

The Placitas Chamber of Commerce urges Congress to adopt the Buffalo Tract Protection Act introduced by Representatives Debra Haaland and Ben Ray Lujan as H.R. 2640 and by Senators Heinrich and Udall as S.B. 526. The Buffalo Tract Protection Act would withdraw from gravel mining and mineral development four federally owned parcels in Sandoval County: the Buffalo Tract, the Crest of Montezuma and two other small parcels. These parcels are simply not appropriate sites for gravel mining because they immediately abut the residential (unincorporated) community of Placitas as well as the San Felipe and Santa Ana Pueblos. This legislation is urgently needed to avert ill-considered federal action that would cause serious economic harm to Sandoval County.

The Placitas Chamber represents most of the small businesses in Placitas as well as many of the service companies whose members have been enabled by real estate investment. The private sector was entirely responsible for real estate investment in Placitas. The effect of the existing gravel mines is truly an "anti-economic development" strategy that has unduly stunted the Placitas community turnaround when compared with other similar areas in the greater Albuquerque and Santa Fe areas. The County

has voluntarily cut taxes because of the proximity of the gravel mines to existing residents. Another, larger gravel mine in Placitas would be devastating to our community and its economic development

The current Rio Puerco Resource Management Plan (RMP), which allows mining on the Buffalo Tract in Area 5 of the Rio Puerco Planning Area, dates back to 1986. When the Bureau of Land Management (BLM) last updated that plan in 1992, it was required by law to ensure ongoing consistency of the plan with local zoning ordinances — yet failed to do so. The time has come for Congress to correct that mistake. Indeed, BLM could authorize new mines at any time under the existing RMP. Exploratory drilling has already taken place on this parcel, which could become the largest gravel mine in Placitas. The proposed draft RMP, whose release may be imminent, continues to allow gravel mining despite strenuous community opposition throughout the ongoing planning process. These possibilities makes passage of the Buffalo Tract Protection Act urgent.

Sandoval County has been trying to redirect gravel mining away from residential areas since 1990, when the County adopted its first zoning ordinance, which declared gravel mining to be inconsistent with the semi-rural character of the Placitas area. The 2009 Placitas Area Plan (PAP) 1 calls for protection of the semi-rural character of the region as well as the character and identity of the specific neighborhoods. As residential development in Placitas has increased, gravel mining in and around Placitas has become even more incompatible with the area's character.

Today, Placitas still hosts four of New Mexico's largest gravel mines, which operate on long-term leases. When the lease for one of the largest mines expired as planned in 2015, the mining company unexpectedly originated a new lease. The County and community organizations sued to block further mining at this site, around which significant residential development had occurred in anticipation of the mine's closing. While the negotiated settlement did not prevent continued mining at this site, it did shorten the time horizon and require remediation. Sandoval County invested limited taxpayer resources in this matter to preserve the County's opportunity for continued economic growth from residential development. Consequently, the sales and pricing of Placitas homes has just begun to recover.

Gravel mining on the Buffalo Tract and related parcels makes no economic sense for Sandoval County. The County stands to lose far more in tax revenues than it would gain from new gravel mining. Each new gravel mine would create only a few new jobs. Moreover, the County would see little additional gross receipts tax because (i) minerals are taxed at the point not of origin but of sale and (ii) most gravel extracted from the Buffalo Tract is expected to be sold outside of Sandoval County. Moreover, gravel mining involves heavy truck traffic, which burdens road infrastructure. Finally, gravel mining consumes three times per acre the amount consumed by residential development in Placitas. Water is the most precious resource in the high desert. All economic activity — all life — in Sandoval County depends on sustainable water supplies.

Of course, a ready supply of affordable gravel also has economic benefits. The BLM's own mineral resource studies indicate not only that there is ample gravel supply available from existing mines for decades-long regional development, but also that there is enormous gravel resource potential in both Bernalillo and Sandoval Counties (the greater Albuquerque metropolitan area markets).

Migration to Sandoval County — from across New Mexico and across the country — has helped fuel the economic growth of the County. Placitas has been an especially attractive destination, notably for retirees and the semi-retired, because of its natural beauty. Such natural beauty is precisely why New

Mexico's nickname is the "Land of Enchantment." Preserving the Buffalo Tract for recreation and wildlife, as well as an urban interface with lands to the north, would make Sandoval County a more attractive place to live and a more desirable location to do business. This is the environment that will attract more population and economic growth. The Placitas Chamber of Commerce predicts 1000 more homes being built in the area where many are already plated. The increase in population in Placitas and subsequent economic growth is our future only without further gravel mining.

Gravel mining produces particulate matter that creates significant health risks within a range of several miles. Most notably, such particulates are a leading cause of silicosis. Even the perception of public health impacts from gravel mining will depress property values in nearby areas and deter new in-migration. In fact, such impacts have already occurred.

We thank the Committee for its attention to our concerns and appreciate the opportunity to explain the Placitas Chamber of Commerce support for the Buffalo Tract Protection Act. In closing, we urge expeditious passage of this legislation.

Sincerely,
Jennise Phillips

Jennise Phillips, President

Placitas Chamber of Commerce

State of New Mexico

Michelle Lujan Grisham
Governor

September 12, 2019

The Honorable Raul M. Grijalva
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Rob Bishop
1329 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva and Ranking Member Bishop:

I write to convey my support for the Buffalo Tract Protection Act (H.R. 2640), introduced by Rep. Debra Haaland and Rep. Ben Ray Luján, and to respectfully request that you hold a hearing on this legislation at the Committee's earliest opportunity. As you may recall, I introduced an earlier version of this bill (H.R. 1085) during my tenure in the House of Representatives. Now, as Governor of New Mexico, I have a strong continuing interest in the passage of this legislation to protect the health and well-being of the citizens of our great state.

The Buffalo Tract Protection Act would withdraw several areas of Bureau of Land Management (BLM) land in Placitas (Unit 5 of the Rio Puerco planning area), including the Buffalo Tract and the Crest of Montezuma, from any mineral development, including gravel mining. Furthermore, the legislation would maintain the authority of the BLM to sell, lease, or exchange the surface rights to parcels. If the surface rights were sold, the mineral rights would remain withdrawn from development.

There is broad support for this bill in the greater Placitas community, an unincorporated area, and Sandoval County. This reflects longstanding opposition to gravel mining in a community that already has four of New Mexico's largest gravel mines. The community has serious concerns about the adverse (and cumulative) impacts of mining on public health, water resources, wildlife corridors, and the environment, which threaten recreational opportunities, cultural sites, quality of life, and property values. Sandoval County is particularly concerned about damage to a key part of its tax base.

The Buffalo Tract Protection Act provides needed safeguards for local residents, and I urge the Committee to expeditiously hold a hearing on this bill. Please let me know if I can be of any assistance as the Buffalo Tract Protection Act moves through the legislative process. Thank you for your consideration of this request.

Sincerely,

Michelle Lujan Grisham

Michelle Lujan Grisham
Governor

State Capitol • Room 400 • Santa Fe, New Mexico 87501 • 505-476-2200 • fax: 505-476-2226

Town of Bernalillo

"The City of Coronado"

Mayor
Jack Torres

Council
Marian A. Jaramillo
Dale R. Prairie
Ronnie A. Sisneros
Tina Dominguez

July 11, 2016

Dear Senator Heinrich:

I write in support of your legislation, the Buffalo Tract Protection Act, which will ensure that communities in southern Sandoval County are protected from gravel mining on nearby lands managed by the Bureau of Land Management (BLM).

The draft Rio Puerco Resource Management Plan, published in July 2012, opened the Buffalo Tract and other nearby public lands to gravel mining. I am concerned that a mine in this area would create additional traffic safety issues, increase environmental pollutants, and destroy the natural beauty and habitat in an area already irreparably damaged by out of control mining.

Your legislation would withdraw the Buffalo Tract and other public lands in the vicinity from any mineral sale, lease, or patent. This will protect Bernalillo, Algodones, Placitas, Santa Anna Pueblo, San Felipe Pueblo, Sandia Pueblo and other residents of unincorporated Sandoval County from unnecessary, harmful impacts from mining. I hope to see this legislation advance quickly, and thank you for your work on behalf of The Town of Bernalillo.

Sincerely,

Mayor Jack Torres

P.O. Box 638 829 Camino del Pueblo Bernalillo, NM 87004 (505) 771-7129 *FAX (505) 404-2582

Hon. Martin Heinrich
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

9 July 2016

Dear Senator Heinrich:

I write in support of your legislation, the Buffalo Tract Protection Act, which will ensure that communities in eastern Sandoval County are protected from gravel mining on nearby lands managed by the Bureau of Land Management (BLM).

The draft Rio Puerco Resource Management Plan, published in July 2012, opened the Buffalo Tract and other nearby public lands to gravel mining. I am concerned that a mine in this area would bring:

1. Major health issues with addition dust of silicate in the air for us to breath.
2. We in the Placitas area already has 4 of the 13 large gravel mining in all of New Mexico.
3. Some of our subdivision borders the Buffalo Track.
4. Our property values are depressed by 20 % due to the proximity of current mines.
5. The current closest mine uses 3 time the amount of water as would a residential area of the same size of the mine.

Your legislation would withdraw the Buffalo Tract and other public lands in the vicinity from any mineral sale, lease, or patent. This will protect The La Mesa Subdivision from unwanted impact from mining. I hope to see this legislation advance quickly, and thank you for your work on behalf of The La Mesa Subdivision, Placitas. (Where you had one of your first house parties so long ago)

Sincerely,

George Franzen
President of La Mesa Homeowners Association
Representing 154 property owners

Senator BARRASSO [presiding]. Anything else? Any additional questions?

Senator CORTEZ MASTO. I do, Mr. Chairman.

Senator BARRASSO. Please.

Senator CORTEZ MASTO. Thank you for the opportunity here.

Mr. French, let me talk to you, something similar, on the same vein that you are hearing, I think, from some of my colleagues. I want to talk about S. 1349, which is the Ruby Mountains Protection Act. In December, Senator Heinrich had asked you at a hearing here about the agency's decision to rescind a land withdrawal for the Pecos Watershed in New Mexico. And at that time, you replied the administration's policy is to preserve the spaces we have right now for future development until such time that we understand what our current mineral development is across the agency. I respect that.

The agency, however, Mr. French, also rescinded then an administrative withdrawal for the Ruby Mountains in northern Nevada. And I know you are familiar with this because we have talked about this. However, the agency already understands the current mineral development potential in the Rubies, because in 2019, under the first Trump administration, the Forest Service released a decision saying that "with the overall unfavorable, non-conducive oil and gas geologic conditions and the 'No to Very Low' and 'Low' potential for oil and gas, these lands have low energy resource values. Offering low energy resource value lands . . . would not serve the best interest of the public from an industrial or environmental perspective."

So, this bill that we are introducing is merely a codification of the Trump administration's findings in 2019. So, I guess my question to you is, why are we still here with the withdrawal? Why are we still fighting this? And why are you still opposed to moving forward?

Mr. FRENCH. Senator, I understand exactly why you are asking the question. That was the decision in 2019. That decision remains, and will continue to protect in that local way the further development of oil and gas. You know, what we are talking about here is, where a national policy approach, which, again, from the administration, is about making sure that we maintain the flexibility for future mineral development, aligned with policies that doing something through an administrative or legislative withdrawal doesn't take into account the local needs. And I think that was part of the conversation that was just happening to understand that.

In this case, you are seeing a position in a statement that, in general, does not support any sort of withdrawals, but it doesn't change the fact of that 2019 decision that we made that made that finding that essentially limits oil and gas development in the Ruby Mountains.

Senator CORTEZ MASTO. So, then let me jump to you, Mr. Raby. On January 14, 2025, the BLM initiated a two-year segregation to consider a 20-year administrative public land withdrawal for the Ash Meadows National Wildlife Refuge and surrounding BLM lands that have been threatened by mining proposals to drill into the sensitive groundwater system, which could dry up seeps and springs that are the core of this refuge. You as well know the Dev-

ils Hole unit of Death Valley National Park and the lifeblood of the surrounding area. Local community leaders are in unanimous consent in their desire to see this withdrawal. A meeting took place on February 27, 2025 to receive public comment, but it is unclear if anything has taken place.

So, Director Raby, I am disappointed, obviously in the Ruby Mountains withdrawal decision. I don't quite understand it, still, but I am glad the segregation for Ash Meadows has remained in effect, under the same administration. I'm a little curious about why there is a difference between the two, just pointing that out, but can you give me the status of the withdrawal?

Mr. RABY. Senator, thank you for the question, and the status is that the parcel segregation is still in place, as in about, you know, 14 months of the two-year parcel segregation, we continue to work on, you know, with our partners with the Fish and Wildlife Service, the evaluation of that area. We no longer have the same mining proposal out there currently. And so, that, you know, does not exist out there, that application. And so, we will take that under consideration as to whether a mineral withdrawal would even be appropriate to advise on in the future.

Senator CORTEZ MASTO. Do you think you are going to need more time for any analysis, and if so, would you let us know and seek an extension of it?

Mr. RABY. We will certainly let you know.

Senator CORTEZ MASTO. Okay, thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Well, I think Senator Daines is on the way down to ask a couple of questions related to his bill, but any other thoughts that any of you have based on the hearing and what you have heard from one another today about ways we can be helpful?

Mr. CHECKETTS. Everyone is looking at me, but I——

[Laughter.]

Mr. CHECKETTS. I better say something.

Senator BARRASSO. We are having this hearing—in my opinion, this is the key bill to the Committee, so.

Mr. CHECKETTS. Well, Senator Barrasso, I will tell you what, grazing is so important. And grazing really protects our nation, protects our food supply. We have seen a lot of things in the news lately about beef prices, and even with beef prices the way it is today, guys, it's still tough to make it as a rancher. The beef prices, similar to what it was in 1980, when you add in inflation, when you add in all the different costs of operating, so to tie it back to our bill, our bill is so important to protect our ranching, to protect our families, the people that work every day to feed this nation, to clothe this nation, to give us the different supplies. And I am grateful for our Forest Service and BLM partners, and I affectionately say that we own the grass, you guys own the land, and I am grateful for them. Without the Forest Service and BLM, we couldn't make it work.

What a nice nation this is to have the opportunity to work together with our federal lands to make it possible to feed our nation, and to allow me, as a rancher, to do what I love, what I am passionate about—to ranch, provide for my family, provide for my cattle. And I promise you that we take care of the land. We love the

land more than anyone, and we appreciate that opportunity and our partners here in this room to allow us to do it. It is the honor of our lives. And we will take care of it.

Thank you.

Senator BARRASSO. Well, you mentioned earlier, the best stewards of the land are the people that live on the land, the people that are there locally that want to make sure we are protecting it. We talk about the environment, the respect for the environment of the people that are on that land.

Mr. CHECKETTS. Yeah, we love it. And you know, we talked—I heard these guys talking about fire. We are grateful, also, for our partnership when we fight fires with the Forest Service and BLM, but I just want to add something here, and the important thing is cooperation and collaboration. I serve on two different rural fire communities, and when they are anxious to go fight fires, we are there first, and our Forest Service and BLM partners come and it works so good when we work together. And my encouragement to save money would be to have more local leadership with our BLM and Forest Service partners when we fight these fires. They have these command centers, and it's important that they involve the local people there.

Senator BARRASSO. Great. Well, thanks so very much to all of you. We are going to turn to Senator Daines for questions, but maybe other members may have additional questions, and they will be sent to you. There is going to be a deadline for us to submit those questions, and that is close of business tomorrow, but we would ask that you get the answers back to us by a week from the end of this hearing today.

Senator Daines.

Senator DAINES. Great. Chairman Barrasso, thank you.

Mr. Raby, when FLPMA was enacted, the BLM was directed to identify lands with wilderness characteristics. Congress has the opportunity to consider adding these lands to the National Wilderness Preservation System. Today, the BLM manages 487 wilderness study areas, totaling about 11.1 million acres. Thirty-seven of those 487 are in Montana. Until Congress decides what to do with the WSAs, the BLM continues to manage the area with the status in limbo indefinitely—that study status. My question is, Mr. Raby, what are the long-term consequences for recreation, forest management, and even wildfire response of wilderness study areas not getting resolved?

Mr. RABY. Senator Daines, thank you very much for the question, and certainly having that wilderness study designation complicates multiple-use management. And so, it inherently limits our ability to carry out hazardous fuels reduction treatments. It can affect forest management activities. It can create limitations on recreation and access. So, it creates a layer of complicating, you know, management direction on areas that, as you noted previously, especially these ones in Montana that are before us in your proposed legislation, those were never found to be of suitable wilderness characteristics, and that has been since 1986.

And so, they do complicate multiple-use management out there, and certainly their release would help uncomplicate that.

Senator DAINES. This isn't meant to be a Trivial Pursuit question, but do you remember who the President was in 1986?

Mr. RABY. Well, I believe that was Ronald Reagan.

Senator DAINES. It was Ronald Reagan.

Mr. RABY. Yes.

Senator DAINES. So it goes back to the Reagan presidency in terms of how long this has been in limbo and needs to be resolved. And we are talking about, in this bill I have, 100,000 acres of 11 million acres that are currently in limbo under the wilderness study area designations. Do you agree that Congress does need to move forward to finally resolve these 11 million acres currently in limbo to either put them in permanent wilderness or back to general management?

Mr. RABY. Senator, the short answer is yes.

Senator DAINES. Thank you.

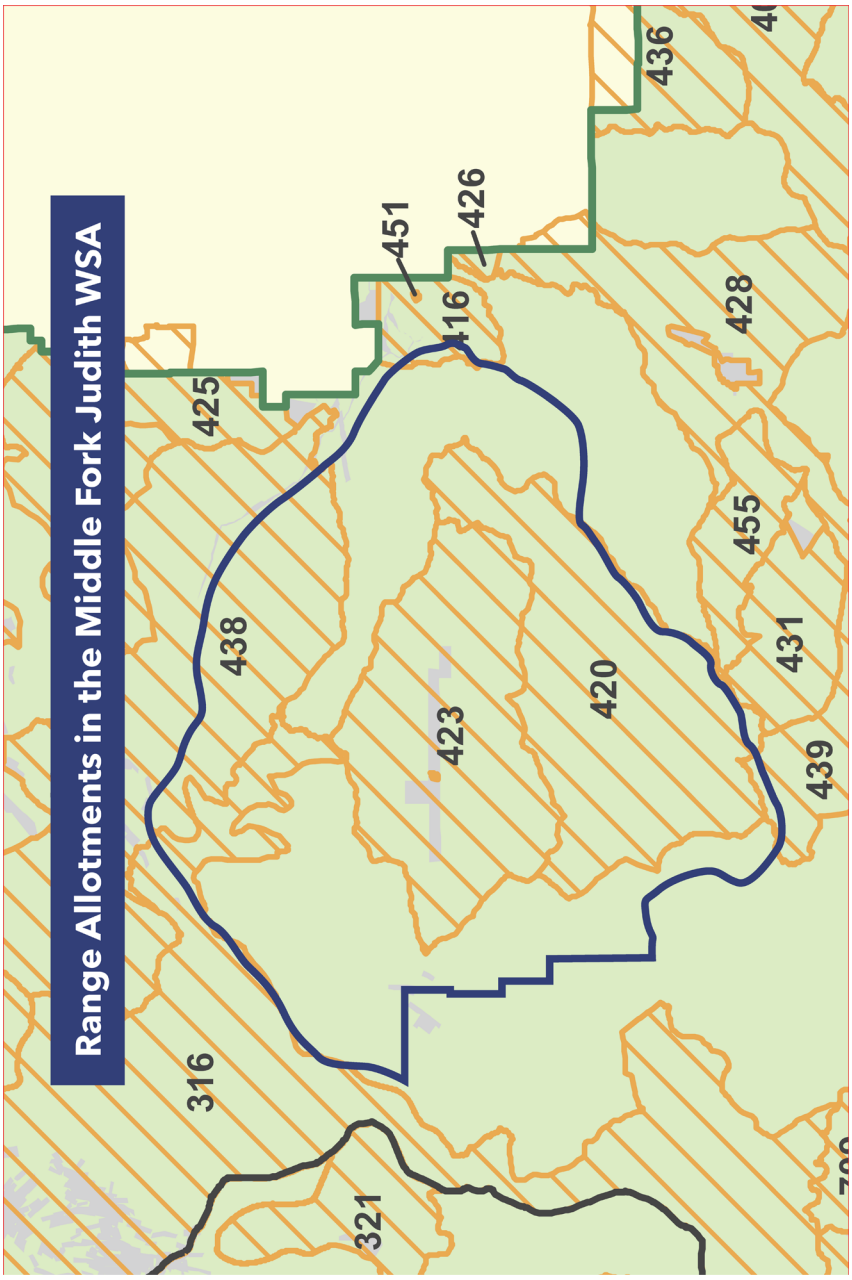
Deputy Chief French, the Forest Service determined the Middle Fork Judith Wilderness Study Area was identified as unsuitable for wilderness over 30 years ago, and that was reaffirmed again in the fall of 2021 after extensive public engagement. Could you briefly talk about what led to this determination and what public input there was in that process?

Mr. FRENCH. Yeah, our forest planning process that looked at this a second time, the engagement occurred over the course of six years—many, many public meetings. I think there were over 100 organizations that commented. We had about 1,200 individual comment letters that came in. And again, for the second time, it was found that it didn't have the characteristics to remain as wilderness. And so, we did our part of what Congress asked us to do, but it sits there still kind of in this limbo after we did the assessment, and it mandates a management that isn't aligned with what the community told us it should be.

Senator DAINES. And I think that that's important testimony, and I thank you that there was a public process with a lot of public input. And again, with these WSAs, when they are deemed suitable for wilderness, we should be looking at taking the next step to make them wilderness, but when they are deemed not suitable for wilderness, we should return them back to the general management status, which, as I mentioned earlier in my opening remarks, still has multiple protections as it relates to the general management status. It's just that they won't be managed as de facto wilderness as they are today.

The Forest Service also manages three active grazing allotments that cover the majority of the WSA. I've got a poster board here behind me.

[The poster referred to follows:]


Range Allotments in the Middle Fork Judith WSA
316
321
438
423
420
425
451
426
416
436
428
455
431
439

Senator DAINES. In 2019, the Forest Service reported to the Montana legislature that there is no mining and the vegetative management is minimal, though the Forest Service has recommended, and I quote, "nearly one million board-feet of harvest per year for fuels management and to help maintain early successional habitat for health." My question is, could you confirm for this Committee that this continues to be the recommendation and that releasing the Middle Fork Judith back to general management will benefit hazardous fuels reduction and wildlife habitat?

Mr. FRENCH. From my conversations back with the Forest Supervisor when they were doing this plan, generally, I would say yes. I haven't heard anything that would change that. You know, we are seeing a need to get in and actively manage these areas that have had fire excluded for as long as they have and have had no active management. I have not seen any change from that, so, yes, generally, I would agree.

Senator DAINES. As we say out West in these dry semi-arid climates, that either we are going to get in and proactively manage the forest or the forest starts to manage us, certainly through these catastrophic wildfires that we see as fire season is lengthened and temperatures have increased.

How does the current designation affect the grazing allotments, and what happens if the WSA is returned to general management?

Mr. FRENCH. Well, I mean, I think the thing to remember here is that it is being managed as wilderness right now, and what that does for us is, it changes the way we can access things, the way that we can do improvements for our permittees that have range allotments in those places. It limits our ability for flexibility for increasing some of those allotments because wilderness requires you only to allow what was historically there when it was designated. And then, it just limits our ability for active management of those areas, even in some places, folks not wanting to see prescribed fire, although we can do it.

So, all of that is limited by the designation, of which, again, at the request of Congress to see if it was even suitable for that designation, through a large public process, we determined no, twice.

Senator DAINES. Mr. French, thank you.

Mr. FRENCH. You're welcome.

Senator BARRASSO. Well, thanks so very much to all of you. I appreciate all of your input and your testimony. It was very helpful for all of the members. We are looking forward to moving these bills forward. So, we appreciate your time.

This hearing is adjourned.

[Whereupon, at 11:19 a.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
February 12, 2026 Hearing: *PLFM Subcommittee Hearing to Receive Testimony on Pending Legislation*
Questions for the Record Submitted to Mr. Jon Raby

[No response was received at the time of publication]

Questions from Ranking Member Martin Heinrich
for the Bureau of Land Management

Question 1: The Cerro de la Olla bill designates wilderness, but it also expands the boundaries of the Rio Grande del Norte National Monument to include parcels that were acquired by the BLM through the Land and Water Conservation Fund.

The property acquired adjacent to the monument represents a success story from the BLM in utilizing LWCF to expand access and enhance outdoor recreation opportunities.

Can you give us an update about BLM's FY26 and FY27 LWCF projects?

Questions from Ranking Member Martin Heinrich
for the Bureau of Ocean Energy Management

Question 1: President Trump's remarks at the World Economic Forum last January acknowledged that the real challenge is not a scarcity of critical minerals—stating there is "no such thing as rare earth," but rather "rare processing." This reflects a recognition that the United States currently has limited capacity to process any critical minerals and specifically lacks any processing infrastructure for seabed minerals.

- Do you know of any existing plans to establish domestic capacity for processing seabed minerals? Is BOEM or any office in the Department of the Interior analyzing the supply chains needed to process minerals from the sea floor?
- Would the development of processing capacity necessitate taxpayer support, and if so, what is the estimated amount?
- Proponents have suggested that the offshore minerals market can be encouraged through government-funded "stockpiling." How does a taxpayer-subsidized stockpile help to alleviate critical mineral vulnerabilities if there is no domestic capacity to process it?
- Without processing capacity, how can offshore critical minerals be "key" to "strengthening the economy of the United States, securing the energy future, and reducing dependence on foreign suppliers for critical minerals" as found in the bill?

Question 2: Has BOEM analyzed the impact that offshore minerals are likely to make on the U.S. critical mineral supply? If so, what percent of the U.S. critical mineral supply does BOEM believe can be procured from the sea floor?

Question 3: For other industries that require federal permitting, such as terrestrial mining or oil and gas, which entity is typically liable for the costs associated with environmental harm?

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Questions for the Record Submitted to Mr. Jon Raby

- Are you aware of any similar requirements on applicants for commercial recovery permits for offshore minerals?
- Would you support permittees being required to post bonds to cover environmental losses?
- There are many foreseeable situations in which companies, especially given the novel nature of deep-sea mining technology, lose assets on the sea floor or while conducting operations. How does BOEM plan to ensure that private entities are held responsible for any environmental damages resulting from their operations? How does BOEM plan to ensure that the responsible party completes any environmental cleanup needed from their operations?

Question 4: The National Academies of Sciences, Engineering, and Medicine is currently engaged in a study to recommend a research strategy on seabed mining for critical minerals which will "include an overview of the technological feasibility and economic potential of extracting seabed minerals; identification of information needed to establish baselines in habitats found at proposed mining sites and surrounding areas; and the potential social, cultural, and economic impacts of seabed mining, including cumulative effects and possible methods to mitigate negative impacts."

- What are the existing regulatory and statutory requirements for determining feasibility, identifying relevant baselines, and assessing various impacts for authorizations referenced in this bill?
- How is BOEM planning to update the existing regulatory framework in order to handle the increased commercial interest in deep sea mining?
- Is the information contemplated by the National Academies' study presently available to applicants or to agency decision-makers?
- If not, how will federal agencies assess compliance with the relevant regulations and statutes on an expedited basis?
- How will federal agencies integrate the results of this research strategy into their decision-making while it is still in development?
- Would it be useful to wait for the results of the contemplated research program before making final decisions about mining leases or permits?

Question 5: Federal agencies involved in the review of authorizations under this bill have experienced significant budget and staff cuts over the last year. In the face of these cuts, how can you "expedite" the process for authorizations as this legislation proposes while ensuring that all statutory and regulatory requirements are met?

- Can you provide a current number of FTE's working in the Environmental Science Program?

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Questions for the Record Submitted to Mr. Jon Raby

- Can you provide the number of FTE's employed by the Environmental Science Program in 2024?

Question 6: What is the status of offshore minerals research at BOEM?

- How is BOEM collaborating with NOAA, USGS, and other federal agencies on offshore critical mineral research efforts? What have the results been of any such collaboration?
- What are the near-term plans for BOEMs research in the space? How much funding does BOEM currently have identified for projects entailing offshore mineral research?
- Which project are underway to help BOEM understand the four regions being considered for offshore mineral lease sales?
- How is BOEM collaborating with the International Seabed Authority (ISA)? Does BOEM plan to incorporate any of the ISA's regulatory regime into the U.S. seabed mining regulatory framework?

Question 7: Can you provide detailed information on the Tribal and Indigenous community consultation that BOEM has engaged in as part of the process surrounding the four areas under consideration for potential offshore lease sales?

- Can you please specify which Tribal or Indigenous communities have been consulted and the results of the consultations?
- How is feedback from these consultations going to be incorporated into BOEM's decision making process?

Question 8: BOEM recently issued a Request for Information regarding "Commercial Leasing for Outer Continental Shelf Minerals Offshore Alaska-Request for Information and Interest." Are you aware that an estimated 88% of the RFI Area overlaps with areas closed to fishing to protect critical marine habitat?

- How was that RFI Area identified?
- Does BOEM anticipate that mining in these areas will be less harmful to that habitat than commercial fishing? How was any comparative analysis conducted and what were the results?

Question 9: In November, BOEM announced the completion of Area Identification, or Area ID, for potential critical minerals leasing on the Outer Continental Shelf offshore American Samoa. This doubled the area under consideration for mining from the original RFI.

- In completing this Area ID, how did BOEM account for the widespread and near-universal opposition to the RFI from local American Samoans and the American Samoan government? What kind of consultation was conducted with American Samoans? What were the comprehensive results of any consultation?

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Questions for the Record Submitted to Mr. Jon Raby

- How is BOEMs decision to expand the RFI Area, despite this opposition, explained or justified? How has BOEM communicated this decision, and the reasons behind it, to the impacted communities and to the elected official of American Samoa?

Question 10: How is BOEM assessing unsolicited requests from companies to lease offshore minerals? What kind of analysis is done to assess these requests? How many such requests are currently being considered by BOEM? Please specify the company and the region for each pending request.

Question 11: How is BOEM identifying priority areas for potential offshore mineral lease sales that are not in an area covered by an unsolicited company request? Which areas does BOEM currently have under consideration? Can you please provide a detailed description of the analysis BOEM conducts to determine which areas to consider.

Questions from Senator Mazie K. Hirono

Question 1: How will the Department monitor, control, and contain pollution of both the seafloor and water column during deep sea exploration and commercial recovery of minerals? Has the Department quantified the impacts to corals, fish, and other organisms in both environmental and economic terms?

Question 2: How will BSEE inspect the construction and operation of offshore facilities located in U.S. federal waters near the U.S. Pacific territories? Will BSEE be responsible for inspecting operations for mining activities in international waters if NOAA permits those activities? If not, who will be responsible for those inspections?

Question 3: What challenges does the Department anticipate experiencing as a result of the U.S. not being a party to UNCLOS? Has BOEM or other agencies considered how to respond if other nations begin authorizing deep sea mining activities in areas beyond national jurisdiction outside the scope of UNCLOS?

Question 4: What public meetings has the Department conducted in areas potentially impacted by seabed mining operations? How does the Department incorporate public input into decision-making?

Question 5: What flexibilities is BOEM willing to provide if impacted communities, such as Pacific territories, feel that they do not have enough time to respond properly to BOEM's Requests for Information? Has the Department provided any of those flexibilities to date?

U.S. Senate Energy and Natural Resources
Subcommittee on Public Lands Forests and Mining
Legislative Hearing to Review Pending Legislation
February 12, 2026
Questions for the Record
Mr. Christopher French, Associate Chief, U.S. Forest Service

Questions from Ranking Member Martin Heinrich

1) The Trump Administration just reopened a timber sale plan in the Tongass National Forest, which would allow for the harvest of over 4,300 acres of old-growth forest over 15 years. This is significant because the Tongass National Forest is one of the world's largest intact temperate rainforests. It holds more carbon than any other national forest in the U.S. and is home to hundreds of species, including Sitka black-tailed deer, which is critical for subsistence hunting. Unless timber development is highly subsidized by the Federal government, the economics aren't there, and neither is public or local support. If that's the case, why re-open the plan?

Response:
The Tongass National Forest is advancing the South Revilla Integrated Resource project in alignment with Executive Order (EO) 14225, "Immediate Expansion of American Timber Production," aimed at boosting domestic timber harvesting on federal lands. The draft record of decision issued on Jan. 23, 2026 describes multiple activities that the Forest Service intends to implement, including timber management, watershed management, wildlife habitat improvement, and recreation improvements. The Forest Service is currently reviewing objections that were submitted by the public during the 45-day objection-filing period held between January 23, 2026 and March 9, 2026. Following consideration of the objections received, the Forest Service will issue a written response to objectors and a final record of decision.

As described in the draft record of decision, the Tongass Forest Supervisor selected an alternative that best meets the project's purpose and need including the need to manage the timber resource for sawtimber production and other wood products, provide jobs and other economic opportunities, and maintain the flexibility and stability of the timber program. The selected alternative includes old-growth and young-growth timber harvest and is expected to provide the most opportunities to support local and regional jobs related to logging, sawmill and export manufacturing, and transportation and services related to domestic manufacturing and export. By providing old-growth and young-growth timber, the Forest Service would contribute to maintaining the existing timber industry during the transition to a predominantly young-growth timber program as directed by the current Tongass Forest Plan.

Additional information on the South Revilla Integrated Resource Project can be found online at: https://www.fs.usda.gov/r10/tongass/projects/53477

2) Exactly how many National Forest System staff are needed to fulfill your mission and to properly manage your 193 million acres of land? Please provide detailed information and any analysis your agency has completed related to necessary staff.

Response:
The Forest Service continuously works to ensure we operate with the greatest efficiency possible in delivering our core mission. This includes creating a more efficient regulatory environment to support implementation of critical land management activities on Forest Service lands. The FY 2027 President's budget outlines workforce needs and appropriate funding levels to advance the Administration's objectives taking into account the implementation of deregulatory actions.

STATEMENT FOR THE RECORD FROM THE HONORABLE MIKE LEE

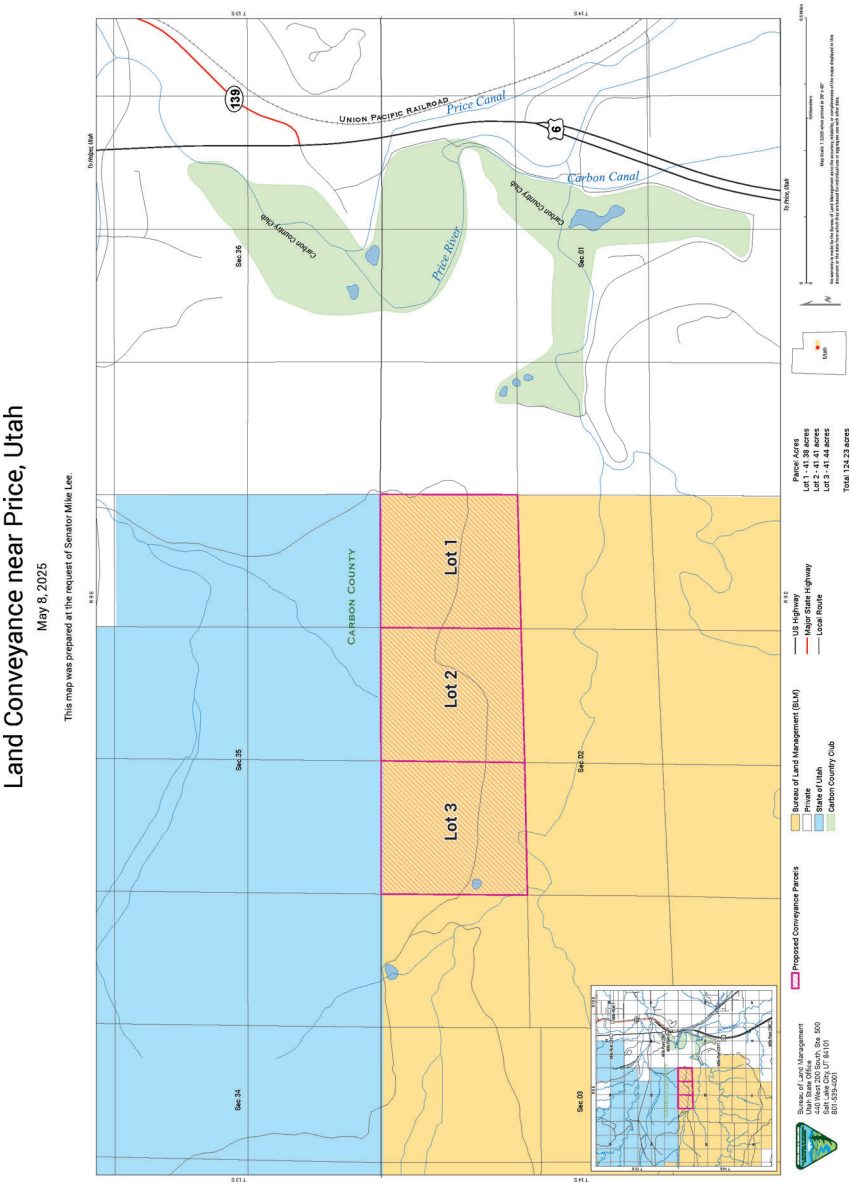
I would like to state for the record my reasons for sponsoring S. 3004, the Upper Price River Watershed Project Act. This bill conveys 124.23 acres of land from the Bureau of Land Management (BLM) to the City of Price, Utah, for the purposes of constructing a reservoir in Consumers Wash and necessarily rerouting Consumers Road around the reservoir.

Ninety-four percent of the State of Utah is currently experiencing moderate to exceptional drought conditions. Under these circumstances, streams dry up, ranchers have insufficient water and pasture for their cattle, and severe wildfire risk is heightened, among other challenges. After years of record-low precipitation, Utahns have taken rigorous measures to address water efficiency and drought resilience.

Local authorities in central Utah have started making significant improvements through the Upper Price River Watershed Project. The project addresses frequent and recurring water shortages in agricultural, municipal, and industrial water supply by constructing a reservoir to increase water storage, creating more efficient water delivery systems, and improving water conservation methods for the watershed. However, the City of Price has encountered regulatory hurdles necessitating legislation.

The Upper Price River Watershed Project involves two federal agencies with distinct National Environmental Policy Act (NEPA) requirements. The project is funded through the Natural Resources Conservation Service's (NRCS) Watershed Protection and Flood Prevention Operations Program. After nearly completing the environmental review required by NRCS, Price City officials were informed that the Bureau of Land Management's separate NEPA process would require them to effectively restart the environmental review.

At full pool, the Lower Price River Reservoir will hold 7,000 acre-feet of water and extend onto BLM-managed land. Consumers Road, which currently runs through the planned reservoir site, must also be rerouted. Because the rerouted road will cross BLM land and the reservoir will cover BLM acreage at full pool, a conveyance of 124.23 acres is needed to enable local authorities to take these proactive measures for drought resilience in central Utah. This legislation provides that authorization, enabling the City of Price to continue with this essential water infrastructure project.


Land Conveyance near Price, Utah
May 8, 2025
This map was prepared at the request of Senator Mike Lee.
CARBON COUNTY
Lot 1
Lot 2
Lot 3
Sec 34
Sec 35
Sec 36
Sec 01
Sec 02
Sec 03
T 14 S
T 15 S
R 9 E
R 10 E
UNION PACIFIC RAILROAD
Price Canal
Carbon Canal
Price River
Carbon County Club
Carbon County Club
139
6
To Helper, Utah
To Price, Utah
Proposed Conveyance Parcels
Bureau of Land Management (BLM)
Private
State of Utah
Carbon Country Club
US Highway
Major State Highway
Local Route
Parcel Acres
Lot 1 - 41.38 acres
Lot 2 - 41.41 acres
Lot 3 - 41.44 acres
Total 124.23 acres
Utah
Bureau of Land Management
Utah State Office
440 West 200 South, Ste. 500
Salt Lake City, UT 84101
801.539.4001

Mayor
TERRY WILLIS

City Attorney
ERIC JOHNSON

City Recorder
JACI ADAMS

City Treasurer
BILLIE HEILESEN

Finance Director
LISA RICHENS

Price Utah

City Council
LAYNE MILLER
TANNER RICHARDSON
RICHARD ROOT
RUSSELL SEELEY
TINA URBANIK

PRICE MUNICIPAL CORPORATION
185 EAST MAIN • P.O. BOX 893 • PRICE, UT 84501
PHONE (435) 637-5010 • FAX (435) 637-2905

February 12, 2026

Honorable Senator Mike Lee
Honorable Congressman Mike Kennedy

Re: Letter of Support for S. 3004, Upper Price River Watershed Project Act of 2025.

Price City Municipal Corporation, Utah supports S. 3004, Upper Price River Watershed Project Act of 2025. This legislation transfers limited lands close to Price City, Utah, from the Bureau of Land Management to Price City for a very important project that will provide important infrastructure to better manage water usage in the Price River watershed and is projected to conserve almost one-third of the water storage right used in Carbon County associated with the Scofield Reservoir. This project is critical for the expansion of our tax base with the new growth needed from new industry. Our Coal mines which have been in operation for over 130 years are now closed and the tax paid by this industry has been shifted to our local residents. We could really use the help with this project.

Please consider approving S. 3004, Upper Price River Watershed Project Act of 2025

Respectfully,

Terry Willis
Mayor

CARBON COUNTY UTAH
Board of County Commissioners

Carbon County
Administration Building
751 East 100 North
Price, UT 84501
Office: (435) 636-3226
www.carbon.utah.gov

February 12, 2026

Honorable Senator Mike Lee
Honorable Congressman Mike Kennedy

Re: Letter of Support for S. 3004, Upper Price River Watershed Project Act of 2025.

Carbon County, Utah supports S. 3004, Upper Price River Watershed Project Act of 2025. This legislation transfers limited lands close to Price City, Utah, from the Bureau of Land Management to Price City for a very important project that will provide important infrastructure to better manage water usage in the Price River watershed and is projected to conserve almost one-third of the water storage right used in Carbon County associated with the Scofield Reservoir. This project is critical for the expansion of our tax base with the new growth needed from new industry. Our Coal mines which have been in operation for over 130 years are now closed and the tax paid by this industry has been shifted to our local residents. Carbon County residents are paying the highest tax of any county in the State of Utah. We could really use the help with this project.

Please consider approving S. 3004, Upper Price River Watershed Project Act of 2025

Respectfully,

Larry Jensen
Carbon County Commissioner

Jared Haddock
Commissioner
(435) 636-3272
jared.haddock@carbon.utah.gov

Larry Jensen
Commissioner
(435) 636-3273
larry.jensen@carbon.utah.gov

Tony Martines
Commissioner
(435) 636-3271
tony.martines@carbon.utah.gov

Price River Water Users Association

15 East Main Street
Price, Utah 84501
435-613-9793

February 11, 2026

Honorable Senator Mike Lee
363 Russell Senate Office Building
Washington, D.C. 20510

Honorable Congressman Mike Kennedy
1626 Longworth House Office Building
Washington, DC 20515

Re: Letter of Support for S. 3004, Upper Price River Watershed Project Act of 2025.

Dear Senator Lee and Congressman Kennedy,

Price River Water Users Association would like to express its support for S. 3004, Upper Price River Watershed Project Act of 2025. This legislation transfers limited lands close to Price City, Utah from the Bureau of Land Management to Price City for a very important project that will provide important infrastructure to better manage water usage in the Price River watershed and is projected to conserve almost one-third of the water storage right used in Carbon County associated with the Scofield Reservoir.

Please consider approving S. 3004, Upper Price River Watershed Project Act of 2025

Respectfully,

William Butcher
President

CARBON WATER CONSERVANCY DISTRICT

February 13, 2026

Honorable Senator Mike Lee
Honorable Congressman Mike Kennedy

Re: Letter of Support for S. 3004, Upper Price River Watershed Project Act of 2025.

Carbon Water Conservancy District, Utah supports S. 3004, Upper Price River Watershed Project Act of 2025. This legislation transfers limited lands close to Price City, Utah, from the Bureau of Land Management to Price City for a very important project that will provide important infrastructure to better manage water usage in the Price River watershed and is projected to conserve almost one-third of the water storage right used in Carbon County associated with the Scofield Reservoir.

Please consider approving S. 3004, Upper Price River Watershed Project Act of 2025

Respectfully,

Jon T. Richens
Chair, Carbon Water Conservancy District

P.O. Box 591 • Price, Utah 84501
Phone: (435) 299-9756

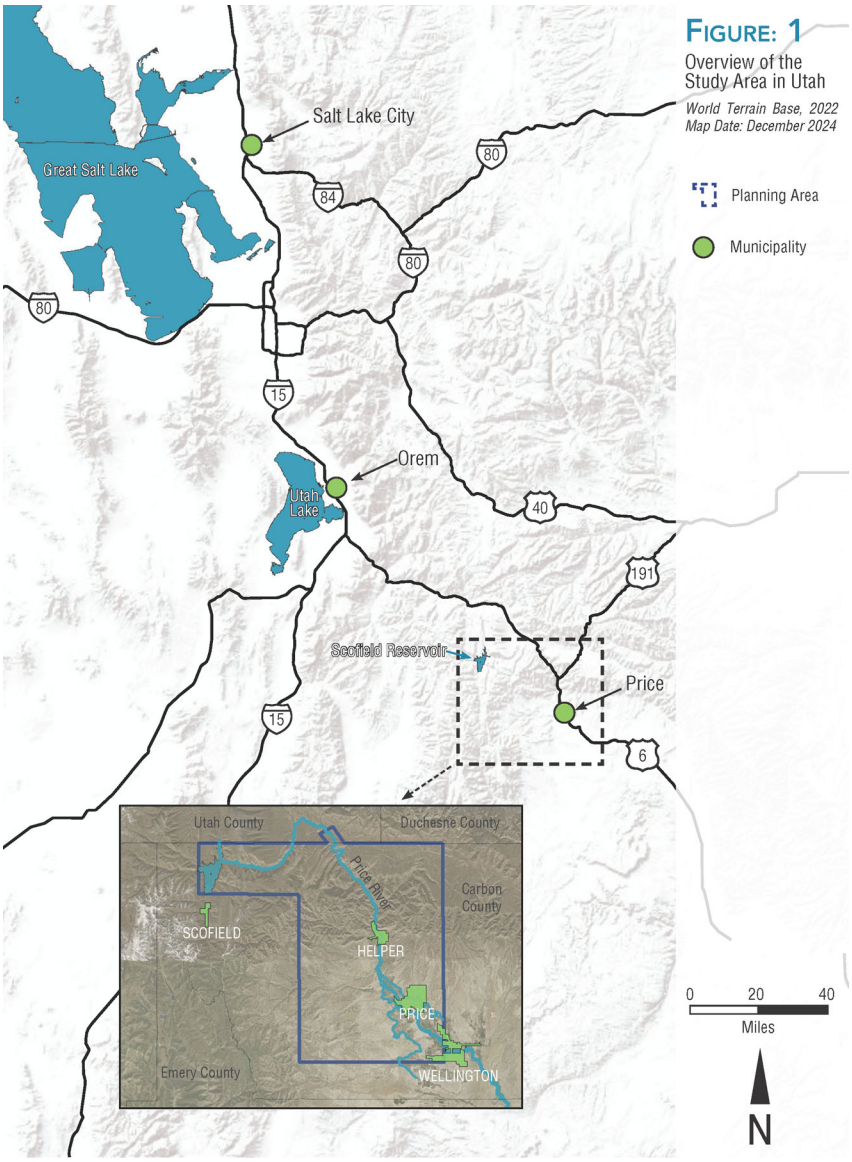
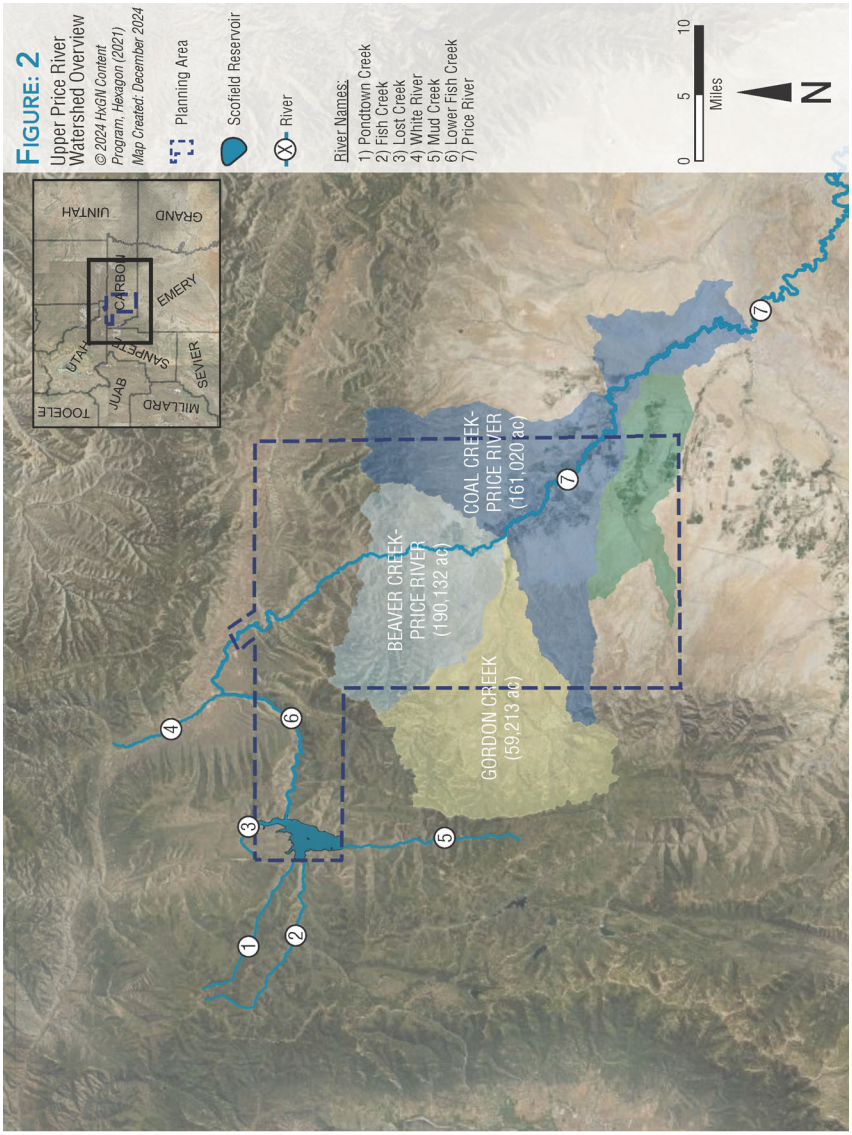
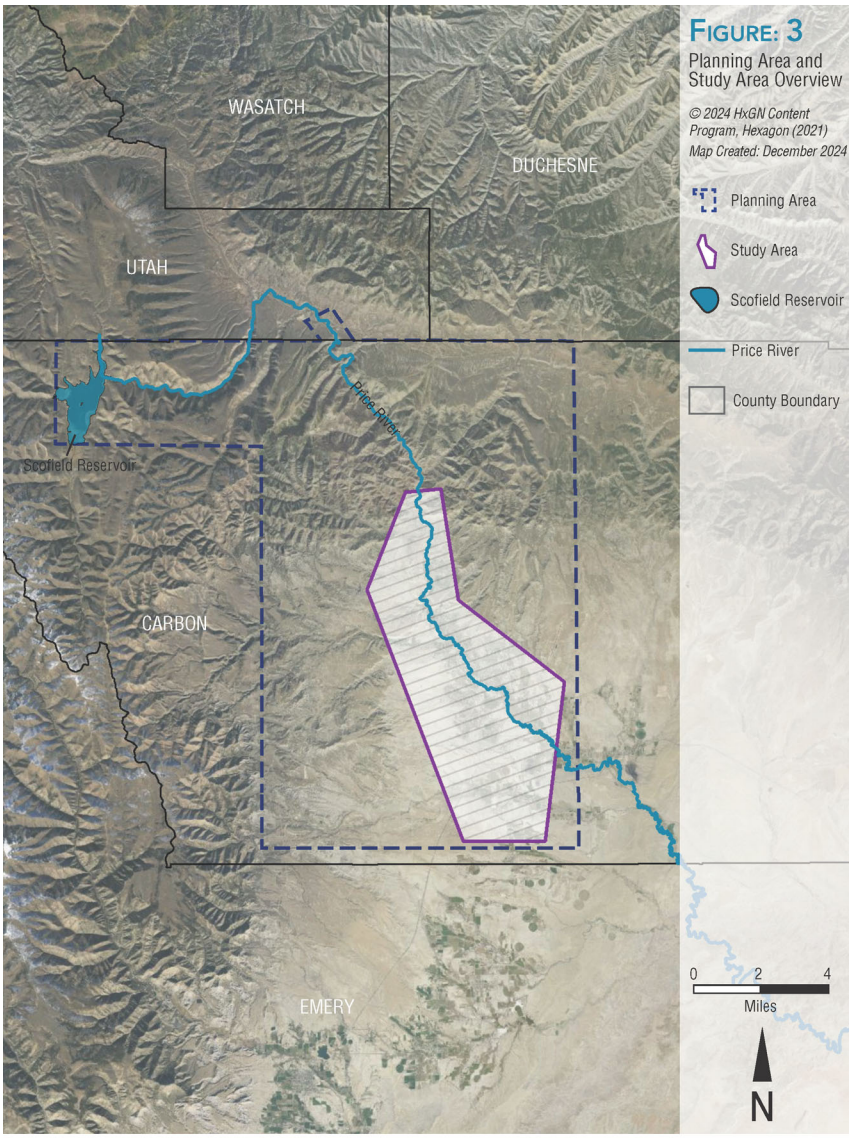


FIGURE: 1
Overview of the Study Area in Utah
World Terrain Base, 2022
Map Date: December 2024


FIGURE: 2
Upper Price River
Watershed Overview
© 2024 HxGN Content
Program, Hexagon (2021)
Map Created: December 2024
Planning Area
Scofield Reservoir
River
River Names:
1) Pondtown Creek
2) Fish Creek
3) Lost Creek
4) White River
5) Mud Creek
6) Lower Fish Creek
7) Price River
0
5
10
Miles
N
UINTAH
GRAND
CARBON
EMERY
SANPETE
UTAH
JUAB
SEVIER
MILLARD
TOOELE
BEAVER CREEK-
PRICE RIVER
(190,132 ac)
COAL CREEK-
PRICE RIVER
(161,020 ac)
GORDON CREEK
(59,213 ac)


WASATCH
DUCHESNE
UTAH
Price River
Scofield Reservoir
CARBON
EMERY
FIGURE: 3
Planning Area and Study Area Overview
© 2024 HxGN Content Program, Hexagon (2021)
Map Created: December 2024
Planning Area
Study Area
Scofield Reservoir
Price River
County Boundary
0 2 4
Miles
N

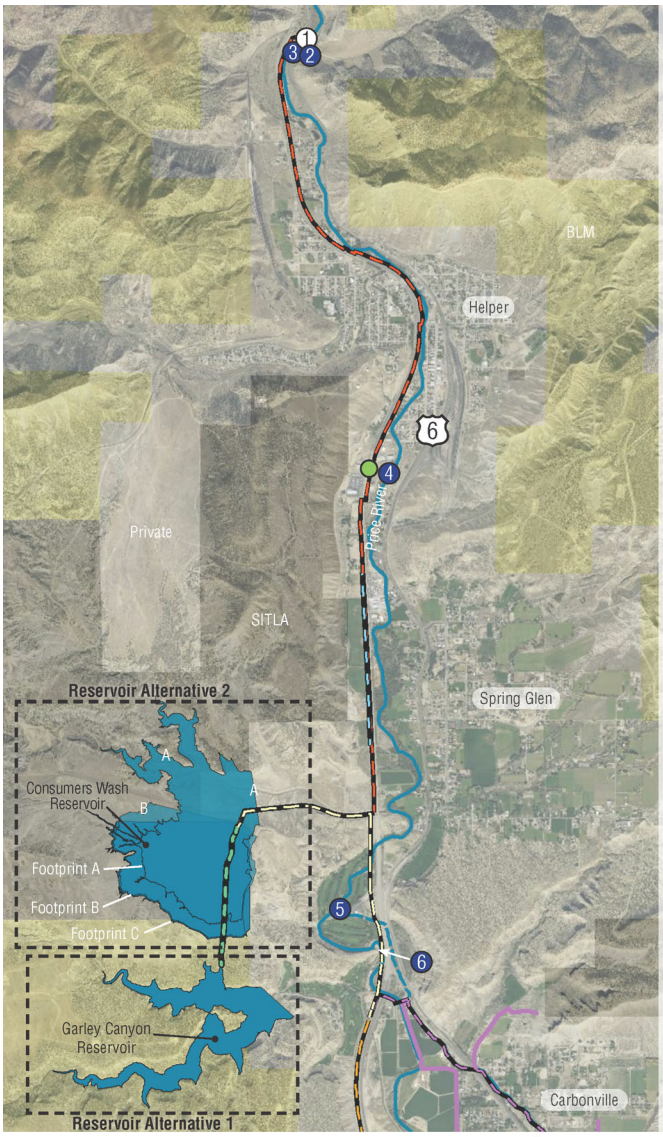


FIGURE: 4

Proposed Project Features including Diversion Structure, Transmission Pipeline, and Reservoir Alternatives

© 2024 HxGN Content Program, Hexagon (2021)

Map Updated: December 2024

- BLM
- Private
- SITLA
- Reservoir Footprint
- Price River
- Transmission Pipeline Alignment
- Proposed Gay Ditch Pipeline
- Pipeline Alignment to Garley
- Pipeline Alignment from reservoir
- Proposed Carbon Pipeline
- Proposed Price-Wellington Pipeline
- Gay Ditch Turnout
- Existing Diversion to be Removed (except Carbon)
- Proposed Diversion

Diversions:

1) Proposed Diversion
2) North Carbon Group
3) Bryner-Ploutz
4) Gay Ditch
5) Price Canal
6) Carbon Canal

0 0.5 1
Miles

N

*See Figure 4-3 for proposed irrigation system pipelines.

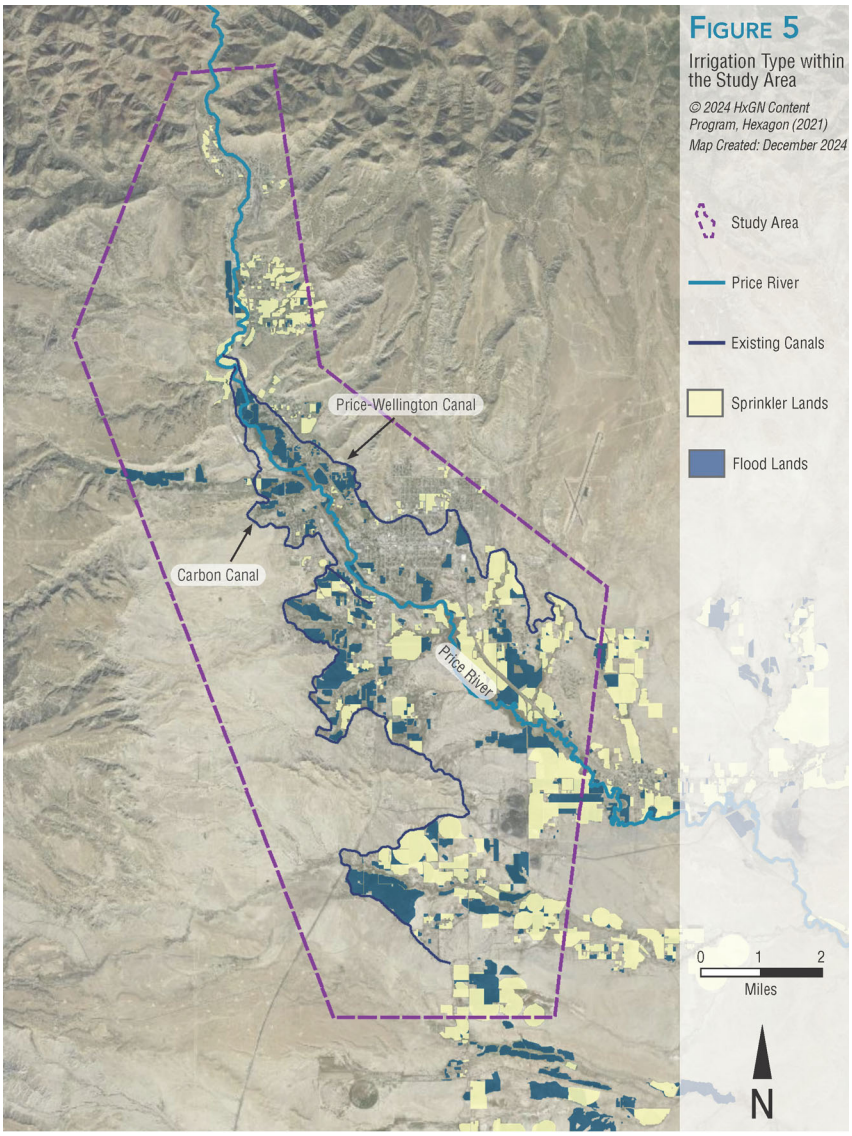


FIGURE 5
Irrigation Type within the Study Area

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Map Created: December 2024

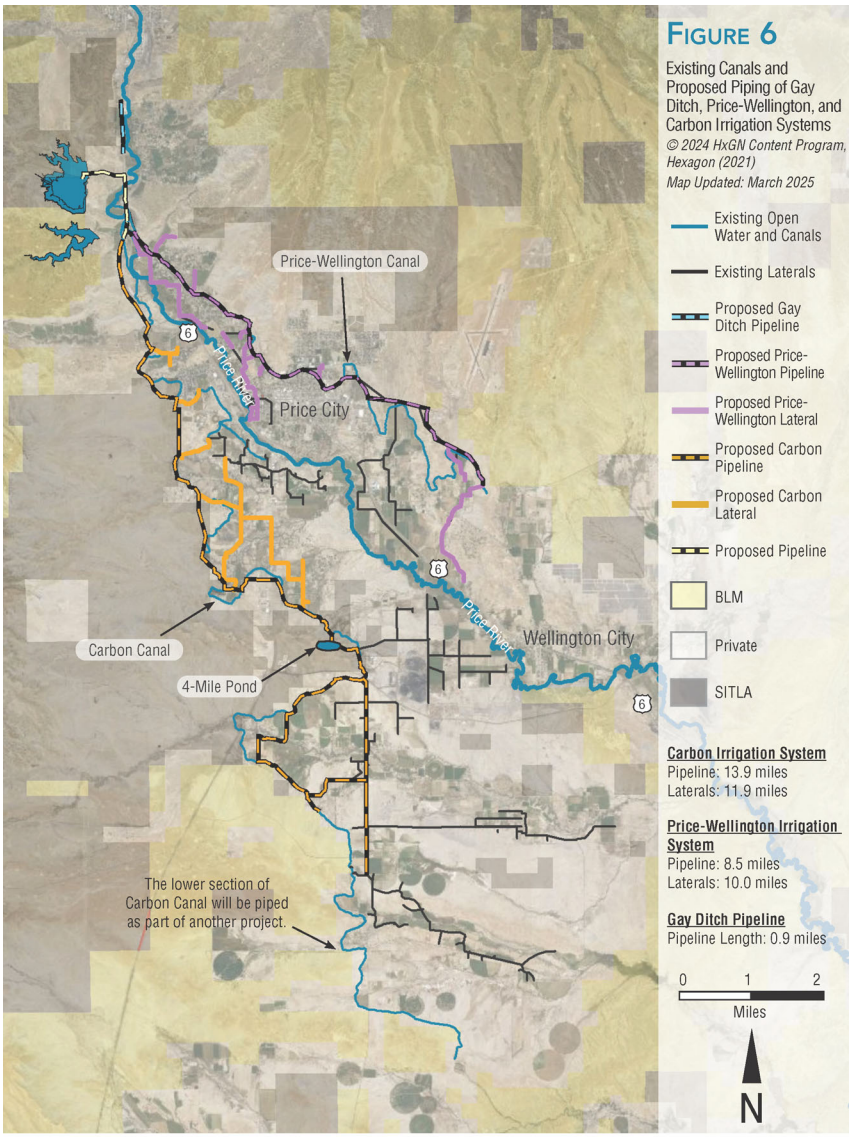
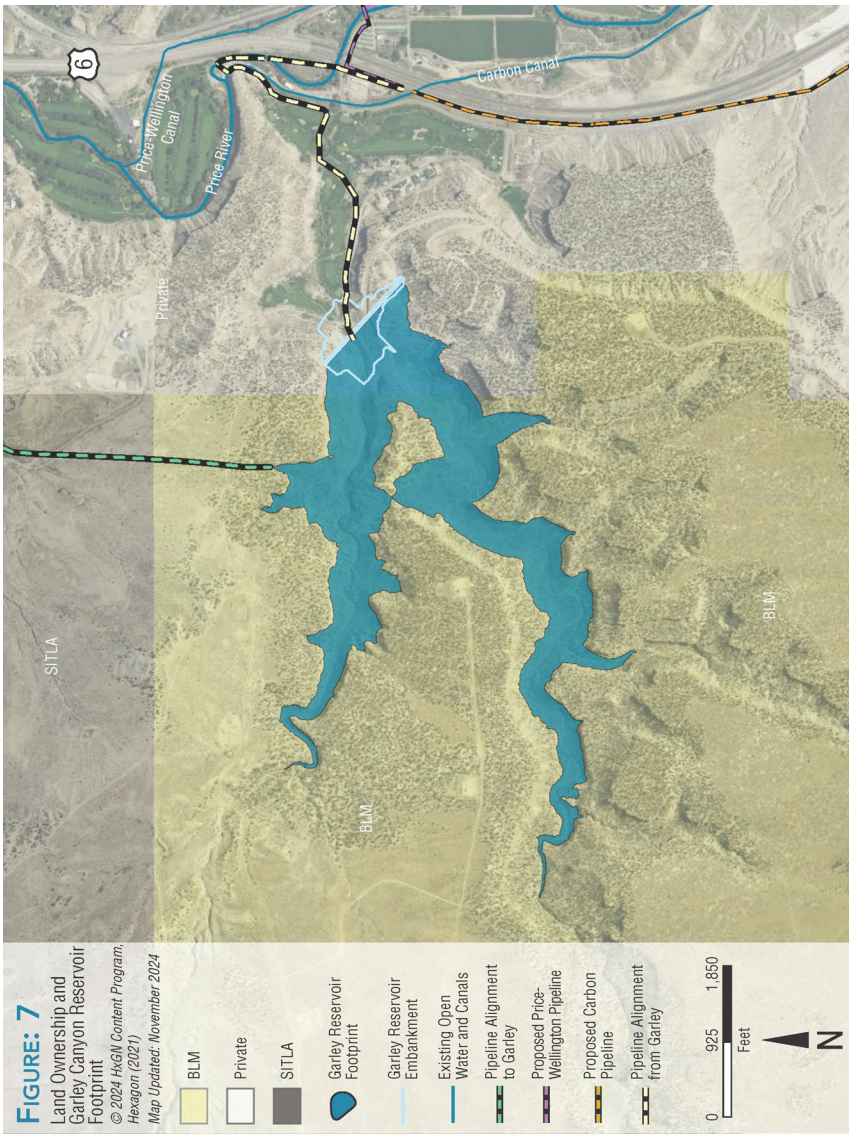


FIGURE 6

Existing Canals and Proposed Piping of Gay Ditch, Price-Wellington, and Carbon Irrigation Systems

© 2024 HxGN Content Program, Hexagon (2021)

Map Updated: March 2025


FIGURE: 7
Land Ownership and Garley Canyon Reservoir Footprint
© 2024 HxGN Content Program. Hexagon (2021)
Map Updated: November 2024
BLM
Private
SITLA
Garley Reservoir Footprint
Garley Reservoir Embankment
Existing Open Water and Canals
Pipeline Alignment to Garley
Proposed Price-Wellington Pipeline
Proposed Carbon Pipeline
Pipeline Alignment from Garley
0
925
1,850
Feet
N
SITLA
Private
BLM
BLM
Price-Wellington Canal
Price River
Carbon Canal
6

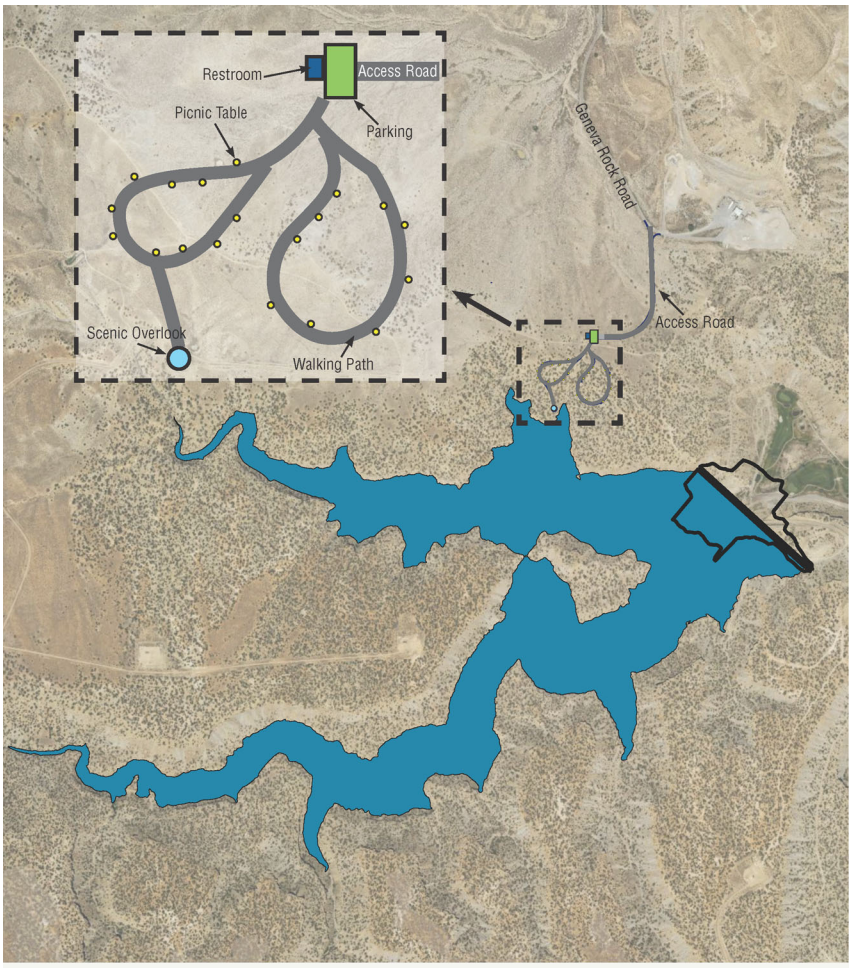
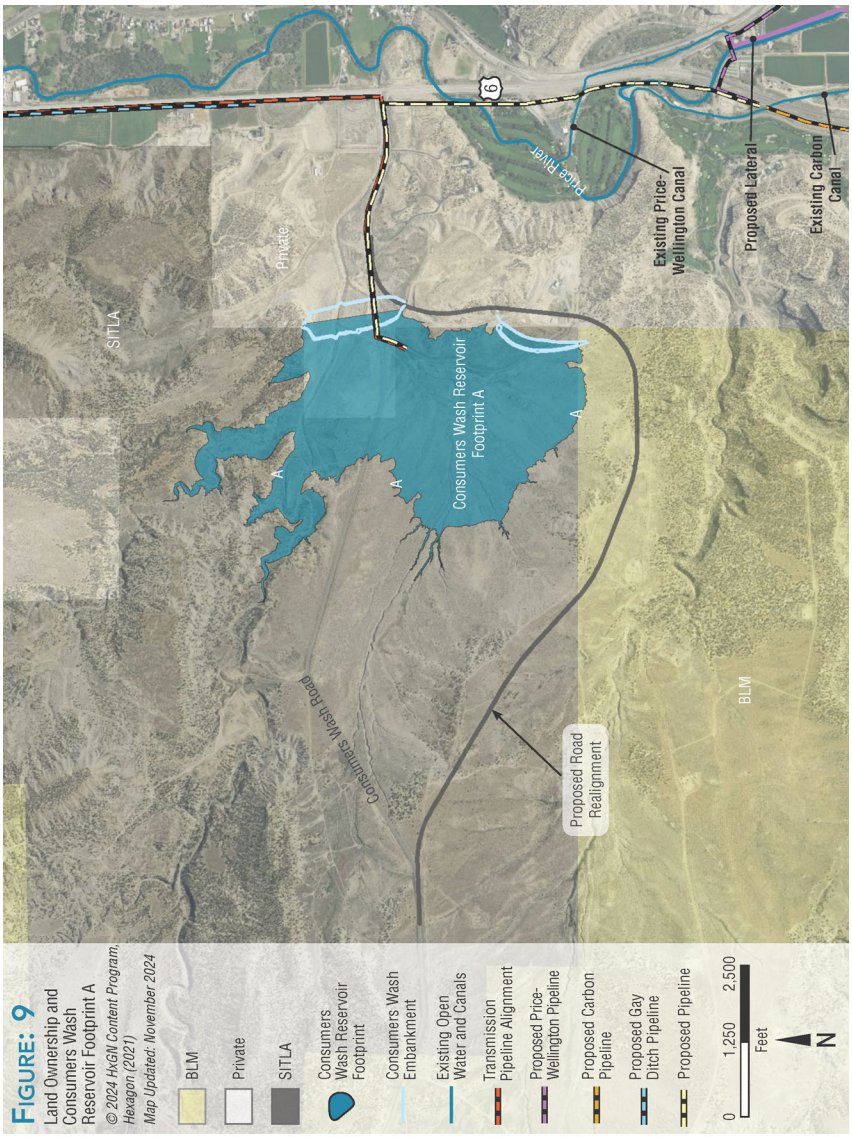


FIGURE: 8

Garley Reservoir Potential Recreation Area

© 2024 HxGN Content Program, Hexagon (2021)

Map Updated: March 2025


FIGURE: 9
Land Ownership and Consumers Wash Reservoir Footprint A
© 2024 HxGN Content Program. Hexagon (2021)
Map Updated: November 2024
BLM
Private
SITLA
Consumers Wash Reservoir Footprint
Consumers Wash Embankment
Existing Open Water and Canals
Transmission Pipeline Alignment
Proposed Price-Wellington Pipeline
Proposed Carbon Pipeline
Proposed Gay Ditch Pipeline
Proposed Pipeline
0 1,250 2,500
Feet
N
SITLA
Private
Consumers Wash Reservoir Footprint A
Consumers Wash Road
Proposed Road Realignment
BLM
Price River
Existing Price-Wellington Canal
Proposed Lateral
Existing Carbon Canal
6
91

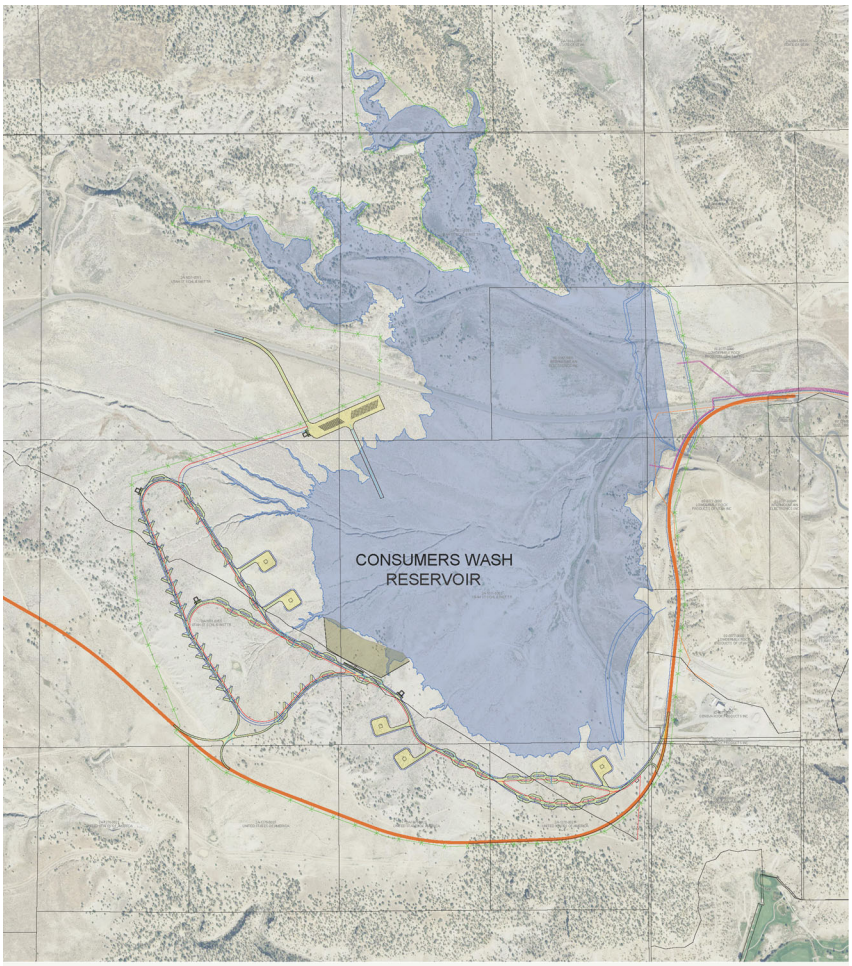


FIGURE: 10

Consumers Wash Reservoir Footprint A Potential Recreation Area

© 2024 HxGN Content Program, Hexagon (2021)

Map Updated: December 2024

Minutes of the City Council Meeting
City Hall
Price, Utah
August 13, 2025

Present:
Mayor Kourianos
Councilmembers:
Joe Christman
Amy Knott-Jespersen
Layne Miller
Terry Willis

Jaci Adams, City Recorder
Nick Tatton, Administrative Director
Brandon Sicilia, Chief of Police

Excused: Councilmember Richardson

Staff/Others: See Public Meeting Sign-In Sheet

1. PLEDGE OF ALLEGIANCE
Mayor Kourianos called the regular meeting to order at 5:04 p.m. Andrew Lasslo, New Life Minstries offered a word. Mayor Kourianos led the Pledge of Allegiance.

2. ROLL CALL
Roll was called with the above Councilmembers and staff in attendance.

3. SAFETY SECONDS
Councilmember Willis reminded everyone that with school starting, watch for children/kids in the crosswalks, flashing lights on school buses and also pay attention to the type of crosswalk, i.e. a clear crosswalk allows cars to continue after the pedestrian is halfway through and a crosswalk with stripes allows cars to continue after a pedestrian is completely through.

4. GENERAL BUSINESS/DISCUSSION

a. SEPTEMBER SUICIDE PREVENTION AND AWARENESS MONTH PROCLAMATION. Consideration and possible approval for Mayor Kourianos to proclaim September as Suicide Prevention and Awareness Month in Price City. Amanda McIntosh, Suicide Prevention Liaison will be in attendance to discuss this agenda item.

Amanda McIntosh was praised by Mayor Kourianos and City Council for her dedication to this program. She then informed everyone about the upcoming events planned for the month of September.

MOTION.
Councilmember Christman moved to approve Mayor Kourianos to proclaim September as Suicide Prevention and Awareness Month in Price City. Councilmember Willis seconded and motion carried.

b. 2025 INTERNATIONAL DAYS UPDATE. Megan Marshall, Price City Event Coordinator will be in attendance to give an update on the 2025 International Days event that was recently held.

Megan Marshall was in attendance to highlight and give a summary on the 2025 International Day's Festival.

c. PREFERRED ALTERNATIVE FOR UPPER PRICE RIVER WATERSHED ENVIRONMENTAL IMPACT STATEMENT (EIS). Consideration and possible approval of "Consumer Wash Reservoir Alternative A Including Pressurized Irrigation System and In-Stream Flow" as the City's preferred alternative for the Upper Price River Watershed EIS.

MOTION.
Councilmember Willis moved to approve the "Consumer Wash Reservoir Alternative A Including Pressurized Irrigation System and In-Stream Flow" as the City's preferred alternative for the Upper Price River Watershed EIS. Councilmember Knott-Jespersen seconded and motion carried.

d. JOINT HIGHWAY COMMITTEE PROJECT CHANGE OF SCOPE REQUEST. Consideration and possible approval of a request to the Joint Highway Committee to Change the Scope of the Canal Crossings Replacement Project to one crossing at Carbon Avenue instead of two due to current funding constraints. New Project Total will be 958,505 including the City's portion of $233,409 (24%).

MOTION.
Councilmember Miller moved to approve the request for the Joint Highway Committee to change the scope of the canal crossings replacement project to one crossing at Carbon Avenue instead of two due to funding constraints. Councilmember Christman seconded and motion carried.

5. CONSENT AGENDA

MOTION.
Councilmember Miller moved to approve consent agenda items a. thru l. Councilmember Willis seconded and motion carried.

a. MINUTES for 07-23-2025 City Council Workshop and City Council.

b. INTERLOCAL COOPERATIVE AGREEMENT BETWEEN PRICE CITY POLICE DEPARTMENT AND UTAH STATE UNIVERSITY. Consideration and possible approval of an Interlocal Cooperative Agreement Between Price City Police Department and Utah State University.

c. AGREEMENT FOR PROFESSIONAL SERVICES RELATED TO FIRST RESPONDERS FIRST AND PRICE CITY PUBLIC SAFETY. Consideration and possible approval of an Agreement Between First Responders First and Price City Public Safety.

d. THE BACORP MASTER LEASE AGREEMENT FOR PRICE CITY POLICE DEPARTMENT VEHICLES. Consideration and possible approval for an Agreement Between The Bancorp Bank and Price City for Price City Police Department vehicles.

e. GAS LINE AGREEMENT. Consideration and possible approval of a service line agreement with Enbridge to provide gas service to the City's new Street Maintenance Shed.

f. WILLIAMS/MOUNTAINWEST PIPELINE ENCROACHMENT REQUEST. Consideration and possible approval of a pipeline encroachment request to construct a flood control ditch across the high pressure gas pipeline owned by MoutainWest LLC located on Wood Hill Road.

g. REMOTE ACCESS POLICY. Consideration and possible approval of the remote computer system access policy.

h. PRICE RIVER WATER RESOURCES COMMITTEE MEMBER APPOINTMENT. Consideration and possible approval of the appointment of Tyler Clark as a member of the Price River Water Resources Committee to fill the current vacancy of Wellington Area Citizen.

i. REQUEST FOR FEE WAIVER/HOPE SQUAD. Amanda McIntosh, Suicide Prevention Liaison/FCCBH is requesting fee waivers for use of the Price City Peace Gardens on September 10, 2025 for the annual Candlelight Vigil and September 13, 2025 for the Southeast Utah Hope Walk.

j. VOCA GRANT AWARD. Acknowledgement of approved VOCA Grant Award to Price City Police Department Victim of Crime Act (VOCA).

k. TRAVEL REQUESTS. Captain Ratcliffe and Colton Greener, Utah Narcotics Officer Association Conference, August 10-15, 2025, St. George, UT. Sergeant Kelly Maynes, CIT International Conference, Anaheim, CA, August 10-13, 2025.

l. BUSINESS LICENSES. AKM Rentals LLC at 175 S 700 E for Allen and Kristen McCourt. Revive N Thrive at 248 S Hwy 55 for Tiffany Noyes & Ailese Curtis. Tagg N Go Express Car Wash at 222 S Hwy 55. Vintage Chandelier LLC at 79 W Main St for Jamie Wilstead. Summit All Phase Construction at 330 Madison Ave for Draper Powell. Homestead Landing Apartments, LLC at 1433 E Airport Rd.

6. PUBLIC COMMENTS
Dave Cox, Price City resident asked about water rights in the Lower Basin Reservoir. Jared Haddock, Price City resident thanked Mayor Kourianos, City Council and Price City Police Department for their service to the community. Ken Huff, Price City residents had concerns with a striping company that got paint on his wheels while painting lines on the road. Wayne Jackson, Price City resident reminded everyone about upcoming events.

7. UNFINISHED BUSINESS
No unfinished business was discussed or reported.

Mayor Kourianos asked for a motion to close the regular City Council meeting.

Councilmember Christman moved to closed the regular City Council meeting. Councilmember Knott-Jespersen seconded and motion carried.

The regular City Council meeting was adjourned at 5:44 p.m.

APPROVED: ATTEST:

_____ _____

Michael Kourianos, Mayor Jaci Adams, City Recorder

MARTIN HEINRICH
U.S. SENATOR FOR NEW MEXICO

Statements of Support for the Cerro de la Olla Wilderness Establishment Act

"The Taos Pueblo People have always recognized the sacredness of all the mountains, in our valley, including Cerro De La Olla. Our ancestors have always emphasized the importance of protecting our mountains and forest from exploitation and development but also protecting the renewable resources they provide to all the people in our area," **said Taos Pueblo War Chief John N. Archuleta.**

"I'm proud to support the Cerro de la Olla Wilderness designation bill introduced by Senator Martin Heinrich and Representative Teresa Leger Fernández. For generations, the people of northern New Mexico have relied on the lands and forests of the Cerro de la Olla for sustenance, resources, and livelihoods. It is both a spiritual and economic base that deserves the protection of Wilderness designation to ensure future generations can continue to enjoy all that makes the Cerro de la Olla special," **said Pascualito M. Maestas, Mayor of the Town of Taos.**

"Cerro de la olla has been a preferred grazing area for generations of local ranchers. I've restored hundreds of acres of grassland on my ranch adjacent to this mountain. This area attracts large herds of wintering wildlife. It is imperative that Cerro de la Olla be protected against development, so that wildlife populations thrive for the benefit of future generations," **said Eliu Romero, grazing permittee on Cerro de la Olla and private land owner adjacent to Cerro de la Olla.**

"From discovered prehistoric artifacts, we know that humans have visited and used Cerro de la Olla for thousands of years. Today, New Mexicans and others visit this rugged mountain to enjoy solitude and expansive vistas, to recreate, and to appreciate its natural splendor. This bill recognizes the importance of saving this special place for tomorrow's visitors, human and wildlife alike, that they may have the same opportunities that we are fortunate enough to have today. Senator Heinrich knows the

value of 'Pot Mountain' personally, and so do we. We thank him for his continued foresight," **said Mark Allison, Executive Director of New Mexico Wild.**

"Río Grande del Norte National Monument is graced by two massive volcanoes. Cerro de la Olla, one of these volcanoes, lies in the heart of the monument. It contains unique habitat and a summit with unparalled views. It should be given the highest protection to benefit wildlife and future generations," **said Roberta Salazar, Executive Director of Rivers and Birds.**

"The lands in northern New Mexico -- from dramatic scenic vistas to opportunities for solitude -- are some of our state's most unspoiled wild places and Congress should do all it can to keep them that way. Senator Heinrich was instrumental in the designation of Río Grande del Norte National Monument and now he is leading the charge of protecting Cerro de la Olla. The wildest of the lands within the monument serve as a critical sanctuary and corridor for wildlife migration and the US Senate has an opportunity to stand with New Mexico by joining Sen. Heinrich to ensure that Cerro de la Olla gets the Wilderness protections it needs," **said Michael Casaus, New Mexico State Director for The Wilderness Society.**

"The Cerro de la Olla in northern New Mexico is home to diverse wildlife species including elk, deer, cougars, black bears, and golden eagles. The area is also key for migratory movement along the Upper Rio Grande watershed," **said Andrew Black, public lands field director at the National Wildlife Federation.** "Designating this region as a wilderness will safeguard wildlife, conserve one of the most intact migration corridors in the nation, and ensure that hunters, hikers, and other outdoor recreationists can continue to enjoy this pristine area for generations to come."

"Cerro de la Olla is a solitary lava dome, rising out of the high sagebrush plains, in the heart of the Río Grande del Norte. The volcano and the surrounding area, provide critical winter habit and shelter for our migrating herds of rocky mountain elk. The mountain has such a diverse ecology, from a southwest desert at its base, to a true alpine grassland in the caldera at the summit. The area is also rich in cultural history and has numerous historical and archaeological sites. Cerro de la Ollas is a treasured public wild land, for local hunters and hikers alike, and is even mentioned in the 2013 Proclamation that established the Río Grande del Norte National Monument, as one of the Monument's Objects of Value to protect for future generations. Thanks and kudos to Senator Heinrich and Representative Leger Fernández, for introducing this wilderness bill for Cerro de la Olla, and their ongoing commitment to protecting or public lands," **said Stuart Wilde, local wilderness guide and conservation advocate with Wild Earth Llama Adventures.**

"We applaud the reintroduction of the Cerro de la Olla Wilderness Establishment Act by Senator Martin Heinrich and Representative Teresa Leger Fernández. Supported by sportsmen and women, this legislation would permanently conserve more than 13,000 acres of public lands in the Rio Grande del Norte National Monument. A unique caldera, this landscape is an important migratory corridor for elk and provides habitat for other game species such as mule deer, mountain lions, and black bear," **said Mike Farrington, New Mexico Backcountry Hunters & Anglers Chapter Vice-Chair.**

"The lands in Taos County play an important role in our culture and way of life. For centuries, our people have depended on them, and the wildlife that call them home, for nourishment and our livelihoods. This legislation will forever protect the wildlife habitat on Cerro de la Olla for big game, while protecting our community's ability to hunt and collect pinon from the whole mountain, and to camp and harvest firewood at the base. It's a win-win for everyone," **said Darlene Vigil, Taos County Commissioner.**

TAOS PUEBLO WARCHIEF
Office of Natural Resource Protection
P.O. Box 2596 Taos, New Mexico 87571
(575) 758-3883 FAX (575) 758-2706

April 25, 2021

Dear Congressional Legislator.

Statement from The Taos Pueblo WarChief Office in Support of the Protection and Preservation of Cerro de la Olla

The Taos Pueblo Warchief Office's main responsibility and duty is to protect and preserve natural resources on our tribal lands. However, we are also involved in supporting the preservation of lands surrounding Taos Pueblo as well.

The protection of Cerro de la Olla is important to Taos Pueblo and our people because it helps to preserve the land our ancestors roamed. It is important that future generations have the opportunity to experience the beauty of this land just as our ancestors have before us.

Safe guarding Cerro de la Olla is also important to protect the special plants and animals that call this place home, as well as to protect the waters that flow through it. Preservation also helps to continue the unique culture of Northern New Mexico, which includes hunting and the gathering of medicinal plants and firewood.

We thank you for your current and past efforts to protect our public lands in Taos County. We now encourage you to include Cerro de la Olla in the Cerros de Norte Conservation Act over the next few months.

In conclusion, the 2021 Taos Pueblo WarChief Office continues to support wilderness protection for Cerro de la Olla.

Fred L. Romero, Warchief

Steven Archuleta, Lieutenant WarChief

TAOS COUNTY
RESOLUTION NO. 2018-21

TAOS COUNTY
ANNA MARTINEZ, CLERK
00042811 9
Book 977 Page 652
1 of 4
05/15/2018 02:20:03 PM
BY DOLORES

A RESOLUTION OF THE TAOS COUNTY COMMISSION DECLARING SUPPORT FOR THE CERROS DEL NORTE CONSERVATION ACT TO ESTABLISH THE CERROS DEL NORTE WILDERNESS WITHIN THE RIO GRANDE DEL NORTE NATIONAL MONUMENT INCLUDING CERRO DE LA OLLA (POT MOUNTAIN)

WHEREAS, areas of ecological importance, cultural significance, and extraordinary wildlife, scenic, recreational value, and wilderness character are present in the Rio Grande del Norte National Monument; and

WHEREAS, these areas are of special importance as components of a wildlife corridor connecting the San Juan Mountains and the Sangre de Cristo Mountains invaluable to elk and other migratory animals; and

WHEREAS, a wilderness designation of this area would continue to honor and protect the traditional livestock grazing use of this area as well as other traditional uses such as hunting, gathering of medicinal herbs, and wood gathering; and

WHEREAS, a wilderness designation will increase the outdoor recreational attraction of the Rio Grande del Norte National Monument by including portions of it in the National Wilderness Preservation System; and

WHEREAS, a wilderness designation will provide the maximum long-term protection of all of these values; and

WHEREAS, the Cerros del Norte Conservation Act wilderness proposal does not infringe on any current motor vehicle areas; and

WHEREAS, the wilderness designation allows for full fire protection as specified in section 4(d)(1) of the *Wilderness Act* which permits any measures necessary to control fire, insect outbreaks, and disease in the wilderness area including the use of mechanized equipment, the building of fire road, fire breaks or fire pre-suppression facilities where necessary to protect public health and/or safety; and

WHEREAS, the Cerros del Norte Conservation Act (S.432), which included Ute Mountain and San Antonio Mountain units, was passed unanimously by the U.S. Senate in December 2017.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the Taos County Commission, meeting in Regular Session, fully supports the enactment of federal legislation to designate Cerro de la Olla Wilderness in the Rio Grande del Norte National Monument.

SIGNATURE PAGE TO FOLLOW

PASSED AND APPROVED this 15th day of May, 2018 by the Taos County Board of Commissioners.

TAOS COUNTY BOARD OF COMMISSIONERS:

Jim Fambro, Commissioner

Mark Gallegos, Commissioner

Gabriel Romero, Commissioner

Tom Blankenhorn, Commissioner

NO

Candyce O'Donnell, Commissioner

VOTE RECORD:

J. Fambro	yes	no	abstain	absent
M Gallegos	yes	no	abstain	absent
G. Romero	yes	no	abstain	absent
T. Blankenhorn	yes	no	abstain	absent
C. O'Donnell	yes	no	abstain	absent

TAOS COUNTY
ANNA MARTINEZ, CLERK
00428119
Book 977 Page 653
2 of 4
05/15/2018 02:20:03 PM
BY DOLORES

ATTEST:

TAOS COUNTY CLERK RECORDER SEAL TAOS

Anna Martinez, County Clerk

APPROVED AS TO FORM:

Randy Autio, Contract County Attorney

RESOLUTION 18-28

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TAOS DECLARING SUPPORT FOR THE CERROS DEL NORTE CONSERVATION ACT TO ESTABLIASH THE CERROS DEL NORTE WILDERNESS WITHIN THE RIO GRANDE DEL NORTE NATIONAL MONUMENT INCLUDING CERRO DE LA OLLA (POT MOUNTAIN)

WHEREAS, areas of ecological importance, cultural significance, and extraordinary wildlife, scenic, recreational value, and wilderness character are present in the Rio Grande del Norte National Monument, and;

WHEREAS, these areas are of special importance as components of a wildlife corridor connecting the San Juan Mountains and the Sangre de Cristo Mountains invaluable to elk and other migratory animals, and;

WHEREAS, a wilderness designation of this area would continue to honor and protect the traditional livestock grazing use of this area as well as other traditional uses such as hunting, gathering of medicinal herbs, and wood gathering, and;

WHEREAS, a wilderness designation will increase the outdoor recreational attraction of the Rio Grande del Norte National Monument by including portions of it in the National Wilderness Preservation System, and;

WHEREAS, a wilderness designation will provide the maximum long-term protection of all of these values, and;

WHEREAS, the Cerros del Norte Conservation Act wilderness proposal does not infringe on any current motor vehicle areas, and;

WHEREAS, the wilderness designation allows for full fire protection as specified in section 4(d)(1) of the *Wilderness Act* which permits any measures necessary to control fire, insect outbreaks, and disease in the wilderness area including the use of mechanized equipment, the building of fire road, fire breaks or fire pre-suppression facilities where necessary to protect public health and/or safety, and:

WHEREAS, the Cerros del Norte Conservation Act (S.432), which included Ute Mountain and San Antonio Mountain units, was passed unanimously by the U.S. Senate in December 2017.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the Town of Taos, meeting in Regular Session, this 27th day of March 2018 that the Town Council fully supports the enactment of federal legislation to designate a Cerro de Yuta Wilderness of 13,420 acres, a Rio San Antonio Wilderness of approximately 8,120 acres, and a Cerro de la Olla Wilderness of 6,225 acres in the Rio Grande del Norte National Monument.

PASSED, APPROVED and ADOPTED, this 27th day of March, 2018, at the Regular Meeting of the Town Council by the following vote:

Mayor Pro Tem Nathaniel Evans	yes
Councilmember Darien Fernandez	yes
Councilmember George "Fritz" Hahn	yes
Councilmember Pascualito Maestas	yes

TOWN OF TAOS

Daniel R. Barrone, Mayor

ATTEST:

Francella Garcia, Town Clerk

APPROVED AS TO FORM

Stephen Ross, Town Attorney

VILLAGE OF QUESTA
P.O. Box 260
Questa, New Mexico 87556-0260
Phone (575) 586-0694
Fax (575) 586-0699

Mark Gallegos, Mayor
Louise Gallegos, **Councilwoman**
Brent P. Jaramillo, **Councilor**
Charlie Gallegos, **Councilor**
John Anthony Ortega, **Councilor**

Renee Martinez, **Interim Village Administrator**

March 31, 2021

Honorable Congresswoman Teresa Leger Fernandez
U.S House of Representatives
2231 Rayburn HOB
Washington, D.C. 20515

Dear Congresswoman Fernandez,

The Village of Questa thanks you for your leadership in Congress that benefits the Village of Questa and New Mexico. We are grateful that we have Rio Grande del Norte National Monument in our neighborhood, which draws many tourists and benefits our town economically. We hope the Act passes congress this year.

Will you consider introducing the Cerro del Norte Conservation Act in the House including an amendment to the bill to include wilderness protection for the second largest volcano within the national monument – Cerro de la Olla?

Cerro de la Olla is important for livestock grazers, hunters, and hikers. It offers visitors solitude in nature, provides breathtaking vistas, and it is a critical migratory corridor and sanctuary for wildlife including elk, antelope, and deer. Wilderness protection will ensure that Cerro de la Olla's wilderness' character is maintained for the benefit of present and future generations and will ensure continued traditional uses for loyal citizens such as livestock grazing, hunting and piñon picking.

We thank you for your leadership in Congress that benefits the Village of Questa and the entirety of New Mexico.

Sincerely,

Mark Gallegos,
Mayor, Village of Questa

TOWN OF RED RIVER
(575) 754-2277
www.redriver.org
100 East Main Street
PO Box 1020
Red River, NM 87558

April 22, 2021

Senator Martin Heinrich
303 Hart Senate Office Building
Washington DC 20510

Senator Ben Ray Lujan
B40C Dirksen Senate Office Building
Washington DC 20510

Congresswoman Teresa Leger Fernandez
US House of Representatives
1432 Longworth House Office Building
Washington D.C., 20515

Dear Legislators,

The Town of Red River thanks you again for your leadership in Congress that benefits of the Town of River and New Mexico. We are grateful that we have Rio Grande del Norte National Monument in our neighborhood, which draws many tourists that benefit our town economically. We saw that the Cerros del Norte Conservation Act passed Congress in 2019. We would like to request that you introduce a bill now to include wilderness protection for the second largest volcano in the national monument. - Cerro de la Olla.

Cerro de Ia Olla is important for hunter and for hikers. It is remote, offering visitors solitude in nature, it provides breathtaking vistas, and it provides critical habitat and sanctuary for wildlife, including a large migratory herd of elk. BLM documentation shows 1,040 miles of open roads surrounding Cerro de Ia Olla. These are open to the public for motorized vehicle use, which is wonderful. Wilderness protection will ensure that Cerro de Ia Olia's wilderness character is maintained for the benefit of future generations in the midst of this vast road network. We thank you for your endless work in Congress that benefits the Town of Red River and the rest of New Mexico.

Respectfully,
Linda Calhoun
Mayor Linda Calhoun
Town of Red River

Senator Heinrich
US Senate
303 Hart Senate Office Building
Washington D.C., 20510

April 25, 2021

Senator Ben Ray Lujan
B40C Dirksen Senate Office Building
Washington DC 20510

Congresswoman Leger Fernandez
US House of Representatives
1432 Longworth House Office

Dear Legislators,

Thank you for your leadership in New Mexico on behalf of New Mexicans.
I own Laguna Peaks Elk Ranch, a private elk ranch which lies within close proximity of Cerro de la Olla within Rio Grande del Norte National Monument. As a hunting guide, my economic livelihood depends on healthy elk populations. This volcanic mountain provides critical wildlife habitat for elk, which inhabit this mountain year round. During winter up to 2,500 elk graze on and near Cerro de la Olla. Antelope graze at the base of this volcano. It is also home to deer, bear, mountain lion and many other wildlife species. I and several other adjacent ranchers depend on income from wildlife game hunts in this vicinity. However, Cerro de la Olla lies in the midst of a vast network of motor vehicle routes that crisscross the Taos Plateau within the national monument. This volcano should be protected as a place where these animals can find sanctuary away from these motor vehicular routes. Hunters can then access the mountain on foot or by horseback for a quality and sporting hunt. I ask you to include Cerro de la Olla in the Cerros del Norte Conservation Bill. The title of that bill indicates that more that one Cerro is being protected but the language of the bill passed in 2019 only indicates one Cerro – Ute Mountain.

Respectfully,

Marty Torres

Marty Torres,
Owner of Laguna Peaks Elk Ranch
23016 Us Highway 64
Taos, New Mexico

The Honorable Teresa Leger Fernandez
US House of Representatives
1432 Longworth House Office Building
Washington D.C. 20515-3013

April 2, 2021

Dear Congresswoman Leger Fernandez,

I thank you for your dedication to the conservation of our cherished public lands. I own a 22,000-acre private ranch, Sierra Morena Ranch, which lies surrounded by Rio Grande del Norte National Monument. Our ranch actually includes part of Cerro de la Olla Mountain. Please know that I am in full support of the Cerro de la Olla Wilderness Proposal.

Wilderness protection ensures that wildlife such as elk and antelope will always have a road-less area for refuge. Such road-less habitat is important for wildlife connectivity between habitat zones. In the winter, large herds of elk numbering close to 1,500 animals, congregate on my ranch, Cerro de la Olla and the surrounding Taos Plateau in the Rio Grande del Norte National Monument area. My ranch as well as Cerro de la Olla provide important grassland habitat for elk to graze.

It is not uncommon for us to watch hundreds of antelope foraging on our ranchland adjacent to Cerro de la Olla.

Cerro de la Olla and the rest of Rio Grande del Norte National Monument provide very important habitat to wildlife as they move back and forth between the San Juan and Sangre de Cristo Mountains.

I urge you to introduce the Cerro de la Olla Wilderness Bill to the House to ensure that 13,000 acres of habitat on this volcanic mountain is forever protected for the benefit of both humans and wildlife.

Sincerely,

Elfu E. Romero
Private landowner, Sierra Morena Ranch
Member of the Arroyo Hondo Abajo Hispanic Community Land Grant
212 Paseo del Pueblo Norte
Taos, NM 87571-5902

Congresswoman Teresa Leger Fernandez
US House of Representatives
1432 Longworth House Office Building
Washington D.C. 20515-3103

April 2, 2021

Dear Congresswoman Leger Fernandez,

I own 1,280 acres known as Elkhorn Ranch within Rio Grande del Norte National Monument. I am also a livestock permittee at Cerro Azul on Bureau of Land Management and US Forest Service lands about 20 miles south of my ranch. My ranch lies in close proximity to Cerro de la Olla Volcano, and it was homesteaded originally by my grandfather, Onesimo Valentin Torres. When he homesteaded our land he had, at one time, 3500 sheep on 22 sections of land in the area that is now Rio Grande del Norte National Monument. He even farmed potatoes there on the sagebrush plateau.

I feel that it is our generation's responsibility to ensure that future generations can enjoy our public land heritage. The surrounding BLM public land to my ranch is a place where many people have hunted, grazed livestock and collected firewood. In our local community, these traditions are vital for our health and livelihood. I want to see that these traditions are honored for my children and grandchildren way into the future.

It is important for you to know that some of us private landowners within the monument depend on wildlife permit sales on our land for part of our income, and we feel that maintaining healthy sustainable big game herds in this is important.
Cerro de la Olla provides rich habitat for elk and deer. In winter, thousands of elk will visit Cerro de la Olla. This mountain is only a mile or two from my ranch and it is a mountain that I have always revered. Last year for the first time in my life, I hiked to its summit. It is an extraordinary mountain with open grasslands on top interspersed by oak and pines. The views are vast and beautiful. I could see the San Juan Mountains, the Sangre de Cristo's and much of the mountains in Colorado. That was quite a thrilling experience.

I request that you act now to introduce a companion bill to the Cerros del Norte Conservation Bill to include the upper elevations of Cerro de la Olla for wilderness protection. It is a world-class landscape feature that deserves the highest land protection status. I understand that wilderness protection ensures livestock grazing as usual and allows for hunting as usual on the mountain. Livestock grazing must continue to be protected and even increased for future sustainability. I hope someday a grandchild of mine will also hike up there to feel the same joy as I did.

Thanks for you work on behalf of our community.

Sincerely,

Floyd Archuleta
Private Rancher within Rio Grande del Norte National Monument
BLM/USFS Livestock Permittee
25 JM Ranch Road, El Prado, NM 87529

RIO GRANDE DEL NORTE COALITION

June 14, 2021

The Honorable Martin Heinrich
U.S. Senate
303 Hart Senate Office Bldg.
Washington, D.C. 20510

The Honorable Ben Ray Lujan
U.S. Senate
498 Russell Senate Office Bldg.
Washington, D.C. 20510

The Honorable Teresa Leger Fernandez
U.S. House of Representatives
1432 Longworth HOB
Washington, D.C. 20515

The Honorable Melanie Stansbury
U.S. House of Representatives
Washington, DC 20515

Dear Senators Heinrich and Lujan and Representatives Leger Fernandez and Stansbury:

On behalf of our organizations and our thousands of members in New Mexico, we write to express our strong support for permanently protecting Cerro de la Olla in Taos County as a Wilderness Area, the highest level of protection for our public lands.

The 13,000-acre Cerro de la Olla, located within the Río Grande del Norte National Monument, is a spectacular caldera that carries deep historical, environmental, and recreational importance. For hundreds of years, people of the Taos area have hunted, gathered herbs, and collected firewood on the flanks of Cerro de la Olla, also known as Pot Mountain. This proposed wilderness area would preserve these traditional uses, including livestock grazing, and provide sanctuary to a wide range of wildlife species.

Cerro de la Olla rises to 9,475 feet in elevation and towers over the Taos Plateau and the Rio Grande del Norte National Monument. Much like Cerro del Yuta—protected as Wilderness in 2019—Cerro de la Olla is also a shield volcano with upper elevations that offer solitude and unparalleled views of the Sangre de Cristo Mountains to the East, the San Juan Mountains to the West, and the Rio Grande Gorge down below. These mountains serve as an important wildlife corridor and provide sanctuary to a wide range of wildlife species including elk, mule deer, mountain lion, black bear, fox, Golden Eagle, Red-tailed Hawk, Swainson's Hawk, Rough-legged Hawk, and many species of migratory songbirds.

The mountain has a very diverse ecology, from a southwest desert at its base, to a true alpine grassland in the caldera at the summit. The area is also rich in cultural history and has numerous historical and archaeological sites. Human artifacts found on Cerro de la Olla date back to at least 10,000 years. In February of 2013, Bureau of Land Management (BLM) staff discovered an alcove along the side of the mountain that sheltered two intact prehistoric pots and rock tools dating to nearly 1,000 years ago.

The proposed Cerro del la Olla Wilderness is overwhelmingly supported by community members, local governments, nonprofit organizations, businesses and tribal entities, including Taos Pueblo, Taos County Commission, Town of Taos, Taos Mayor Dan Barrone, Questa Mayor Mark Gallegos, and Red River Mayor Linda Calhoun.

Thank you for your dedication to protecting our cherished public lands. We offer our continued support for your conservation efforts. Please let the us know what you need from us to assist you in your efforts.

Respectfully,

Roberta Salazar
Executive Director
Rivers and Birds
riversandbirds@gmail.com

Stuart Wilde
Owner
Wild Earth Llama Adventures
llamatrek@gmail.com

Norbert Mondragon
Chairman
El Salto del Agua Association
norbert.mondragon@elsaltonm.org

Joe Zupan
Executive Director
Amigos Bravos
jzupan@amigosbravos.org

Philip Alldritt
President
Taos Archeological Society
taoscuba@hotmail.com

Eric Patterson
Coordinator
Water Sentinels – Rios de Taos
eepatt@gmail.com

Kristina Ortez
Executive Director
Taos Land Trust
kristina@taoslandtrustorg

Charles Howe
Executive Director
National Veterans Wellness and Healing Center
Chuck1559@aol.com

Steve Harris
Executive Director
Rio Grande Restoration
steve.harris39@gmail.com

Jesse Deubel
Executive Director
New Mexico Wildlife Federation
jesse@nmwildlife.org

Mark Allison
Executive Director
New Mexico Wild
mark@nmwild.org

Oscar Simpson
State Chair
New Mexico Sportsmen
oscarsimpson3@yahoo.com

Michael Casaus
New Mexico State Director
The Wilderness Society
michael_casaus@tws.org

Andrew Black
Public Lands Field Director
National Wildlife Federation
blacka@nwf.org

Brian Sybert
Executive Director
Conservation Lands Foundation
bsybert@conservationlands.org

Michael Dax
Western Programs Director
Wildlands Network
michael@wildlandsnetwork.org

Susan Morgan
President
The Rewilding Institute
susancoyotte@icloud.com

Camilla Simon
Executive Director
Hispanics Enjoying Camping, Hunting and the Outdoors (HECHO)
camilla@hechoonline.org

March 18, 2018

The Honorable Ben Ray Lujan
U.S. House of Representatives
2446 Rayburn HOB
Washington, DC 20515

Dear Congressman Lujan,

Thank you for your support of our public lands. The Cerros del Norte Conservation Act (S.432 unanimously passed by the Senate in December 2017, but not introduced in the House of Representatives) proposed Wilderness status for two areas of the Rio Grande Del Norte National Monument. I am asking that you introduce a companion bill **and include for Wilderness status the upper elevation of Cerro de la Olla (6,225 acres), also known as Pot Mountain,** located within the National Monument in Taos County.

I am a Wildlife Biologist and long term resident of northern New Mexico who values wildlife and wilderness. The pinyon-juniper, ponderosa pine and mixed conifer forest habitat of Cerro de la Olla is critical big game winter range, especially for elk and deer. The large elk herd that summers in the San Juan Mountains migrates east to this area for the winter. Much of the surrounding area is open sagebrush with numerous roads (1,040 miles of roads within the Monument) lacking thermal cover, especially important to ungulates such as elk and deer. Additionally, Wilderness status will provide much needed protection for game and non-game wildlife from mechanized disturbances.

According to the New Mexico Department of Game and Fish there are 208 vertebrate species in the county that utilize the forested habitats mentioned above. Hunting is important to many New Mexicans and other US citizens. Pot Mountain provides habitat for 20 game species (including big game, small game and fur-bearers) and 188 non-game species. The mountain is culturally important to Native American Pueblo tribes and provides habitat for 38 wildlife species known to have tribal cultural importance. Many wildlife species in New Mexico are in trouble, often due to habitat loss and degradation. The 208 vertebrates include 55 species that are classified threatened, endangered or sensitive (TES). Although there is overlap in the classification by the different agencies, the classification of these 55 TES species includes:

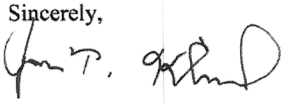
1 Federal Endangered
2 Federal Threatened
13 US Forest Service Sensitive in Region 3
14 US BLM Sensitive in NM
2 State of NM Endangered
5 State of NM Threatened
32 State of NM "Species of Greatest Conservation Need" (SGCN)
22 "Imperiled", Univ. of NM Natural Heritage Program (NHP)

TES invertebrates include: 2 classified as "Imperiled" by NHP, and
1 classified as a "SGCN" by the State of NM.

The forested upper elevation portion of Cerro de la Olla offers good hiking and spectacular views. Wilderness status will significantly enhance the recreational experience devoid of mechanized disturbances and contribute to the value of the National Monument.

Thank you again for all of your efforts on behalf of New Mexico's public lands. Please consider introducing a companion bill to the Cerros del Norte Conservation Act and adding Cerro de la Olla to the bill. If you would like additional information or have questions, please don't hesitate to contact me in Santa Fe at 505-986-1771 or via email at jon@klingel.name.

Sincerely,



Jon Klingel
Wildlife Biologist, retired

The Honorable Tate Reeves, Governor of Mississippi (Chair)
The Honorable Kay Ivey, Governor of Alabama
The Honorable Mike Dunleavy, Governor of Alaska
The Honorable Jeff Landry, Governor of Louisiana
The Honorable Greg Abbott, Governor of Texas

Ms. Kelly Hammerle
Bureau of Ocean Energy Management (VAM-LM)
45600 Woodland Road
Sterling, VA 20166-9216

Submitted via: Regulations.gov

RE: Request for comments on the 11th National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (Docket ID: BOEM-2025-0483)

January 23, 2026

Dear Ms. Hammerle:

The Outer Continental Shelf (OCS) Governors Coalition is pleased to submit comments on the 11th National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program. The Draft Proposed Program (DPP) will bolster our nation's energy supply through new and expanded planning areas, consistent lease sales, and development of oil and gas resources.

The OCS Governors Coalition was created by governors from coastal states in May 2011 to promote a constructive dialogue on OCS energy-resource planning and development between coastal state governors and federal policy makers. The nonpartisan group of governors supports policies that encourage a safe, responsible expansion of offshore oil, natural gas, and other energy development to the benefit of the nation, our states, and our citizens.

The Alaska region, Pacific regions, and Gulf of America leasing areas have the potential to unlock a vast amount of resources that could power homes, decrease prices at the pump, and stabilize investments in the United States economy. In 2025, it was estimated that about 29.6 billion barrels of oil and 54.8 trillion cubic feet of gas are in the Gulf of America[1], by unleashing these resources it would provide better energy security for American families. To put that in perspective, that much oil could provide roughly 4.7 million homes with reliable energy and does not even account for the power that can be generated by the available natural gas. Access to this amount of power would ensure our states were powered tenfold, and that supply could be distributed to the entirety of the U.S.

As state executives, our principal role in the OCS Governors Coalition is to consider the opportunities and challenges of offshore energy development and coastal management in order to appropriately balance the health and safety of our citizens and coastal resources with economic prospects. Over the past several years, the lack of consistent and predictable offshore oil and gas leases sales have been a

[1] Bureau of Ocean Energy Management, "Interior Advances American Offshore Energy Dominance with First Lease Sale Under the One Big Beautiful Bill Act," *Bureau of Ocean Energy Management,* https://www.doi.gov/pressreleases/energy-dominance-first-lease-sale-one-big.

The Honorable Tate Reeves, Governor of Mississippi (Chair)
The Honorable Kay Ivey, Governor of Alabama
The Honorable Mike Dunleavy, Governor of Alaska
The Honorable Jeff Landry, Governor of Louisiana
The Honorable Greg Abbott, Governor of Texas

hindrance in our state economies given the crucial role offshore energy development plays. In contrast, the Draft Proposed Program offers the certainty that our economies and industry needs. We believe the current and expanded areas in the Draft Proposed Program will lead to a more prosperous and secure future for our citizens.

The 11th National Oil and Gas Leasing Program will unleash American energy, support and create jobs, and benefit the lives of consumers in coastal states and beyond. Untapped energy sources are needed now more than ever and there must be positive change to positively impact American people.

We appreciate the opportunity to offer these comments and urge the Bureau of Ocean Energy Management to finalize a program that fully takes advantage of all possible lease sales to meet growing energy demands.

Sincerely,

Governor Tate Reeves
State of Mississippi
Chair, OCS Governors Coalition

Governor Kay Ivey
State of Alabama

Governor Greg Abbott
State of Texas

Governor Jeff Landry
State of Louisiana

The Honorable Tate Reeves, Governor of Mississippi (Chair)
The Honorable Kay Ivey, Governor of Alabama
The Honorable Mike Dunleavy, Governor of Alaska
The Honorable Jeff Landry, Governor of Louisiana
The Honorable Greg Abbott, Governor of Texas



INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

February 12, 2026

The Honorable Senator John Barrasso, Chair
U.S. Senate Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
366 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Senator Catherine Cortez Masto, Ranking Member
U.S. Senate Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
366 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Support for S. 462 – Truckee Meadows Public Lands Management Act

Dear Chair Barrasso and Ranking Member Cortez Masto,

On behalf of Incline Village General Improvement District (IVGID), We are writing in support of ***S. 462,*** *the Truckee Meadows Public Lands Management Act*. IVGID is charged with providing water, sewer, trash, and recreation services for the communities of Incline Village and Crystal Bay, which are adjacent to Lake Tahoe, Nevada. For decades, we have partnered with the North Lake Tahoe Fire Protection District leading proactive fuels reduction to reduce risk of wildfire and improve overall forest health near our recreation and public facilities in the Tahoe Basin. **S. 462** ensures we can continue to provide important public recreation and the highest level of wildfire protection for our community, especially as federal resources are stretched thin.

Catastrophic wildfire is the biggest threat to the communities, environment, and watershed of the Lake Tahoe basin. In recent years, the Tahoe Basin faced one of the most severe wildfire seasons on record. IVGID has successfully treated over 3,000 acres throughout our service territory, which is funded through local fees to ensure we can protect our residents, public infrastructure, and recreational facilities from the threat of wildfire in the Lake Tahoe basin.

By conveying 14 acres (two parcels) to IVGID, **S. 462** enables us to continue to protect our residents and local facilities and improve the management of these parcels. The proximity of these two parcels, which are adjacent to homes and schools, made them a priority. We have reached out to the U.S. Forest Service to do what we can, but there are not enough federal resources for these lands to be adequately treated or managed for wildfire. IVGID would manage these lands only for the public purpose of conducting fire risk reduction activities, enhancing recreational opportunities, and improving public access.

PUBLIC WORKS DEPARTMENT
1220 SWEETWATER ROAD · INCLINE VILLAGE NV 89451
PH: (775) 832-1203 · FAX: (775) 832-1260 · WWW.IVGIDPUBLICWORKS.ORG

IVGID respectfully urges the Senate Energy and Natural Resources Committee to favorably consider and advance this important legislation. Thank you for your continued commitment to enhancing public recreation and community safety in regions threatened by wildfire.

Sincerely,

Michaela Tonking

Trustee Michaela Tonking
Board Chairperson
Incline Village General Improvement District

Kate S. Nelson, PE
Director of Public Works/
Acting General Manager
Incline Village General Improvement District

PUBLIC WORKS DEPARTMENT
1220 SWEETWATER ROAD · INCLINE VILLAGE NV 89451
PH: (775) 832-1203 · FAX: (775) 832-1260 · WWW.IVGIDPUBLICWORKS.ORG

NSSGA®
NATIONAL STONE, SAND & GRAVEL ASSOCIATION

February 12, 2026

The Honorable Mike Lee
Chairman
U.S. Senate Committee on Energy & Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
U.S. Senate Committee on Energy & Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

On behalf of the more than 500 members of the National Stone, Sand & Gravel Association (NSSGA), I am writing to express our concerns about two bills that received testimony at the legislative hearing on Thursday, February 12, 2026. The bills are S. 1464, the Buffalo Tract Protection Act by Senator Heinrich, and S. 462, the Truckee Meadows Public Lands Management Act by Senator Rosen. The Buffalo Tract Protection Act would permanently ban future aggregates production in central New Mexico, severely limiting critical resources for infrastructure construction and public works projects in this growing region. The Truckee Meadows Public Lands Management Act would directly impact several operations in Nevada, putting existing aggregates operations at risk.

NSSGA represents aggregates producers and manufacturers of equipment and services that support the construction industry. Our members are essential to the work of this country, and we represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the United States. Our members employ more than 100,000 hardworking men and women who are responsible for the essential raw materials used in every home, building, road, bridge and public works project.

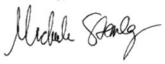
The Buffalo Tract Protection Act will set a bad policy by permanently banning aggregates production on federal tracts in central New Mexico. These areas contain some of the only available aggregates supply near the Albuquerque market. Enacting this ban would set a bad precedent and severely limit communities' ability to access the resources needed to build roads, bridges, renewable energy projects, schools, hospitals, homes and businesses. Allowing this ban to proceed would significantly increase the cost of public works projects, requiring the importation of stone, sand and gravel to develop and repair infrastructure and buildings. According to conservative estimates, aggregate prices in the Albuquerque metro market would increase by 30 to 40 percent, and some projections suggest a 90 percent increase in costs. Advancing S. 1464 will stagnate and diminish the movement of goods and commerce in central New Mexico.

As the cost of supplying aggregates rises, budgets of local communities and federal entities seeking to invest in infrastructure in Nevada and New Mexico would be severely strained, slowing project delivery and harming the economy. Eliminating access to a construction material essential to addressing these infrastructure challenges would severely impede Nevada and New Mexico's ability to compete in an increasingly global marketplace.

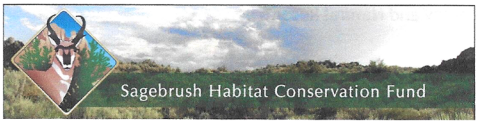
While this legislation will create a competitive disadvantage and negatively affect residents of Nevada and New Mexico, it will also have significant environmental impacts. Delaying improvements to Nevada and New Mexico's congested roads or eliminating access to materials needed to develop new water projects and cleaner energy sources will undermine efforts to achieve cleaner air and water and to maintain access to public lands. Further, if enacted, requiring aggregates to be trucked from greater distances will increase transportation emissions.

I greatly appreciate your consideration of our views and your important work on the committee to improve our nation's infrastructure.

Sincerely,



Michele Stanley
President and CEO
National Stone, Sand & Gravel Association



PO Box 1643 Hailey, ID 83333

February 11, 2026

Senate Committee on Energy and Natural Resources
The Honorable Mike Lee, Chair
The Honorable Martin Heinrich, Ranking Member
P.O. Box 1643
Hailey, ID 83333

Dear Chair Lee and Ranking Member Heinrich:

I write on behalf of the Sagebrush Habitat Conservation Fund (the Fund) to request the Committee's support of S. 462, the Truckee Meadows Public Lands Management Act (TMPLMA). This bill would benefit the residents of Washoe County and the State of Nevada by creating several new protected areas, including the Massacre Rim Dark Sky National Conservation Area (NCA) adjacent to the Sheldon National Wildlife Refuge. As the owner of more than 11,000 acres of private lands located only a few miles from the Refuge and proposed NCA, the Fund strongly supports this land designation.

Additionally, the Fund holds grazing permits for the Mosquito Valley and Horse Lake allotments, which are also located adjacent to, and partially within, the Massacre Rim Dark Sky NCA. We specifically ask for your support of the TMPLMA's Title IV—Voluntary Donation of Grazing Permits and Leases, Section 401. This provision would allow the Fund to waive its grazing permits without preference to the Bureau of Land Management to retire grazing on those allotments in favor of other public uses, including as a wildlife corridor between Sheldon Refuge and the Vya Rim, and to improve scenic and recreational values. These permits have not been actively grazed for nearly ten years and the allotments are beginning to recover from past overgrazing.

The lands in the Mosquito Valley and Horse Lake allotments include designated priority habitat for Greater sage-grouse, as well as habitat for mule deer, pronghorn, elk, black bear, and bighorn sheep; small mammals like pygmy rabbit and American pika; golden eagles and migratory birds; more than ten species of bats; and dozens of other kinds of wildlife. To benefit native species, the Fund has implemented restoration projects on its private lands that are intermingled with the Mosquito Valley and Horse Lake allotments. Partnering with the Nevada Department of Wildlife and the U.S. Fish and Wildlife Service, we have rehabilitated numerous springs and seeps, restored flow to Berrey Brook after 100 years of impoundment, completed native seedings, and removed over 20 miles of fencing that impede wildlife movement. We have many more ongoing projects, also partnering with these agencies.

Title IV, Section 401 in S. 462 employs standard, targeted language that has been used successfully in past legislation to facilitate voluntary grazing permit retirement in the Owyhee Canyonlands and Boulder-White Clouds Wilderness in Idaho, the California Desert Conservation Area, and Cascade-Siskiyou National Monument in Oregon. The same language is included in other Senate

bills, including the Sutton Mountain and Painted Hills Area Wildfire Resiliency Preservation and Economic Enhancement Act introduced during the 118th Congress.

Thank you for your support of public lands, wildlife, and voluntary conservation by landowners in Washoe County. Please. We strongly support the enactment the Truckee Meadows Public Lands Management Act and ask that you take action this session.

Sincerely,

Floyd C. Roberton
President

WASHOE COUNTY
"Dedicated to Excellence in Public Service"

1001 E. 9th Street
Reno, Nevada 89512
Phone: (775) 328-2000
Fax: (775) 328-2491
www.washoecounty.gov

January 10, 2026

Statement for the Record
Senate Energy and Natural Resources Committee
Subcommittee on Public Lands, Forests and Mining
Hearing on Pending Legislation
Re: S. 462 to provide for economic development and
conservation in Washoe County, Nevada, and for other purposes

Thank you, Chair Lee and Ranking Member Heinrich, for receiving testimony on S. 462, the Truckee Meadows Public Lands Management Act.

The Truckee Meadows Public Lands Management Act (TMPLMA) was proposed in close collaboration between local and federal jurisdictions including Washoe County, the City of Sparks and the Tribal Nations in the area with Senator Rosen's leadership. The bill as introduced received significant public input including multiple rounds of public comment, industry and stakeholder roundtables and public meetings with the approval of area elected officials. The TMPLMA represents the best of ground up, publicly driven and federally collaborative processes which create the most effective land management arrangements.

Currently, 83% of land in Washoe County, Nevada is owned and managed by the Federal Government. As the area grows, issues like affordable housing, infrastructure connectivity, and public recreation as well as economic development make partnership with the Federal Government necessary in determining how lands in Washoe County can be best used for the benefit of area constituents while still protecting the overall public interest. TMPLMA achieves this by creating a methodology of land disposal which ensures comprehensive review and thoughtful planning and by creating new wilderness and conservation areas that protect the unique ecology which is treasured by all.

TMPLMA is thoughtful of responsible growth by creating new procedures for affordable housing by allowing key land to be sold below fair market value where it will be used to secure much-needed housing for the area. For lands nominated for disposal, for economic development purposes or otherwise, the federal agencies with jurisdiction would conduct environmental assessments of the parcels before initiating sale.

WASHOE COUNTY
"Dedicated to Excellence in Public Service"

1001 E. 9th Street
Reno, Nevada 89512
Phone: (775) 328-2000
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www.washoecounty.gov

For these reasons, the Board of County Commissioners of Washoe County, Nevada strongly supports S. 462 the Truckee Meadows Public Lands Management Act and stands ready to assist the committee in any way necessary as they continue work on the bill.
Thank you again Chair Lee and Ranking Member Heinrich.

Submitted by:
Clara Andriola, Chair, Board of County Commissioners
CAndriola@washoecounty.gov

Western Watersheds Project

Nevada Office
(208) 421-4637
paul@westernwatersheds.org

Working to protect and restore Western Watersheds and Wildlife

February 11, 2026

By email to: *fortherecord@energy.senate.gov*

United States Senate
Committee on Energy and Natural Resources

Re: Written Testimony for Hearing on S. 462 – Truckee Meadows Public Lands Management Act (Hearing Date: February 12, 2026)

Dear Chair Lee and Ranking Member Heinrich:

Western Watersheds Project writes in support of the voluntary livestock grazing permit retirement provision in Senate bill 462, the Truckee Meadows Public Lands Management Act (TMPLMA).

As written, TMPLMA Section 401 allows voluntary waiver and retirement for grazing permits on the Mosquito Valley and Horse Lake allotments. While we fully support grazing permit retirement on these allotments due to their critical wildlife habitat and conservation value, we suggest expanding the authorization for voluntary permit retirement to all grazing allotments that are partly or wholly within a protected area designated by TMPLMA, such as a wilderness or national conservation area. This would align with the approach that other laws that include grazing permit retirement have taken, such as wilderness designations in the Owyhee Canyonlands and Boulder White Clouds in Idaho.

Thank you very much for your consideration of this input, and I hope to work with the Committee on expanding the TMPLMA's voluntary grazing permit retirement provision.

Sincerely,



Paul Ruprecht
Nevada Director
Western Watersheds Project
PO Box 941
Lebanon, OR 97355

February 12, 2026

The Honorable Mike Lee
Chair
Senate Committee on Energy and Natural Resources
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy and Natural Resources
Washington, DC 20510

The Honorable John Barrasso
Chair
Subcommittee on Public Lands, Forests, and Mining
Senate Committee on Energy and Natural Resources
Washington, DC 20510

The Honorable Catherine Cortez Masto
Ranking Member
Subcommittee on Public Lands, Forests, and Mining
Senate Committee on Energy and Natural Resources
Washington, DC 20510

Dear Chairs Lee and Barrasso, Ranking Members Heinrich and Cortez Masto, and Members of the Committee:

The undersigned organizations, collectively known as Sportsmen for the Rubies, write in strong support of S. 1349, the Ruby Mountains Protection Act, recently introduced by Senator Cortez Masto (D-NV). This legislation would conserve the iconic Ruby Mountains by permanently withdrawing portions of this landscape from oil and gas leasing. Our organizations, representing thousands of Nevada sportsmen and women, extend our sincere appreciation to the Subcommittee on Public Lands, Forests, and Mining for holding a hearing on this legislation on February 12, 2026. We respectfully urge the Senate Energy and Natural Resources Committee to advance this bill to markup and move it to the Senate floor.

The Ruby Mountains are a uniquely important feature of Nevada's landscape. Often referred to as the "Swiss Alps of Nevada," the Rubies are among the state's most valued tourism and outdoor recreation destinations. This iconic range in Elko County is beloved by hunters, anglers, and outdoor recreationists from across Nevada and beyond. The area supports exceptional wildlife populations, including Lahontan cutthroat trout, Himalayan snowcock, sage-grouse, mule deer, elk, pronghorn antelope, bighorn sheep, and is the only place in Nevada where Rocky Mountain goats are found.

The Ruby Mountains are home to one of the largest mule deer herds in the state. Each year, the Ruby Mountain Mule Deer Herd relies on generational knowledge passed from down from doe to fawn to migrate from high-elevation summer ranges to lower sage brush dominated winter ranges, often traveling more than 50 miles. Protecting this landscape is essential to ensuring that the generational knowledge of these migrations routes is not lost and that the wildlife who depend on them continue for generations to come.

Due to the strength of this mule deer herd, the hunting units in this region are among the most celebrated and sought after in Nevada, generating significant economic benefit

for the regional economy. In Elko County, roughly 78 percent of visitors to public lands are nonlocal recreationalists drawn to the Ruby Mountains and the surrounding area for hunting, fishing, and backcountry recreational opportunities. Their presence contributes significantly to the county's outdoor recreation sector, which produces an estimated
$230.4 million in economic output each year. The Ruby Mountains are crucial to the outdoor recreational opportunities of the area and form the foundation of local businesses, supporting the livelihoods and culture of Elko County and of Nevada's outdoor community.

Beyond their ecological and economic significance, the Rubies hold deep cultural and spiritual importance to the constituent Bands of the Te-Moak Tribe of the Western Shoshone. The undersigned organizations stand in solidarity with the Tribe in calling for passage of S. 1349 to protect this sacred mountain range, which is an irreplaceable treasure for tribal communities, for Nevadans, and for the nation.

Thank you for your consideration of this important legislation.

Respectfully,

Sportsmen for the Rubies

Coalition for Nevada's Wildlife
Elko Bighorns Unlimited
Fraternity of the Desert Bighorn
Nevada Bighorns Unlimited
Nevada Bighorns Unlimited, Midas Chapter
Nevada Bighorns Unlimited, Fallon Chapter
Nevada Chapter of Backcountry Hunters and Anglers
Nevada Chukar Chasers
Nevada Muley's
Nevada Sporting Dog Alliance
Nevada Waterfowl Association
Ruby Mountain Fly Fishers
Sierra Front Muley Fanatic Foundation
Theodore Roosevelt Conservation Partnership
Nevada Wildlife Federation
Trout Unlimited

cc: Senator Rosen, Representative Amodei

February 12, 2026

The Honorable Mike Lee,
Chair
Committee on Energy and Natural Resources
U.S. Senate, Washington, DC 20510

The Honorable Martin Heinrich,
Ranking Member
Committee on Energy and Natural Resources
U.S. Senate, Washington, DC 20510

The Honorable John Barrasso,
Chair
Subcommittee on Public lands, Forests, and Mining
Committee on Energy and Natural Resources
U.S. Senate, Washington, DC 20510

The Honorable Catherine Cortez Masto, Ranking Member
Subcommittee on Public lands, Forests, and Mining
Committee on Energy and Natural Resources
U.S. Senate, Washington, DC 20510

Dear Chairs Lee and Barrasso, Ranking Members Heinrich and Cortez Masto:

The Theodore Roosevelt Conservation Partnership writes to express strong support for the Truckee Meadows Public Lands Management Act (S. 462), and the Ruby Mountains Protection Act (S. 1349). Our organizations, representing thousands of Nevada sportsmen and women, extend our appreciation to the Subcommittee on Public Lands, Forests, and Mining for holding a hearing on this legislation. We respectfully request that the Senate Energy and Natural Resources Committee advance these pieces of legislation swiftly.

The Truckee Meadows Public Lands Management Act, introduced by Senator Jacky Rosen (D-NV), provides a balanced and forward-looking approach to land management in Washoe County. The bill includes the sale or transfer of carefully vetted public land parcels for community use, tribal land transfers, the establishment of new conservation areas, and the designation of new or expanded wilderness areas. Together, these measures support economic development while strengthening long-term stewardship of public lands. This legislation represents an important step toward responsible, community-driven land use planning that prioritizes conservation and maintains public access for hunting, fishing, and outdoor recreation. We applaud this thoughtful, balanced approach that sustains local economies, protects cultural resources, and upholds the integrity of Nevada's public lands.

The bill establishes more than 630,000 acres of National Conservation Areas and approximately 223,000 acres of new wilderness designations, strengthening long-term investment in outdoor recreation. These landscapes are key drivers of outdoor recreational spending in Northern Nevada, supporting local businesses across hospitality, lodging, retail, guiding and outfitting services. With non-local visitors contributing an estimated $618.6 million annually in outdoor-recreation spending in Washoe County, this legislation will expand high-quality recreation opportunities and, in turn, further stimulate economic growth in Northern Nevada.

The Ruby Mountains Protection Act, led by Senator Cortez Masto (D-NV) and Jacky Rosen (D-NV), would withdraw more than 300,000 acres in the Ruby Mountains in the Humboldt–Toiyabe National Forest and nearly 40,000 acres within the Ruby Lake National Wildlife Refuge from future mineral leasing. This bill provides essential protection for one of Nevada's most iconic landscapes.

The Ruby Mountains are a uniquely important feature of Nevada's landscape. Often referred to as the "Swiss Alps of Nevada," the Rubies are among the state's most valued tourism and outdoor recreation destinations. This iconic range in Elko County is beloved by hunters, anglers, and outdoor recreationists from across Nevada and beyond. The area supports exceptional wildlife populations, including Lahontan cutthroat trout, Himalayan snowcock, sage-grouse, mule deer, elk, pronghorn antelope, bighorn sheep, and is the only place in Nevada where Rocky Mountain goats are found.

The Ruby Mountains are home to one of the largest mule deer herds in the state. Due to the strength of this mule deer herd, the hunting units in this region are among the most celebrated and sought after in Nevada, generating significant economic benefit for the regional economy. In Elko County, roughly 78 percent of visitors to public lands are nonlocal recreationalists drawn to the Ruby Mountains and the surrounding area for hunting, fishing, and backcountry recreational opportunities. Their presence contributes significantly to the county's outdoor recreation sector, which produces an estimated $230.4 million in economic output each year. The Ruby Mountains are crucial to the outdoor recreational opportunities of the area and form the foundation of local businesses, supporting the livelihoods and culture of Elko County and of Nevada's outdoor community.

Beyond their ecological and economic significance, the Rubies hold deep cultural and spiritual importance to the constituent Bands of the Te-Moak Tribe of the Western Shoshone.

Both pieces of legislation reflect a thoughtful balance between conservation, cultural values, and economic vitality. Advancing these bills will help secure long-term sustainability for Nevada's public lands, safeguard important natural resources, and preserve the outdoor heritage cherished by Nevadans and visitors alike.

Thank you for your continued leadership on our nation's natural resources, public lands, and for your consideration of this request.

Sincerely,

Joel Webster

Chief Conservation Officer

Theodore Roosevelt Conservation Partnership



The Las Placitas Association

Preserving and Protecting the Quality of Life in the Placitas Area



February 25, 2026

Senator Mike Lee
Chairman, Senate Committee on Energy & Natural Resources
U.S. Senate
366 Dirksen Senate Office Building
Washington, DC 20510

Senator Martin Heinrich
Ranking Member, Senate Committee on Energy & Natural Resources
U.S. Senate
366 Dirksen Senate Office Building
Washington, DC 20510

RE: February 12, 2026 hearing on S. 1464 – Buffalo Tract Protection Act

Dear Chairman Lee and Ranking Member Heinrich:

The community coalition of the Eastern Sandoval Citizens Association (ESCA), its Land Use Protection Trust (LPT) and the Las Placitas Association (LPA) write today in strong support of S. 1464 - Buffalo Tract Protection Act, which was considered in the February 12, 2026 evidentiary hearing of the Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining. We thank Senator Heinrich for introducing the bill.

This bill would withdraw certain Bureau of Land Management (BLM) land from mineral development. The subject parcels, including the Buffalo Tract, are located in Placitas, New Mexico, a suburban community of metropolitan Albuquerque located in Sandoval County, New Mexico. Sandoval County is the only county in New Mexico that gained population in the most recent decennial census. The beauty and semi-rural character of suburban Placitas are part of the area's appeal and a witness to the growth of Albuquerque, New Mexico's largest city.

Gravel is the only mineral contained in any of these parcels. While gravel is necessary for residential development, the Bureau of Land Management's 2010 *Mineral Resource Potential and Reasonably Foreseeable Development for Planning Units 1-5* documents that there are abundant alternative gravel resources in the area sufficient to support resident development through this century at the current rate of growth.

There is community-wide opposition to gravel mining in Placitas. In fact, during the 2012 timeframe of the revision process for the obsolete 1986 Rio Puerco Resource Management Plan, BLM recorded some 17,000 public comments in opposition to gravel mining.

The community understands that gravel mining is not compatible with residential development. Gravel mining generates huge amounts of particulate matter (PM 2.5 and PM10) that pose significant health risks, notably silicosis. In addition to impacts on mortality and public health, ongoing and unmitigated spent gravel mines have a devastating impact on the character of the natural environment. Furthermore, State of New Mexico monitoring as recent as 2016 shows Placitas as the only "orange dot" (indicating unhealthy air quality for sensitive groups) on the state map. And then there is the impact on water resources. It is widely agreed that water resources are scarce and precious in New Mexico. It is therefore crucial to understand that gravel mining consumes three times as much water per acre as residential development. It is also relevant to note that Sandoval County derives no revenue from gravel that is taxed at "point of sale" in other counties while the cost of infrastructure falls exclusively to Sandoval County.

The combination of visible impacts on the environment, documented impacts of particulates on public health, threats to water resources and compromised cost/benefit equation in effect constitute an anti-economic development strategy for Placitas, metro Albuquerque, Sandoval County and New Mexico.

Furthermore, Congressional Budget Office Estimate impacts prepared in 2020 for House and Senate indicate modest federal budgetary impacts from prohibiting sand and gravel production on these public lands[1].

For its part, the public favors low impact recreation and a wildlife corridor on the Buffalo Tract as a sustainable approach to these public lands. Recreation, a critical need for this suburban community, is one of the BLM multiple uses recognized under the Federal Land Policy and Management Act (FLPMA). As well, the Pueblos of Santa Ana and San Felipe border the Buffalo Tract and have critical concerns about the cultural significance of these lands.

This legislation is urgently needed to avert ill-considered federal action that would cause economic harm to this New Mexico region.

The coalition thanks the Sub-Committee for taking the time to appreciate the gravity of the situation for Placitas, Sandoval County, metro Albuquerque and New Mexico. We urge swift passage of the Buffalo Tract Protection Act, which has the unanimous support of the New Mexican community.

[1] Congressional Budget Office Cost Estimate, June 4, 2020

Sincerely,

George Franzen
President, Eastern Sandoval Citizens
Association (ES-CA)

Sandy Johnson
President, Las Placitas Association (LPA)

Mary Rose Szoka-Valladares
Chair, Land Use Protection Trust (LPT) and
Member, LPA

CONSERVATION LANDS FOUNDATION

Statement for the Record

Chris Hill, Chief Executive Officer
Conservation Lands Foundation

Senate Committee on Energy and Natural Resources
Public Lands, Forests, and Mining Subcommittee
Legislative Hearing
February 12, 2026

Chair Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee, thank you for the opportunity to submit testimony in support of seven bills being considered in today's hearing.

The Conservation Lands Foundation represents a broad, nonpartisan, national network of community leaders and advocates solely focused on protecting lands managed by the Bureau of Land Management. BLM oversees the largest amount of the country's public land at 245 million acres. Conservation Lands Foundation focuses on protecting BLM lands throughout the West and has been doing this for 18 years. We have staff based in western states and have built a Friends Grassroots Network of nearly 90 local organizations and thousands of people who help care for individual places for the benefit of all Americans.

With that mission in mind, Conservation Lands Foundation supports the following bills being considered in today's hearing:

S.462, Truckee Meadows Public Lands Management Act
Led by Senators Rosen and Cortez Masto of Nevada, this legislation offers a visionary approach to protecting nearly one million acres of Nevada's public lands. This bill not only expands National Conservation Lands through nine new designations—including five National Conservation Areas and four Wilderness areas—but also tackles challenges like housing affordability. By preserving critical habitats, ensuring outdoor access, and honoring Indigenous land connections, this act safeguards the high quality of life Northern Nevadans cherish. We strongly support the inclusion of the Massacre Rim Dark Sky, Smoke Creek, and Pah Rah areas and urge Congress to pass this essential legislation.

S. 1349, Ruby Mountains Protection Act
Senators Cortez Masto and Rosen of Nevada are also leading the Ruby Mountains Protection Act, legislation which seeks to prevent oil and gas development within the Ruby Lake National Wildlife Refuge and the critical habitat of Nevada's largest mule deer herd. As one of the state's



CONSERVATION LANDS FOUNDATION

most significant landscapes for recreation and biodiversity as well as an area with low oil and gas potential, the Ruby Mountains region requires permanent protection. Preserving this vital habitat corridor is essential for the long-term health of local wildlife, migratory bird populations, and the surrounding communities.

S. 1464, Buffalo Tract Protection Act
This legislation, led by Senators Heinrich and Lujan of New Mexico, is designed to protect northern New Mexico communities from gravel mining. It achieves this by permanently withdrawing four BLM parcels—including the Crest of Montezuma—from mineral extraction. While the BLM retains the authority to manage surface rights, the legislation ensures that the underlying mineral rights remain under federal protection and are never opened for development.

This bill has a House companion, HR 2893, led by Representatives Melanie Stansbury and Teresa Leger Fernandez of New Mexico.

S. 1497, Cerro de la Olla Wilderness Establishment Act
Led by Senators Heinrich and Lujan of New Mexico, this legislation aims to protect 13,103 acres within northern New Mexico's Rio Grande del Norte National Monument as protected wilderness. This designation ensures long-term ecological and historical preservation by maintaining motorized traffic restrictions. Crucially, it secures vital migratory corridors for native wildlife, including elk, bears, and mountain lions.

This bill has a House companion, HR 2944, led by Representatives Leger Fernandez and Stansbury.

S. 3493, Carson City Public Land Correction Act
This legislation, introduced by Senator Rosen of Nevada, provides a comprehensive update to Carson City's land management. By transferring nearly 1,300 acres for public use and safety projects, the Act addresses critical needs like flood mitigation, expanded outdoor recreation access, and improved transit. Furthermore, it stimulates the local economy by making 360 acres available for development while mandating that all resulting revenue stay in the community to protect environmentally sensitive lands and fund wildfire prevention. Finally, it revisits 2009 allocations to ensure federal land use matches the city's vision for the future.

This legislation is also included in Title IV of Representative Mark Amodei's HR 2317, the Northern Nevada Economic Development and Conservation Act.

S. 3526, Protecting Unique and Beautiful Landscapes by Investing in California (PUBLIC) Lands Act

CONSERVATION LANDS FOUNDATION

Led by Senators Alex Padilla and Adam Schiff of California, this legislation would protect and restore over 1.7 million acres of public land across Northwest California, the Central Coast, and Los Angeles County. It would provide permanent protection for 900,000 acres—including 547,000 acres of new wilderness and nearly 700 miles of wild and scenic rivers. Additionally, it designates 871,000 acres in high-risk areas of Humboldt and Trinity counties for restoration and fire resilience. These efforts will enhance water quality, safeguard outdoor recreation, and significantly reduce wildfire threats to local communities.

House companions for components of this legislation are led by Representatives Jared Huffman (H.R. 6913, Northwest California Wilderness, Recreation and Working Forests Act), Judy Chu (H.R. 6783, San Gabriel Mountains, Foothills, and Rivers Protection Act), and Salud Carbajal (H.R. 4877, Central Coast Heritage Protection Act).

In alignment with our mission to protect BLM lands, the Conservation Lands Foundation **opposes S. 3004, the Upper Price River Watershed Project Act of 2025**. Introduced by Senators Lee and Curtis of Utah, this bill lacks the standard 'reversionary clause' and fair financial compensation requirements typical of land transfer legislation, signaling a troubling shift toward the privatization of federal public lands. Furthermore, by bypassing public notice and tribal consultation, the bill shuts out local residents and Tribal Nations. Without a required environmental or economic assessment, the potential impacts of developing this 125-acre parcel—ranging from habitat loss to increased wildfire risk—remain dangerously unexamined.

I urge the Committee and all Members of the Senate to support the six bills and oppose the one bill articulated in my testimony, and thank you for the opportunity to share this testimony. For additional information, please contact David Feinman, Vice President of Government Affairs at davidf@conservationlands.org.

KEEP TAHOE BLUE®
Protecting Tahoe Since 1957

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February 17, 2026

The Honorable Mike Lee
U.S. Senate, Utah
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich
U.S. Senate, New Mexico
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Lee and Ranking Member Heinrich:

On behalf of the League to Save Lake Tahoe (Keep Tahoe Blue), thank you for including the bipartisan Santini-Burton Modernization Act (S. 3695/H.R. 7255) in the Senate Energy and Natural Resources Committee's hearing on Thursday, February 12, 2026. Introduced by Senators Cortez Masto (D-NV), Rosen (D-NV), Padilla (D-CA), and Schiff (D-CA), and Representatives Kiley (R-CA), Titus (D-NV) and Lee (D-NV), the Santini-Burton Modernization Act (SBMA) will support the next chapter of the Lake Tahoe region's conservation success story. As advocates for Lake Tahoe's health, clarity, and protection, Keep Tahoe Blue thanks you for your consideration of this important legislation.

Keep Tahoe Blue was founded in 1957 to manage the development that was causing Lake Tahoe's famed clarity to decline. It is the oldest and largest environmental organization at the Lake and continues to work with local, state, and federal officials and agencies across the region to carry out our mission of protecting lake clarity while supporting responsible development and equitable access to recreation and the outdoors.

Lake Tahoe benefits from the successful collaboration of the federal, state, regional, and local governments along with environmental non-profits and the private sector. The Santini-Burton Modernization Act will re-establish a unique and much-needed funding source to address Tahoe's growing backlog of recreation management projects and parcel-specific restoration needs not covered by other sources, such as the Lake Tahoe Restoration Act.

The SBMA will unlock existing funds at no cost to taxpayers that will help our region implement lake-saving infrastructure and restoration projects. It is the product of a multi-year collaboration by Tahoe's state and local governments, the Washoe Tribe of Nevada and California, non-profits like Keep Tahoe Blue, and the private sector. We are grateful to see this vision turned into legislation.

Thank you for your consideration of the Santini-Burton Modernization Act. Keep Tahoe Blue and our partners across the region urge you to support this legislation as it moves through your committee.

Sincerely,

Darcie Goodman Collins, PhD
Executive Director

OUTDOOR ALLIANCE

February 11, 2026

Senator John Barrasso
Chair, Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
307 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Catherine Cortez Masto
Ranking Member, Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
309 Hart Senate Office Building
Washington, D.C. 20510

Re: February 12th Public Lands, Forests, and Mining Subcommittee hearing to receive testimony on pending legislation

Chairman Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee:

On behalf of the human-powered outdoor recreation community, thank you for the opportunity to provide input on February 12th's Subcommittee hearing on legislation affecting federal public lands and waters. Our views on individual bills are below.

Outdoor Alliance is a coalition of nine member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes.

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PUBLIC Lands Act (S.3526)

Outdoor Alliance strongly supports the PUBLIC Lands Act, which would protect important conservation and recreation lands and waters in California.

The bill's protections for Northwest California were crafted after years of input from business leaders, conservationists, anglers, mountain bikers, fire management professionals, and more, and we appreciate efforts to consider the needs of a broad array of regional stakeholders in developing this legislation. In this region, the bill would conserve approximately 262,000 acres of public land as Wilderness, designate 379 miles of new Wild and Scenic rivers, and create a special restoration area of more than 700,000 acres. In addition to protecting conservation values in the area, the bill would expand opportunities for sustainable recreation. With the establishment of the Elk Camp Ridge Recreation Trail, the bill would expand mountain biking trails along the Elk Camp Ridge and in Del Norte County. It would permanently protect the South Fork Trinity River—a popular and valuable steelhead fishery—and study the feasibility of establishing the Bigfoot National Recreation Trail to highlight the botanical and biological diversity of the region. We greatly appreciate the bill's attention to ensuring the protection and sound management of Wilderness climbing opportunities, as well as the inclusion of Land of the Lost—the closest sport climbing to Arcata and Eureka—in a special management area. In addition to new Wild & Scenic designations for whitewater resources on the East Fork North Fork Trinity and Canyon Creek, paddlers enthusiastically support the protection of more than 48,000 acres of public land within the proposed Wilderness areas surrounding already-designated Wild and Scenic watersheds on the Trinity, Eel, and Black Butte Rivers. Moreover, 25 whitewater river access points will be protected within proposed Wilderness and special restoration areas, and potential Wilderness areas will ensure boaters can continue to paddle along the banks of the lower portion of Redwood Creek surrounded by the tallest trees in the world.

The bill would also protect key conservation and recreation values within California's Central Coast, including popular destinations for outdoor recreationists of many forms, from mountain bikers to wildlife viewers. In this region, the bill would protect more than 262,000 acres of public land within the Los Padres Forest and Carrizo Plain National Monument, designate 159 miles of river as Wild and Scenic, and create two new scenic areas, Black Mountain and Condor Ridge. Santa

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Barbara County's Condor Ridge is within the Santa Ynez Mountains, and its unique climate creates an area of high biodiversity and critical habitat for southern steelhead. The bill designates a 400-mile-long Condor National Recreation Trail, supporting through-hiking and backpacking opportunities across the entire length of the Los Padres National Forest, from Los Angeles to Monterey County. It would also protect important and threatened wilderness characteristics around popular rock climbing areas in the Sespe Gorge along Highway 33. Paddlers support adding more miles to the Wild and Scenic Piru Creek, a waterway rare for the region that provides outstanding whitewater less than an hour drive from downtown Los Angeles. Importantly, all proposed new Wilderness boundaries were drawn in order to preserve existing mountain biking trails, and the title would mandate that the Forest Service conduct future studies for improving mountain biking trail opportunities across the Los Padres National Forest. Additionally, the bill protects trail corridors for numerous high priority trails identified by local mountain bikers through the Central Coast Concerned Mountain Bikers (CCCMB), an IMBA local group.

The bill would also add lasting protections to the San Gabriel Mountains, supporting the health and well-being of all Angelenos and helping to sustain local businesses and the broader outdoor recreation economy. The San Gabriel foothills are an important urban/wildland buffer zone and the gateway to the mountains for many millions of Angelenos who otherwise have limited access to open space and outdoor recreation. The bill would establish an 8,417 acre Condor Peak Wilderness and a 6,774 acre Yerba Buena Wilderness. Additionally, the San Gabriel Wilderness would be expanded by 2,000 acres, and the Sheep Mountain Wilderness by nearly 14,000 acres. It adds Little Rock Creek and its tributaries to the Wild and Scenic Rivers system and designates three segments of the San Gabriel River for future study as potential wild and scenic rivers. The bill includes provisions for wilderness management, including fire control, wildlife management, tribal access for cultural purposes, and recreational activities like rock climbing and horseback riding.

Ruby Mountains Protection Act (S.1349)

Outdoor Alliance supports the Ruby Mountains Protection Act, which would withdraw approximately 350,000 acres of National Forests and National Wildlife Refuges System lands in Nevada's iconic Ruby Mountains from oil and gas

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development. The Ruby Mountains are a popular destination for numerous human-powered outdoor recreation activities, as well as hunting and angling. The withdrawal would protect popular recreation sites, including Lamoille Canyon and the Ruby Crest National Recreation Trail. The area also includes extensive high-quality backcountry skiing terrain, such as the well-known Terminal Cancer Couloir. Outdoor recreationists strongly support long term protections for this important landscape, and we encourage the Subcommittee to advance S. 1349.

American Shores Protection Act of 2025 (S.3082)

Outdoor Alliance supports S.3082 to establish a temporary prohibition on new oil and gas development off the shores of Florida, Georgia, and South Carolina. While we prefer to see Congress enact a permanent prohibition due to the severity of harmful impacts that new offshore oil and gas drilling would have on Southeast and Florida Gulf communities, wildlife, and coastal economies, this temporary protection is extremely important and valuable.

Clean beaches and healthy coasts are the lifeblood of many local economies in the southeast, especially in Florida, where tourism generates more than $133 billion in economic impact annually and employs an estimated 2 million people. Florida's beaches and waterfront activities consistently rank as a top factor in tourists' decisions to visit the state. The services and opportunities that beaches and the coast provide are why 75% of Floridians live in coastal counties.

The risks of expanded offshore oil and gas development to beaches, fisheries, local economies, and unique environments are simply too great. New oil and gas development would require seismic surveys, drilling operations, oil transport by tankers, and the installation of platforms, pipelines, and other infrastructure. Collectively these activities would significantly damage both the environment and outdoor recreation economies while exposing these regions to the risk of catastrophic oil spill. More than a decade has passed since the devastating 2010 Deepwater Horizon Oil Spill, and yet the disastrous consequences are still felt in the Gulf region. So long as we continue to pursue new offshore oil and gas exploration and leasing, we will be placing communities, economies, and environments at unnecessary risk.

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Outdoor Americans with Disabilities Act (S.2968)

The Outdoor Americans with Disabilities Act (OADA) states an intent to increase access to public lands for individuals with disabilities, primarily by increasing roads and motorized routes and by preventing closures of existing roads. Although Outdoor Alliance supports this bill's stated intent, the OADA takes an extreme approach that would mandate the proliferation of roads and motorized trails across public lands without regard for other public lands values such as cultural sites, human-powered backcountry recreation, wildlife habitat, water quality, and scenic character.

The OADA defines "disability-accessible land" as land having at least 2.5 miles of roads accessible to motorized vehicles or off-highway vehicles per square mile. It then places extensive restrictions on road closures—especially closures that would result in a reduction in disability-accessible land—while encouraging land managers to reopen closed roads in order to increase the amount of disability-accessible land. The bill would also require public hearings for certain road closures, would require that land managers establish new roads to account for road closures, and would exclude certain decisions establishing or closing roads from consideration under the National Environmental Policy Act.

Applying a blanket definition of disability-accessible land based on a standard per-square-mile road density is arbitrary and does not reflect the recreational resources or landscape features that draw recreationists to a particular location on public lands. Although roads are important access infrastructure for recreationists of all backgrounds, they are not appropriate or desirable everywhere on public lands. By requiring that land managers make travel management decisions based on this metric, the OADA would inappropriately tilt these decisions towards leaving roads open or establishing new roads even where they create public safety issues, cause unacceptable resource impacts, or add to agencies' deferred maintenance backlogs. Land managers must retain the ability to manage roads and other motorized routes through travel management planning and site-specific decision-making to protect outdoor recreation and other public lands values.

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Revitalizing America's Offshore Critical Minerals Dominance Act (S.2860)

Outdoor Alliance strongly opposes S. 2860, which would expedite permits and authorizations for seabed mining. The deep ocean and its seabed are considered the last unexplored regions of our world, yet what we do know of them is that they are highly intricate and fragile, often containing some of the oldest living coral species on the planet. The severity of environmental impacts caused by seabed mining is poorly understood. Expediting permits for seabed mining, as directed by S. 2860, risks causing irreversible harm to these ecosystems as well as to ocean and coastal recreation and tourism, which depend on a healthy ocean environment. The U.S. should instead play a leadership role at the global level by supporting moratoria on seabed mining until its consequences and its technological and economic feasibility are more fully understood.

Upper Price River Watershed Project Act of 2025 (S.3004)

Outdoor Alliance opposes the Upper Price River Watershed Act, which would convey 125 acres of Bureau of Land Management lands to the City of Price, Utah at no cost to the town and without meaningful sideboards regarding future uses. While land transfers of this size are not uncommon, these sorts of transactions have historically required payment to the federal government, a land exchange, or a reversionary clause requiring that land be returned to the federal government if used for purposes other than those stipulated in the bill. Additionally, S. 3004 states that the conveyed land should "be used by the City for public purposes, *as defined by the City,*" essentially removing any meaningful restriction on future uses of the land. We are concerned that this legislation sets a dangerous precedent that ignores longstanding practice related to land conveyances and opens the door to further privatization of federal lands in gateway communities without a fair process or a fair return to the American public.

Montana Sportsmen Conservation Act (S.3527)

Outdoor Alliance opposes S. 3527, which would eliminate Wilderness Study Area (WSA) designations from the Middle Fork Judith, Hoodoo Mountain, and Wales Creek WSAs—an area totaling approximately 100,000 acres in western Montana. While we appreciate the need to reach permanent solutions regarding landscapes

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designated as WSAs, these solutions should be driven by a long-term vision that is developed collaboratively with Tribes and local stakeholders, including recreationists. Ultimately, it is our community's belief that an appropriate long-term vision for these landscapes must include a mix of recreation-friendly protective designations, as well as potentially new Wilderness and other areas' release back into multiple-use management. The specifics of the application of those designation types should be worked out through collaboration and without a gap in the protection of these landscapes created by an immediate and broad-scale WSA release.

* * *

Thank you for considering our community's input. We look forward to working with you to enhance outdoor recreation opportunities on America's public lands and waters.

Best regards,

Louis Geltman
Vice President for Policy and Government Relations
Outdoor Alliance

cc: Adam Cramer, Chief Executive Officer, Outdoor Alliance
Heather Thorne, Executive Director, Access Fund
Beth Spilman, Executive Director, American Canoe Association
Clinton Begley, Executive Director, American Whitewater
Kent McNeill, CEO, International Mountain Bicycling Association
David Page, Executive Director, Winter Wildlands Alliance
Tom Vogl, Chief Executive Officer, The Mountaineers
Ben Gabriel, Executive Director, American Alpine Club
Madeline Bachner Lane, Chief Executive Officer, Colorado Mountain Club
Chad Nelsen, Chief Executive Officer, Surfrider Foundation

February 11, 2026

Senator John Barrasso
Chairman
Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Senator Catherine Cortez Masto
Ranking Member
Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, DC 20510

RE: SEMA & ORBA Letter of Support for S. 2968, the Outdoor Americans with Disabilities Act

Dear Chairman Barrasso and Ranking Member Cortez Masto,

On behalf of the Specialty Equipment Market Association's (SEMA) members, we thank the Senate Energy and Natural Resources Committee's Public Lands, Forests, and Mining Subcommittee for holding a hearing on S. 2968, the "Outdoor Americans with Disabilities Act." SEMA supports this important bill, which is critical to ensuring that all Americans, including the millions of men and women who are disabled, can enjoy the benefits of outdoor recreation.

The Specialty Equipment Market Association (SEMA) is a non-profit trade association that represents over 7,000 mostly small businesses around the country that drive innovation in the specialty automotive aftermarket industry. SEMA is proud to represent manufacturers, distributors, retailers, and installers of the parts and accessories that are used to customize and modify motor vehicles, including those used off-road.

Within SEMA, The Off-Road Business Association (ORBA), a non-profit business association, represents businesses and professionals in the off-road industry. ORBA is a

national leader in land use policy and trail advocacy, working to protect motorized access and shape the future of off-highway recreation through education, legislation, and collaboration. ORBA unites manufacturers, retailers, clubs, e-commerce platforms, race organizers, and advocacy groups from across the country with the mission to preserve the rights of off-road users while promoting environmental conservation and responsible recreation.

SEMA & ORBA members manufacture products that modify and customize trucks, SUVs, and offroad vehicles and make it easier for Americans to enjoy the outdoors, including bigger wheels and tires, suspension upgrades, lift kits, winches, lighting products, and more. These specialty products enhance everything from SUVs, trucks, four-wheelers, ATVs, to other off-highway vehicles (OHVs) to improve performance, style, safety, and to enjoy the great outdoors.

The Outdoor Americans with Disabilities Act would expand motorized trail access to ensure individuals with disabilities can access federal and state-owned public lands that have been previously inaccessible. SEMA and ORBA support this landmark bill, which ensures that our nation's public lands and the natural treasures are open to all Americans. For far too long, federal land management policies have reduced motorized recreational access to public lands at the expense of the disabled and large segments of the U.S. population who are not physically able to enjoy them. Chairman Lee's bill is a welcome policy shift in the name of expanding access on government lands for all Americans.

At present, large portions of land managed by the U.S. Department of the Interior and the U.S. Forest Service restrict motorized access, which creates a barrier that prevents individuals with disabilities from accessing and recreating on these public lands.

Chairman Lee’s bill defines "disability-accessible land" as public land on which at least 2.5 miles of authorized roads accessible to motorized or off-road vehicles exist for each square mile. The bill requires the Interior Department and the Forest Service to update travel management plans to ensure that each square mile of public land provides the necessary roads to ensure the land is accessible. It also requires land managers to coordinate with state, county, local, and tribal governments to identify which roads provide the best opportunities for recreation and to give local stakeholders a voice before any road is closed. Additionally, the bill prevents roads from being closed if doing so would cause an area to fall short of accessibility requirements, except in cases of emergency or significant safety threats, and requires road closures to be paired with the designation of alternative routes.

Thank you to the Subcommittee on Public Lands, Forests, and Mining for your consideration of SEMA and ORBA's comments in support of the Outdoor Americans with Disabilities Act. We welcome the opportunity to work with you and your staff on this important legislation, which is critical to providing reasonable access to public lands for the disabled community and all Americans.

Sincerely,



Karen Bailey-Chapman
Senior Vice President - Public and Government Affairs
Specialty Equipment Market Association (SEMA) & Off-Road Business Association (ORBA)

CC: Chairman Mike Lee
Ranking Member Martin Heinrich
Sen. James E. Risch
Sen. Steve Daines
Sen. Tom Cotton
Sen. Jim Justice
Sen. Cindy Hyde-Smith
Sen. Lisa Murkowski
Sen. Ron Wyden
Sen. Mazie K. Hirono
Sen. Angus S. King, Jr.
Sen. John W. Hickenlooper
Sen. Alex Padilla

NPCA Positions on Legislation before the Committee on Energy and Natural Resources

February 11, 2026

Dear Senator,

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our 1.9 million members and supporters nationwide, we write to share our thoughts on select legislation ahead of a hearing in the Committee on Energy & Natural Resources Subcommittee on Public Lands scheduled for February 12, 2026.

S. 1497 - Cerro de la Olla Wilderness Establishment Act: NPCA **supports** this legislation along with the Taos Pueblo Tribe, members of the traditional local Hispano community and many others. Cerro de la Olla is an exceptional tract of land with unique, lush, forested wildlife habitat rising out of sage plateau in the middle of Rio Grande del Norte National Monument. It is ancestral Taos Pueblo land and an important part of Hispano land grant history and absolutely deserving of formal wilderness designation to permanently protect its many special qualities, resources and deep cultural history.

S. 2968 - Outdoor Americans with Disabilities Act: NPCA **opposes** this legislation, which would prioritize motorized recreation on public lands over resource protection. Federal land managers are required to make informed decisions to determine where motorized vehicles will not damage natural and cultural resources in national parks and other public lands. The federal government should use modern standards to decide road networks on public lands to ensure we protect wildlife habitat, rivers, creeks and forests among other resources. Instead, this legislation creates requirements that will result in more motorized routes on public land, including national parks, regardless of whether those routes enhance the visitor experience or harm the cultural and natural resources these landscapes have been set aside to protect. NPCA would appreciate the opportunity to work with the committee and disability advocates to develop a bill that addresses the relevant needs and opportunities while maintaining park protections.

S. 3082 - American Shores Protection Act: NPCA **supports** this legislation, which would prohibit oil and natural gas exploration, development and production in designated areas of the Outer Continental Shelf off the coasts of Florida, Georgia and South Carolina. The bill will help safeguard vitally important marine and coastal resources, along with the local economies that depend on healthy waters and thriving marine wildlife. From Canaveral National Seashore to Fort Sumter National Monument, each of these states is home to vibrant coastal national park sites whose protection will be strengthened by preventing offshore drilling in adjacent waters.

S. 3527 - Montana Sportsmen Conservation Act: NPCA **opposes** this legislation, which releases Bureau of Land Management Wilderness Study Areas (WSA) in Montana but does not include any kind of conservation measures for other landscapes. The explicit removal of land protections for these WSAs undermines the conservation legacy of public lands and puts them at risk of development. This bill would set a dangerous precedent that could be used to remove protections for WSAs in areas that are vital to the integrity of national park ecosystems. WSAs are critical conservation tools that offer significant biodiversity and watershed benefits to the larger landscapes they inhabit.

Lastly, Congress plays such an important role in reviewing expert analysis to determine where transferring federal lands is needed and appropriate. Federal public lands are cornerstones of American culture, creating shared

experiences and lasting memories for hundreds of millions of people every year. NPCA urges the committee to look closely at legislation such as **S. 3004, the Upper Price River Watershed Project Act,** which would convey 125 acres of federal land to the town of Price, Utah, without public input, environmental or cultural resources reviews, or revisionary protections. Congressional analysis of this type of legislation must continue to consider public comments and ongoing resource protection for generations to come.

Thank you for considering our views.

Sincerely,

Christina Hazard
Legislative Director

NATIONAL PARKS CONSERVATION ASSOCIATION

777 6th Street NW, Suite 700, Washington, DC 20001 | 800.628.7275 | npca.org

February 12, 2026



The Honorable Mike Lee
Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Committee on Energy and Natural Resources

The Honorable John Barrasso
Chairman
Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources

The Honorable Catherine Cortez Masto
Ranking Member
Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources

SUBJECT: Testimony in support of Senator Alex Padilla's Protecting Unique and Beautiful Landscapes by Investing in California (PUBLIC) Lands Act (S. 3526) for the February 12, 2026 hearing of the Subcommittee on Public Lands, Forests, and Mining

Dear Chairmen Lee and Barrasso and Ranking Members Heinrich and Cortez Masto:

Thank you for holding a hearing on Senator Alex Padilla's Protecting Unique and Beautiful Landscapes by Investing in California (PUBLIC) Lands Act (S. 3526) in the Subcommittee on Public Lands, Forests, and Mining on Thursday, February 12, 2026. Please note that the Committee Coon Energy and Natural Resources successfully marked up the previous version of this bill (S. 1776) in 2024. We urge you to recognize this previous bipartisan progress by passing S. 3526 out of the Committee as swiftly as possible.

Originally introduced by former Senator Kamala Harris and then reintroduced by Senator Padilla, the PUBLIC Lands Act is a combination of three bills passed in 2021 and 2022 by the House of Representatives:

- Northwest California Wilderness, Recreation, and Working Forests Act by Representative Jared Huffman
- Central Coast Heritage Protection Act by Representative Salud Carbajal
- San Gabriel Mountains, Foothills, and Rivers Protection Act by Representative Judy Chu

The PUBLIC Lands Act will:

- Sec. 101: Promote restoration on over 871,414 acres of mostly previously logged federal land
- Sec. 102: Encourage the cleanup of areas on federal land impacted by illegal marijuana growing
- Sec. 103: Require that the Restoration Area established in Sect. 111 be reflected in the local management plans for the affected public lands
- Sec. 104: Require that local fire management plans be adjusted to reflect the new wilderness designations and the fire authorities included in PUBLIC
- Sec. 201: Require a study of the feasibility of establishing a long-distance trail running from the Mendocino National Forest (MNF) to Redwood National and State Parks (RNSP)
- Sec. 202: Permit continued existing motorized and non-motorized uses on an existing National Forest recreation trail in the Six Rivers National Forest (SRNF)
- Sec. 203: Require the study of the feasibility of constructing a new long-distance trail in the Shasta-Trinity National Forest (STNF)
- Sec. 204: Require a study of the feasibility of establishing a long-distance trail that runs the entire length of the Los Padres National Forest (LPNF)
- Sec. 205: Require the US Forest Service (USFS) to identify new recreation trail construction opportunities in the LPNF, MNF, STNF, and SRNF
- Sec. 206: Require the USFS to study the feasibility of constructing new mountain bicycling trails in the SRNF
- Sec. 207: Authorize the USFS and Bureau of Land Management (BLM) to enter into partnership agreements with willing parties to help the agencies maintain certain recreation facilities in Del Norte, Humboldt, Mendocino, and Trinity counties
- Secs. 208-209: Authorize the construction of new public lands visitors' centers in Del Norte and Trinity counties
- Sect. 210: Require the National Park Service (NPS) to conduct a study to evaluate the feasibility and suitability of establishing additional overnight accommodations for visitors near RNSP
- Sect. 301: Protect 547,131 acres of public land as wilderness
- Sect. 302: Direct the appropriate management of the new wilderness areas
- Sect. 303: Protect 33,918 acres as potential wilderness
- Sect. 304: Protect 699.3 miles of streams as wild and scenic rivers (WSR) and 223,776 acres of land around them
- Sect. 305: Require the USFS to study three forks of the San Gabriel River for their eligibility for WSR designation
- Sec. 306: Designate 34,882 acres as scenic areas
- Sect. 307: Protect over 60,818 acres as special management areas

- Sect. 401: Require the BLM, NPS, and USFS to develop maps and legal descriptions of the areas designated in the bill
- Sect. 402: Require the BLM, NPS, and USFS to incorporate the new designations into the local land management plans for the affected federal lands
- Sect. 403: Ensure that existing utility infrastructure is unaffected by the new designations
- Sect. 404: Reauthorize an existing water pipe in the Angeles National Forest
- Sect. 405: Ensure that Native Americans can continue to use the lands included in the bill for cultural purposes

We will now explain each of these provisions in more detail.

SEC. 101. South Fork Trinity-Mad River Restoration Area

This element of the bill promotes fuel reduction and forest and woodland restoration on 871,414 acres of public lands in southern Trinity and western Humboldt counties in the SRNF and STNF and lands managed by the BLM's Redding Field Office. Within this area, the ecological health of previously logged forests will be improved and the danger of unnaturally severe fires will be reduced through a careful program of individual tree-cutting, especially along roads, near private land and in "plantations" (areas that were replanted following clearcut logging or fires).

Not later than 2 years after the date of enactment, the Secretaries of Agriculture and Interior shall jointly submit to Congress:

- a plan to conduct restoration activities and improve the ecological integrity of the restoration area; and
- an updated fire management plan for the land that includes the restoration area.

In developing the plans, the Secretaries shall solicit input from a collaborative group in a manner that is "transparent and inclusive." The updated fire management plan shall include the use of prescribed fire and the use of shaded fuel breaks. "Shaded fuel breaks" are areas where the trees are carefully thinned to reduce the chance of a fire racing from the crown of one tree to another. They are called "shaded" fuel breaks because the thinning cannot be so aggressive that it reduces the shade provided by the forest canopy. The reason for this is that allowing sunlight to reach the forest floor will encourage the growth of shrubs that could increase fire severity.

The restoration area is protected from disposal under the public land laws (which means that it cannot be sold), new mining claims, and new energy leases.

This aspect of the bill was added to create a positive example for the USFS of ecologically sound forest management. This provision marks the first time that a California member of Congress has proposed a "forest health" vision based upon best science as opposed to timber extraction.

SEC. 102. California Public Land Remediation Partnership

Marijuana cultivation on federal public lands is a serious problem. Hundreds of abandoned grow sites exist on our public lands. These sites are littered with garbage, toxic waste, and the corpses of poisoned animals. The California Public Lands Remediation Partnership is established to help clean up these illegal marijuana growing sites on northwest California's federal public lands. The Partnership will coordinate cleanup, prioritize specific areas for restoration, and secure resources from state, federal, or other sources for restoration.

This aspect of the bill was added to address the severe impacts of illegal marijuana cultivation in northwestern California's federal public lands.

Section 103: Land and resource management plans

In revising the land and resource management plan for the STNF and SRNF, the Secretary shall consider the purposes of the South Fork Trinity-Mad River Restoration Area.

Section 104: Annual fire management plans

Requires land managers to create comprehensive fire management plans for the wilderness areas and wilderness additions designated by the bill. This will require wilderness areas that are managed by multiple agencies to have a single, unified fire management approach.

This aspect of the bill was added to ensure seamless fire management even in wilderness areas managed by more than one National Forest. For example, the Trinity Alps Wilderness is managed by the Klamath NF, STNF, and SRNF.

Section 201: Bigfoot National Recreation Trail

The legislation gives land managers 3 years to study the feasibility of establishing a "Bigfoot National Recreation Trail." The proposed trail would run for 360 miles from the MNF in the south to RNSP in the north.

While the name is supposed to be humorous, the purpose of the trail is serious: to provide for a long-distance hiking and horseback riding opportunity that also highlights the amazing ecological and social values of the Klamath-Siskiyou region.

Many of the places that would be accessed by the proposed trail, such as southern Trinity County, have an abundance of public lands but few trails. The Bigfoot Trail will help to meet this need for public access.

Section 202: Elk Camp Ridge Recreation Trail

Designates the Elk Camp Ridge Recreation Trail in the Smith River National Recreation Area. The trail would remain open to motorized and non-motorized recreation uses (including mountain bicycling). This element of the bill was added at the request of mountain bikers and motorized recreationists.

Section 203: Trinity Lake Trail

Gives land managers 3 years to study the feasibility and public interest in building a trail for hiking, horseback riding, and mountain biking around Trinity Lake in Trinity County's STNF. Construction is authorized if it is determined that building the trail is feasible and in the public interest. The trail could be a real draw for tourism in Trinity County. No construction can take place until required reviews are completed. This element of the bill was added because of suggestions made to Representative Huffman at a public meeting in Weaverville.

Section 204: Condor National Scenic Trail study

Requires federal agencies to study the feasibility and public interest involved in the establishment of a 400-mile-long trail that would run the length of the LPNF to be known as the Condor National Scenic Trail. Much of the proposed trail already exists. The construction of new segments will only be allowed after required environmental studies are completed. Some of the existing portions of the trail overlap routes where vehicle use is allowed. The legislation makes it clear that the eventual goal is a trail that is only open to horses, hikers, and (outside wilderness) mountain bikes. This will eventually involve the construction of new trail segments to bypass those routes where vehicles are allowed.

This element of the bill was added at the urging of the Condor Trail Association that has spent many years working to establish the route.

Section 205: LPNF, SRNF, STNF, and MNF trails study

The Forest Service is given 3 years to study the feasibility of establishing new non-motorized trails for hikers, equestrians, and bicyclists in the LPNF, SRNF, STNF, and LPNF outside of protected wilderness areas. No trails can be constructed until required environmental studies are completed. Since most of the non-motorized trails in the affected

NFs are inside wilderness areas where bicycles are prohibited, this provision was added to encourage the construction of new non-motorized trails outside of wilderness.

The LPNF is also given 3 years to study the feasibility of building a trail between LPNF Road 95 and the Ballinger Canyon off-road vehicle recreation area. The trail cannot be constructed until required environmental studies are completed. This element was added at the request of off-highway vehicle enthusiasts.

Section 206: Construction of mountain bicycling routes

Not later than 3 years after the date on which funds are made available to carry out this section, the USFS must study the feasibility of constructing several non-motorized trails in Del Norte County's Smith River National Recreation Area. The agency is permitted to construct the routes if they are found to be feasible and in the public interest after appropriate environmental review. Since most of the non-motorized trails in the region are inside wilderness where bicycles and motorized vehicles are prohibited, this provision was added to encourage the construction of new trails outside of wilderness.

Section 207: Partnerships

Ensures that federal land managers can partner with qualified organizations to help maintain trails and campgrounds, staff visitor centers and to conduct public education and outreach. This resulted from input Representative Huffman received at a public meeting on the bill in Ukiah.

Section 208: Trinity Lake Visitor Center

A visitor center is authorized for construction in Weaverville in Trinity County. The purpose of the visitor center is to help the public discover and appreciate the public lands of the Shasta-Trinity region.

This aspect of the bill was added because of suggestions made to Representative Huffman at a public meeting in Weaverville.

Section 209: Del Norte County Visitor Center

A visitor center is authorized in Del Norte County to help the public discover Redwood National and State Parks and the Smith River National Recreation Area.

This aspect of the bill was added because of suggestions made to Representative Huffman at a public meeting in Crescent City.

Section 210: Study; Partnerships related to overnight accommodations

Requires the government to study the possibility of providing overnight accommodations near RNSP. This element of the bill was added at the request of the Save the Redwoods League to address the shortage of overnight accommodations in the region.

Section 301: Designation of wilderness

Designates 547,131 acres of land as "wilderness." Wilderness is the strongest protection available for federal land under federal conservation law. Once an area is designated as wilderness, all development such as logging, road construction, energy extraction, etc. are prohibited while hiking, horseback riding, camping, and other non-motorized activities are allowed. Bicycling, however, is prohibited. Fire-suppression is also allowed in wilderness, including the use of bulldozers and aircraft to fight fires if necessary. The proposed wilderness areas included in the bill do not currently have any roads in them, so closing the areas to motorized vehicles is simply a recognition of the current reality, not a denial of public access.

The proposed wilderness areas are *currently* both wild and undeveloped and used exclusively for hiking, horseback riding, hunting, fishing, and other wilderness-compatible activities. None of them are popular with bicyclists. Other activities, such as off-road vehicle use, are either illegal, rare, or both. The following have been excluded from the proposed wilderness boundaries:

- Roads and trails that are legally open to motorized vehicles.
- Communication sites.
- Campgrounds (at least those used for car-camping).
- Gas, mining, and oil leases.
- Authorized rights-of-way, especially for telephone lines, powerlines, gas lines, water diversions, sediment disposal sites or any other utilities or public works projects.
- Dams or water diversions.
- Fire lookouts.
- Trails that are *both* legally open to and popular with mountain bikers.
- Public lands that are adjacent to heavily developed areas of private property.
- Public lands that are near any legally-open roads to allow for aggressive roadside fuel reduction and fire-suppression efforts.
- Public lands that are within 300' of any utility, especially powerlines, to allow room for maintenance and vegetation-clearing for fire-safety; and
- Areas that have been heavily disturbed in the past by development, including logging.

This element was added to PUBLIC because conservation advocates have been trying to permanently protect the affected areas for decades. The following is a list of the proposed wilderness areas included in the bill.

PROPOSED WILDERNESS AREA (National Forest and/or BLM office)	**ACRES**
Black Butte River (Mendocino NF)	11,155
Caliente Mountain (Bakersfield BLM)	35,116
Chanchelulla Additions (Shasta-Trinity NF)	6,382
Chinquapin (Shasta-Trinity NF)	31,028
Chumash Additions (Los Padres NF)	23,670
Condor Peak (Angeles NF)	8,207
Diablo Caliente (Los Padres NF)	17,870
Dick Smith Additions (Los Padres NF)	54,036
Elkhorn Ridge Additions (Arcata BLM)	37
English Ridge (Arcata BLM)	6,204
Garcia Additions (Central Coast BLM and Los Padres NF)	7,289
Machesna Mountain Additions (Central Coast BLM and Los Padres NF)	10,817
Mad River Buttes (Six Rivers NF)	6,097
Matilija Additions (Los Padres NF)	30,184
Mount Lassic Additions (Six Rivers NF)	1,288
North Fork Eel River Additions (Arcata BLM and Six Rivers NF)	16,342
Pattison (Shasta-Trinity NF)	29,451
San Gabriel Additions (Angeles NF)	2,032
San Rafael Additions (Los Padres NF)	23,969
Santa Lucia Additions (Los Padres NF)	2,921
Sespe Additions (Los Padres NF)	14,313
Sheep Mountain Additions (Angeles NF)	11,938
Siskiyou Additions (Six Rivers NF)	29,594
Soda Lake (Bakersfield BLM)	13,332
South Fork Eel River Additions (Arcata BLM)	603
South Fork Trinity River (Shasta-Trinity NF)	26,562
Temblor Range (Bakersfield BLM)	12,585
Trinity Alps Additions (Redding BLM and Shasta-Trinity NF)	62,474
Underwood (Shasta-Trinity and Six Rivers NF)	15,068
Yerba Buena (Angeles NF)	6,694
Yolla Bolly-Middle Eel Additions (Arcata BLM and Mendocino, Shasta-Trinity, and Six Rivers NFs)	21,126
Yuki Additions (Arcata BLM and Mendocino NF)	14,132
	547,131

At the request of members of the Round Valley Indian Tribes, the bill also renames the "North Fork Wilderness," established by Congress in 1984, as the more precisely named "North Fork Eel River Wilderness."

The bill also corrects an error in the 2006 boundary of the Elkhorn Ridge Wilderness by removing 30 acres on the one hand while adding 37 acres on the other.

Section 302: Administration of wilderness

The bill states that:

- Land managers can suppress fire in wilderness using all the tools available to them outside of wilderness areas.
- Authority to use bulldozers and other heavy equipment for fire-suppression in wilderness can be delegated to local land managers.
- Livestock grazing can continue where it was being allowed at the time the wilderness areas were designated.
- Wilderness areas do not have buffer zones—the protections afforded by the Wilderness Act end at the boundary of a designated wilderness. The presence of wilderness next door should not impact the management of adjacent private, local, state, or federal lands.
- Native Americans have the right to use the wilderness areas for cultural purposes, including working with land managers to temporarily close the areas for ceremonies.
- Horses are allowed in wilderness. They already are allowed in wilderness, but this language reassures equestrians.
- Rock climbing, including the use of fixed anchors, is allowed in wilderness.

These provisions are standard wilderness management language common to most wilderness bills.

Section 303: Designation of potential wilderness

The bill designates two kinds of wilderness areas: conventional wilderness and "potential wilderness." Both kinds of wilderness are managed the same way for the most part. The difference is that conventional wilderness areas are completely unlogged, unroaded and undeveloped—as close to "undisturbed" as is possible--while the "potential wilderness areas" included in Title I have experienced some limited degree of disturbance and thus require a period of recovery (or even active restoration) before they can become conventional wilderness. It may be helpful to think of potential wilderness as a "two-step wilderness": Step one is restoration, while step two is graduation to conventional wilderness. The dividing line is old roads: If an area has old roads that are now closed to

the public, it is proposed as potential wilderness under Title I. If an area has never had a road in it, then it is proposed as conventional wilderness in the bill. The potential wilderness areas will be designated as wilderness after the Secretary publishes in the Federal Register a notice that necessary restoration has been completed.

This element was added to the bill because the affected areas are wilderness-worthy but require restoration to make them free of roads. The bill includes 33,918 acres (over 52 square-miles) of proposed potential wilderness.

PROPOSED POTENTIAL WILDERNESS	**ACRES**
Redwood National Park Potential Wilderness	31,000
Yuki Potential Wilderness (Arcata BLM)	2,918
	33,918

Section 304: Designation of WSRs

The National Wild and Scenic Rivers Act is the nation's primary river conservation tool. Congress passed the Act in 1968 to specifically balance our existing policy of developing rivers for the water, power, and flood control resources by building large dams, with a new policy of protecting some free-flowing rivers with outstanding natural and cultural values for the benefit and enjoyment of present and future generations.

Federal public lands within a river corridor averaging 320 acres per mile (about 1/4 mile on each side of the river) are managed to protect the river's free flowing character and outstanding values. Federal agencies that administer public lands are responsible for the management of designated rivers and are required to develop a plan within three years of designation to guide future management of the protected stream. The bill classifies each stream as wild, scenic, or recreational.

Wild: These segments are wild, unroaded and undeveloped. Logging, road building, new mining claims, developed campgrounds, and motorized access are generally prohibited on wild segments. All other activities associated with public lands such as grazing, mining of valid existing claims, hunting and other forms of non-motorized recreation are permitted provided that the river's free flowing character and outstanding values are protected.

Scenic: These segments are generally undeveloped but may have occasional road crossings and riverside structures that are visually screened from the river. Motorized use on trails may or may not be permitted based on existing use and resource protection needs. All other activities normally associated with public lands are permitted, if the river's visual quality, free flowing character, and outstanding values are protected.

Recreational: These segments are generally developed, with parallel roads, bridges, and structures. All activities normally associated with public lands may occur provided that the river's free flowing character and outstanding values are protected.

The National Wild and Scenic Rivers Act confers no federal authority over private land use or local zoning of private lands. There is no practical impact on private property, except that federal protection typically increases private property values and contributes to the local economy by attracting tourists and recreational visitors. The state's authority to regulate water rights remains unaffected by designation. There is a federal water right conferred by designation, but it begins at the date of designation and is junior to all other existing rights.

Most of the streams proposed for protection in the bill provide critically important habitat for threatened fish species including steelhead trout and salmon. The following streams are designated as wild and scenic rivers. The WSR designations include 699.3 miles of stream and 223,776 acres (over 349 square-miles) of land around them.

PROPOSED WSR	**LENGTH (miles)**
Bear Creek (Arcata BLM)	11
Big Creek (Arcata BLM)	4.6
Big Flat Creek (Arcata BLM)	7.5
Butter Creek (Shasta-Trinity NF)	7
Canyon Creek (Shasta-Trinity NF)	17.8
Cedar Creek (Arcata BLM)	9.6
Deep Hole Creek (Arcata BLM)	4.3
East Branch South Fork Eel (Arcata BLM)	23.1
East Fork North Fork Trinity River (Shasta-Trinity NF)	17.35
East Fork South Fork Trinity River (Shasta-Trinity NF)	11.8
Eden Creek (Arcata BLM)	2.7
Elder Creek (Arcata BLM)	7
Elk Creek (Arcata BLM and Mendocino NF)	11.4
Eltapom Creek (Shasta-Trinity NF)	3.4
Fish Creek (Arcata BLM)	4.2
Gitchell Creek (Arcata BLM)	3
Grouse Creek (Shasta-Trinity NF)	11.3
Hayfork Creek (Shasta-Trinity NF)	16.4
Honeydew Creek (Arcata BLM)	10.6
Indian Creek (Arcata BLM)	3.3

PROPOSED WSR	LENGTH (miles)
Indian Creek (Los Padres NF)	14.4
Lacks Creek (Arcata BLM)	7.8
Little Lost Man Creek (Redwood NP)	3.6
Little Rock Creek (Angeles NF)	20.2
Lost Man Creek (Redwood NP)	8.7
Madden Creek (Six Rivers NF)	8.4
Matilija Creek (Los Padres NF)	14.45
Mattole River (Arcata BLM)	1.5
Middle Fork Eel River (Mendocino and Shasta-Trinity NFs)	62.7
Mono Creek (Los Padres NF)	24.5
New River (Shasta-Trinity NF)	15
North Fork Eel River (Six Rivers NF)	14.3
North Fork Trinity River (Shasta-Trinity NF)	27.7
Olsen Creek (Shasta-Trinity NF)	2.8
Piru Creek (Los Padres NF)	55.85
Rattlesnake Creek (Shasta-Trinity NF)	5.9
Red Mountain Creek (Six Rivers NF)	8.1
Redwood Creek (Redwood NP)	27.6
Rusch Creek (Shasta-Trinity NF)	3.2
Salmon Creek (Arcata BLM)	4.6
Sespe Creek (Los Padres NF)	20.9
Sisquoc River (Los Padres NF)	69.2
South Fork Eel River (Arcata BLM)	12.3
South Fork Elk River (Arcata BLM)	9.4
South Fork Trinity River (Shasta-Trinity NF)	68.85
	699.3

Section 305: WSRs study

The bill requires the USFS to study the suitability of three forks of the San Gabriel River for WSR status. Water agencies had objected to the designation of the stream as a WSR so a study is proposed instead.

Section 306: Scenic areas

Designates 34,882 acres as scenic areas in the LPNF:

- Condor Ridge 18,666 acres
- Black Mountain 16,216 acres

These areas will be managed to maintain their scenic character. New roads and other developments are prohibited. Hiking, camping, horseback riding, mountain biking, and vehicle use of approved routes will be allowed.

The areas were added to win the support of bicyclists.

Section 307: Special Management Areas

Designates 60,818 acres of Special Management Areas (SMA):

- Fox Mountain in the LPNF: 41,082 acres
- Horse Mountain in the SRNF: 7,482 acres
- Sanhedrin in the MNF: 12,254 acres

The SMAs must be managed to protect specific ecological, cultural, recreational, and other values listed in the bill. All development is prohibited, but restoration is allowed. While the areas are managed essentially as wilderness, bicycling is allowed and existing roads and off-highway vehicle trails can continue to be used. The USFS has 5 years to develop management plans for the SMAs.

The areas were added to win the support of mountain bikers.

Section 401: Maps and legal descriptions

Requires federal agencies to prepare maps and legal descriptions of the areas designated by the bill.

Section 402: Updates to land and resource management plans

Requires federal agencies to update land management plans to reflect the bill's provisions.

Section 403: Pacific Gas and Electric Company utility facilities and rights-of-way

Ensures that existing utilities can still be maintained in the proposed Restoration Area and other areas that overlap with existing utilities. There are no existing utilities in proposed wilderness areas.

Section 404: Reauthorization of Existing Water Facilities in Pleasant View Ridge Wilderness

The Omnibus Public Lands Management Act of 2009 designated the Pleasant View Wilderness in the Angeles National Forest. The USFS failed to notify the authors of the bill

that there was a water pipe in the Pleasant View Wilderness that provides water to a children's summer camp outside of the wilderness. This section is meant to allow for the continued existence of the water pipe in the wilderness.

SEC. 405. Use by members of Indian Tribes

Ensures that Native Americans retain the right to use areas protected by the bill for cultural purposes

Again, we urge the Committee to pass S. 3526 as soon as possible in recognition of its previous progress in the Committee in the 118th. Congress. Thank you for your consideration.

Sincerely,



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U.S. Department of the Interior
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
S. 2860, the Revitalizing America's Offshore Critical Minerals Dominance Act
S. 3082, the American Shores Protection Act of 2025
H.R. 677, the Expedited Appeals Review Act
February 12, 2026

Thank you for the opportunity to provide the Department of the Interior's (Department) views on S. 2860, the Revitalizing America's Offshore Critical Minerals Dominance Act, S. 3082, the American Shores Protection Act of 2025, and H.R. 677, a bill to establish a process to expedite the review of appeals of certain decisions by the Department of the Interior.

S. 2860, Revitalizing America's Offshore Critical Minerals Dominance Act
The Department appreciates the Subcommittee's continued engagement on issues related to offshore resource management, domestic energy security, and responsible stewardship of the Outer Continental Shelf (OCS).

S. 2860 would establish a statutory framework to accelerate the assessment, mapping, exploration, and potential development of offshore critical mineral resources. The bill directs Federal agencies to streamline permitting processes under existing authorities, enhance interagency coordination, develop a seabed mapping plan, identify critical minerals derived from seabed resources, and engage with key allies and partners to advance seabed mineral exploration and processing capabilities.

The Administration supports S. 2860 because it is consistent with, and reinforces, the policy direction established in Executive Order 14285, Unleashing America's Offshore Critical Minerals and Resources. Like Executive Order 14285, the bill seeks to strengthen domestic supply chains for critical minerals, reduce reliance on foreign sources, and improve coordination across Federal agencies in the assessment and responsible development of offshore critical mineral resources.

By codifying many of the priorities set forth in Executive Order 14285, S. 2860 would provide longer-term certainty beyond the current Executive Order, support sustained interagency coordination, and enhance the Federal government's ability to responsibly identify, map, and evaluate offshore critical mineral resources on the OCS. The bill's emphasis on seabed mapping and data collection would improve the Federal government's understanding of offshore critical mineral potential while supporting transparency and informed decision-making.

The Department also recognizes the bill's focus on strengthening domestic capabilities for critical mineral exploration, processing, and supply chain development. These efforts align with broader Administration priorities to bolster national security, support domestic manufacturing, and ensure that the United States remains competitive in securing critical mineral resources essential to defense, infrastructure, and industrial applications.

S. 2860 would help advance the Administration's national security and economic objectives while reinforcing responsible management of offshore resources.

S. 3082, American Shores Protection Act of 2025

On his first day in office, President Trump signed Executive Order 14154, Unleashing America's Energy, declaring it is "in the national interest to unleash America's affordable and reliable energy and natural resources." Under President Trump's leadership, the United States became the largest producer of oil and natural gas in the world, and the responsible energy production from the Gulf of America greatly contributed to our nation's energy dominance. Once again, Secretary Burgum and the Department of the Interior have taken concrete steps to deliver on the President's goal by ensuring the increased production of reliable and affordable energy for the American people.

The Administration opposes S. 3082 because it would impose statutory constraints that substantially limit the discretion of the President and the Secretary of the Interior in developing future oil and gas leasing programs, including the 11th National OCS Oil and Gas Leasing Program currently under development.

The longstanding process established by Congress through the OCS Lands Act and reflected in the Department's existing regulatory framework provides broad discretion to balance multiple statutory objectives, including energy security, environmental protection, coastal community interests, and economic conditions. This flexibility is particularly critical in the development of a multi-year program like the 11th National OCS Program.

The Department is proceeding through a careful, deliberative process that is consistent with Federal law under the OCS Lands Act, with multiple rounds of public review, comment, and analysis, prior to the Secretary making a final decision on which OCS areas may ultimately be included in the 11th National OCS Program and subsequently offered for lease. The new area of the Eastern Gulf of America being analyzed for potential future activities in the 11th National Program is at least 100 miles from all points in Florida. Several other Gulf states are just as close to the Eastern Gulf, including Alabama (~100 miles), Mississippi (~120 miles), and Louisiana (~114 miles). Accordingly, any activities in these federal waters would have a comparable impact on all the Gulf states as well as the nation as a whole. Additionally, the OCS Lands Act requires the Secretary to consider input from Governors of affected states throughout both the National Program and lease sale planning processes.

Absent any decision by the President to amend or lift the existing withdrawals on leasing activities in the area, the inclusion of the areas of the Gulf of America described in this bill in the 11th National Program development process is purely for the purposes of analyzing potential resources and development activities in these areas pursuant to the OCS Lands Act, and pursuant to the President's Executive Order 14154, Unleashing American Energy, and Secretary Burgum's Order 3445. If signed into law, this legislation would degrade President Trump and Secretary Burgum's ability to achieve American energy dominance by reducing the discretion that the OCS Lands Act provides the Executive branch for administering these areas. Limiting the President's discretion could reduce domestic energy production, increase reliance on foreign energy sources, and constrain economic opportunities for coastal communities.

The Department remains committed to managing offshore energy resources in a responsible manner while ensuring that decisions regarding access to OCS resources are made through established, data-driven processes that allow for flexibility and informed judgment. The Department will continue working to achieve the President's goals of lowering energy prices for American families and businesses by prioritizing the responsible development of reliable and affordable American energy.

H.R. 677, Expedited Appeals Review Act

The Department's Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary of the Interior to conduct hearings and decide appeals of decisions of the Department's bureaus and offices. The Interior Board of Land Appeals (the Board), an appellate review body within OHA and separate from the bureaus and offices, serves as an impartial forum for the resolution of disputes involving public lands and natural resources, including disputes about oil and gas production, mining, grazing, royalties, and land use.

H.R. 677 would authorize an appellant to file a notice of expedited review of an appeal and then require the Board to issue a final decision within 6 months of the notice or 18 months after the date of the appeal, whichever is later. If a final decision is not issued by the deadline, the decision on appeal would be "deemed to be a final agency action for purposes of the Administrative Procedure Act (APA)." The bill further directs that judicial review of such decisions will be de novo notwithstanding the review set forth in the APA. Finally, the bill would apply to all appeals, including those pending as of the date of enactment.

The Department supports the intent of H.R. 677 to expedite the Board's review and issuance of final decisions of these appeals but would like to work with the sponsor on some refinements based on consideration of other substantive statutes that require a hearing on the record before the OHA and IBLA. Additionally, under H.R. 677, those appellants who file notices to expedite may move their appeals ahead of the oldest pending appeals, lengthening the time for other appellants awaiting decisions. H.R. 677 might also force some appellants who seek expedited review to wait longer to challenge a decision in Federal court than they would if they did not seek expedited review. For example, the Federal Oil and Gas Royalty Management Act gives the Department 33 months to issue a final decision in an appeal of a royalty order; if the Department does not do so, the appellant may seek judicial review. The Department would like to work with the sponsor to avoid these kinds of consequences.

Under this Administration, OHA and the Board are working diligently to streamline and modernize the appeal process, while maintaining necessary flexibility in adjudication and resolving all appeals. The Department looks forward to working closely with the sponsor to ensure that H.R. 677 meets its intended goals and those of the Administration.

Conclusion

Thank you for the opportunity to provide this statement for the record.

February 11, 2026

Senator John Barrasso
Chair, Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
Washington, D.C. 20510

Senator Catherine Cortez Masto
Ranking Member, Subcommittee on Public Lands, Forests, and Mining
Committee on Energy and Natural Resources
Washington, D.C. 20510

Re: Surfrider Foundation Support of S. 3082, February 12th Public Lands, Forests, and Mining Subcommittee to Receive Testimony on Pending Legislation

Dear Chairman Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee,

The Surfrider Foundation ("Surfrider") submits these comments on S. 3082 - *To prohibit oil and natural gas exploration, development, and production in certain areas of the outer Continental Shelf off the coast of Florida, Georgia, and South Carolina*. Surfrider is a grassroots environmental organization dedicated to the protection and enjoyment of the world's ocean, waves, and beaches for all people through a powerful activist network. We submit these comments on behalf of our U.S. network of 200 chapters and Student clubs and more than 350,000 members and supporters.

Surfrider supports S. 3082 - The American Shores Protection Act to establish a temporary prohibition on new oil and gas development off the shores of Florida, Georgia, and South Carolina. Surfrider would much prefer to see congress enact a permanent prohibition due to the severity of harmful impacts that new offshore oil and gas drilling would have to Southeast and Florida Gulf communities, wildlife and coastal economies. Nevertheless, this temporary protection is extremely important and valuable.

Clean beaches and healthy coasts are the lifeblood of economies in the Southeast, especially in Florida where tourism generates over $133 billion in economic impact annually and employs an estimated 2 million people. Florida's beaches and waterfront activities consistently rank as a top factor in tourists' decisions to visit the state. The services and opportunities that beaches and the coast provide are why 75% of Floridians live in coastal counties.

Robust commercial and recreational fishing and seafood industries also depend on a healthy and functioning marine ecosystem. In Georgia, saltwater recreational fishing contributes an estimated $540 million in economic impact and supports over 3,200 jobs. In Florida, saltwater recreational

fishing contributes an estimated $9.2 billion in economic impact annually and supports nearly 100,000 jobs. In South Carolina, the commercial fishing industry generates $42 million in economic impact annually while recreational saltwater fishing contributes an estimated $195 million in economic impact. Expanding offshore oil exploration and drilling in these areas puts the region's vital commercial and recreational fishing industries and communities in jeopardy.

The risks of expanded oil and gas development to beaches, fisheries, local economies, and unique environments are simply too great. New oil and gas development would require seismic surveys, drilling operations, oil transport by tankers, and the installation of platforms, pipelines, and other infrastructure. Collectively these activities would significantly damage both the environment and related economies, while exposing these regions to a catastrophic oil spill. Over a decade has passed since the devastating 2010 Deepwater Horizon Oil Spill and yet the disastrous consequences still loom in the Gulf region. Florida's Gulf Coast communities experienced severe economic, environmental, and community well-being impacts, with economic and natural resource losses valued at over $3 billion. So long as we continue to pursue new oil and gas exploration and leasing, we will be placing our communities, economies, and environments at unnecessary risk.

An overwhelming majority of the public is opposed to new offshore oil and gas drilling. A 2024 survey shows that an estimated 64% of registered U.S. voters are opposed to new offshore drilling. To date, 300 municipalities, 2,500 elected officials, 59,000 businesses, and 500,000 fishing families across the United States have formally opposed new offshore oil and gas development. Further, new oil and gas leasing is not needed to meet our nation's energy needs. The U.S. has been a net oil exporter since 2020 and hit an all-time high of domestic oil production in 2024. Oil and gas companies have already stockpiled roughly 1,800 unused leases that span 10 million acres of U.S. waters. Instead of approving new oil and gas lease sales that will lock our nation into future decades of offshore drilling, the U.S. should embrace the transition to renewable sources of energy.

Our coastal communities and businesses depend on clean beaches and waters, abundant wildlife, and scenic viewsheds – all of which would be compromised by the expansion of offshore drilling and an increased risk of spills. A major spill would cause catastrophic impacts to these coastal communities, a truth we should have learned from previous spills that have had long-lasting impacts on our businesses, local tourism rates, and the health of our marine environments.

Finally, Surfrider urges the Subcommittee to consider other relevant legislation to prohibit new offshore oil and gas development off U.S. coastlines. This includes S.1432 - The West Coast Ocean Protection Act of 2025, as the Draft Proposed 11th National Outer Continental Shelf Oil and Gas Leasing Program released by the Bureau of Ocean Energy Management in November, 2025, includes lease sales off the California coast.

We appreciate the opportunity to provide this testimony to the Public Lands, Forests, and Mining Subcommittee. Thank you for considering the public interests represented by the Surfrider Foundation and our chapters across Florida, Georgia and South Carolina.

Katie Day
Sr Manager of Science and Policy
Surfrider Foundation

Katie Bauman
Florida Policy Manager
Surfrider Foundation

Pete Stauffer
Ocean Protection Manager
Surfrider Foundation

TROUT UNLIMITED

2/11/2026

The Honorable Mike Lee
Chairman
Senate Energy and Natural Resources Committee
363 Russell Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Energy and Natural Resources Committee
709 Hart Senate Office Building
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The Honorable John Barrasso
Chairman
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307 Dirksen Senate Office Building
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The Honorable Catherine Cortez Masto
Ranking Member
Public Lands, Forests, and Mining Subcommittee
309 Hart Senate Office Building
Washington, DC 20510

Re: Hearing on PUBLIC Lands Act (S. 3526)

Dear Chairman Lee, Chairman Barrasso, Ranking Member Heinrich, and Ranking Member Cortez Masto:

Trout Unlimited strongly supports the Protecting Unique and Beautiful Landscapes by Investing in California (PUBLIC) Lands Act (S .3526). Our 10,000+ members and supporters in California depend on public lands for fishing and hunting opportunities. In fact, every single one of the most famous trout and salmon waters in California flow from or through public lands. But coldwater and terrestrial habitats on many of California's public lands are increasingly being degraded or threatened by a variety of influences, including more frequent and severe wildfire and drought as well as the deterioration of vital infrastructure (roads, trails, boat ramps and campgrounds), illegal trespass cannabis cultivation, and inconsistent monitoring of resource conditions, fish and wildlife populations, and increasing recreational use.

The individual bills that comprise the PUBLIC Lands Act would help address all of these challenges, and were built on feedback from local communities, business interests, and other stakeholders over many years. This legislation would better protect and restore some of California's most iconic salmon, steelhead and trout waters, boost protection of biodiversity and landscape resilience, and improve access to the outdoors.

- The Northwest California Wilderness, Recreation and Working Forests Act would help protect and restore famous steelhead and salmon fisheries and blacktail deer habitat, rehabilitate areas degraded by illegal cannabis grows, improve public access to some of California's most unique lands and waters, restore forest health and reduce risks to local communities from catastrophic wildfire. It would also help local communities capitalize on the region's reputation as one of the best areas for fishing, hunting, and other outdoor recreation.

- The San Gabriel Mountains Foothills and Rivers Protection Act would better protect segments of the San Gabriel River through federal Wild and Scenic River designations. The San Gabriel River is one of the few in southern California that offer trout fishing, and scientists have documented remnant genes of the rare southern steelhead in native trout populations there.

- The Central Coast Heritage Protection Act would confer federal Wild and Scenic River designation to 159 miles of central California coastal streams and help conserve coldwater habitats and fishing opportunities in a semi-arid region where there are few coldwater fishing opportunities. Sespe and Piru Creeks in the Los Padres National Forest would benefit from Wild and Scenic River

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designation—these creeks are two of only three state-designated Wild Trout streams in southern California and Sespe Creek supports a population of endangered southern steelhead.

For sportsmen and women, there is no substitute for good habitat. We must better protect and restore the best of what we have left to sustain America's unique sporting heritage. The PUBLIC Lands Act would do exactly that for some of the most productive fishing and hunting grounds in California.

Trout Unlimited thanks Senators Padilla and Schiff for their leadership on this important legislation. We also thank the Committee for taking up S. 3526 and respectfully urge the Committee to advance this legislation. For questions related to these comments, please contact:

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2/11/2026

The Honorable Mike Lee
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Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Energy and Natural Resources Committee
709 Hart Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
Chairman
Public Lands, Forests, and Mining Subcommittee
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Catherine Cortez Masto
Ranking Member
Public Lands, Forests, and Mining Subcommittee
309 Hart Senate Office Building
Washington, DC 20510

Re: Hearing on Montana Sportsmen Conservation Act (S. 3527)

Dear Chairman Lee, Chairman Barrasso, Ranking Member Heinrich, and Ranking Member Cortez Masto:

Trout Unlimited thanks Senator Daines for his continued interest in Montana's public lands and working towards resolving areas that have been stuck in Wilderness Study Area (WSA) status for decades. As drafted, S. 3527 proposes to release the Middle Fork of the Judith WSA, managed by the U.S. Forest Service, and the Hoodoo Mountain and Wales Creek WSAs, managed by the Bureau of Land Management.

Each of these WSAs contain important conservation values, including headwater streams that support native Westslope cutthroat trout, a state-designated Species of Greatest Conservation Need. Additionally, the Wales Creek and Hoodoo Creek WSAs provide cold, clean water downstream to the famed Blackfoot River, a Blue Ribbon fishery that attracts anglers from around the world.

In addition to supporting native trout, the Middle Fork of the Judith is a restoration priority for Trout Unlimited where a multi-phase, collaborative project is investing $178,000 to reduce sediment inputs and restore 80 miles of stream habitat.

Given the significant fish, wildlife and recreation values of these WSAs, it is imperative that there is certainty for the future management of these areas, should they be released, with safeguards that protect conservation investments and values. Additionally, there are other areas in the state where collaboratives have proposed designations to protect appropriate landscapes that could be balanced with WSA release elsewhere.

As drafted, the proposed legislation does not provide this certainty or balance, and Trout Unlimited is committed to working with Senator Daines on legislation to find the best, collaborative path forward that balances WSA release with conservation outcomes. For questions related to these comments, please contact:

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Re: February 12, 2026 Hearing to Receive Testimony on Pending Legislation

February 12, 2026

Dear Senators:

We thank you for considering our testimony on the bills considered in today's hearing. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System.

How nonconforming uses degrade the National Wilderness Preservation System

All of us should be proud of our natural wilderness heritage. However, recent trends threaten that heritage and our ability to preserve for future generations an authentic Wilderness. Those trends are embodied in some of the provisions contained in various bills the Committee is receiving testimony on today.

When Congress designated the National Wilderness Preservation System in 1964, it envisioned units of a greater whole. Congress defined what Wilderness was for this greater system:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its

> community of life are untrammeled by man, where man himself is a visitor who does not remain.

16 U.S.C. § 1131(c). The Wilderness Act mandates that each agency responsible for administering a Wilderness unit preserve the wilderness character of that unit.

Motorized uses, commercialization, manipulation of natural processes, and recreational pressures all degrade Wilderness. While the 1964 Wilderness Act prohibits or severely restricts these pressures, non-conforming exceptions written into Wilderness designations contribute to damaging wilderness character. There has been a growing trend to insert special exceptions for activities or structures in individual Wildernesses that the Wilderness Act would otherwise prohibit or generally prohibit.

Allowing non-conforming uses in Wilderness designations impact the entire Wilderness System in addition to impacting that individual Wilderness. Non-conforming uses decrease recognizable core qualities of a particular Wilderness. Non-conforming uses in one bill are often copied and expanded in subsequent Wilderness bills. Ultimately, when this trend spreads, creeping normalcy (or a shifting baseline) erodes the Wilderness System and we are left with land that no longer matches Congress's 1964 vision of an enduring wilderness resource to pass to future generations. Restraint from human meddling so nature may shape the lands designated Wilderness is the challenge to which we must rise.

To ensure new Wilderness bills protect wilderness character, we encourage the drafters and editors of these bills to consider the following measures to preserve wilderness character:

1. Avoid non-conforming uses in new Wilderness designations.
2. Keep Wilderness bills brief and free of special-management language, even if the intent is to reiterate the provisions of the Wilderness Act. When interpreting statutes, the courts will assume that every word has meaning, so even if a bill meant to confer the same thing, but uses even slightly different words, it could lead to an interpretation different than what was intended.
3. Place non-conforming uses outside the wilderness boundary if possible or phase out non-conforming uses.
4. Consider alternative designations if special provisions that compromise the ability to protect the area as Wilderness can't be avoided.

We have enclosed our report on special provisions in Wilderness bills. We ask the Committee to consider this report and our testimony, as all of the Wilderness bills considered today have non-conforming provisions in them. They would allow in the Wildernesses they designate, and contrary to what the Wilderness Act would allow, the following activities: military overflights, climatological data-collection structures, wildlife water structures, and any activity allowed in

House Report 101-405, Appendix B, among other things. They repeat various sections of the Wilderness Act where it is unnecessary and risks different language conflicting with the Act.

Below we discuss some specific and concerning non-conforming provisions.

Management activities in Wilderness bills that allow "policies established in Appendix B of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rep. 101-405)."

House Report 101-405, Appendix B, did not originate from careful committee study or hearings informed by public testimony—members of Congress did not generate the framework, concepts, or even the words in this document.[1] House Report 101-405 Appendix B is a verbatim restatement of the 1986 management directives created by the US Forest Service (USFS), the Bureau of Land Management, and the International Association of Fish & Wildlife Agencies. We have included these directives and an unofficial reprint of House Report 101-405, Appendix B with our testimony.

These 1986 management directives, generated with no public or judicial review, clash with the plain language of the Wilderness Act on methods, tools, and at times the appropriateness of wildlife activities themselves. "Many actions sought and taken by state wildlife agencies involve manipulations of wilderness, such as introducing or transplanting species, killing predators, and altering habitat. These examples of trammeling are generally not permitted in wilderness."[2]

For example, the 1986 management directives presume that water-diversion pipelines are acceptable. Yet in 2023, a court enjoined the U.S. Fish and Wildlife Service from starting construction of a pipeline to deliver oxygenated water to fish at the Red Rock Lakes Wilderness because it likely violated the Wilderness Act.[3] The 1986 management directives also assume that poisoning watersheds to kill all aquatic species so the agency may restock a desirable species is also permissible in Wilderness. Last fall, however, a court vacated the US Forest Service's decision to poison a watershed and kill aquatic wildlife with gills so it could introduce a management-desired species in the Absaroka-Beartooth Wilderness.[4]

Other conflicting activities in the 1986 directives (aka House Report 101-405 Appendix B) include—but are not limited to—aerial fish stocking, habitat alteration and facility development, and radio-collaring animals. Courts have found activities such as eradicating potentially rare

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[1] Compare that with H. Rep. 101-405, Appx A, which is a reprint of the Congressional Grazing Guidelines, which, when it was published about eight years earlier, had a hearing before the same Committee and the language of which that Committee originally drafted.

[2] Nie, M, Pitt, K., Barns, C, Haber, J., Joly, J. and Zellmer, S. 2020. *Response to Kisonak's "Fish and Wildlife Management on Federal Lands: the Authorities and Responsibilities of State Fish and Wildlife Agencies."* ENVIRONMENTAL LAW 50: 973-997.

[3] *Wilderness Watch v. USFWS*, 9:23-cv-00077-DWM, Opinion and Order on Motion for Preliminary Injunction, ECF Document 28 (D. Mont. Aug. 8, 2023).

[4] *Wilderness Watch v. US Forest Service*, CV-23-133-M-DWM (D. Mont. Oct 23, 2025).

macroinvertebrates via poison to reintroduce an alternative fish species, propping up wildlife with watering tanks, and helicoptering into Wilderness to radio-collar elk all violate the plain meaning of the Wilderness Act.[5] This court guidance has likely dissuaded further unlawful agency action. For example, the USFS abandoned proposals to authorize state wildlife agencies in Utah and Idaho to helicopter into Wilderness to net-gun and collar mountain goats and bighorn sheep after public comments pointing out court guidance.[6]

Statutorily adopting the agencies' 1986 directives by adopting H. Rep. 101-405, Appx B, will reverse the fate of projects like these and essentially be a backdoor amendment that majorly amends the Wilderness Act.

Referencing the Wilderness Act's Section 4(d)(1), 16 U.S.C. §1133(d)(1), to authorize continuing wildlife management activities in wilderness that employ aircraft, including helicopters

This language shoehorns helicopter-assisted wildlife management activities into a special provision never intended for such a broad and profound nonconforming use. This problematic language has appeared in other bills that we either did not note or were not aware of at the time, such as previous Nevada Wilderness designations tucked into a December 2022 defense-spending bill.[7]

Currently, all existing caselaw that considers administrative use of motor vehicles and aircraft in Wilderness—including motorized wildlife management—considers those activities under section 4(c)—not 4(d)(1). State agencies must seek federal approval for helicopter-assisted wildlife projects in Wilderness, and federal agencies must ensure that authorizing that activity complies with the Wilderness Act, including section 4(c). Repurposing wildlife management activities under 4(d)(1) will amend the Wilderness Act, allowing agencies to land aircraft anywhere they claim to have been and totally excusing them from showing their actions are minimally necessary to protect wilderness character.

The Wilderness Act mandates that federal agencies responsible for administering Wilderness must preserve Wilderness character.[8] The Act does not allow helicopter or aircraft but for a narrow exception of what is minimally necessary to administer Wilderness (section 4(c)).[9] Section 4(d)(1)

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[5] *Californians for Alternatives to Toxics v. USFWS*, 814 F.Supp.2d 992 (E.D. Cal. 2011); *Wilderness Watch v. USFWS*, 629 F.3d 1024, 1032 (9th Cir.2010); *Wilderness Watch v. Vilsack*, 229 F. Supp. 3.d 1170 (D. Idaho 2017).

[6] *See* Utah Division of Wildlife Resources mountain goat and bighorn sheep capture and collar via helicopter in wilderness project, Uinta-Wasatch-Cache National Forests, at https://www.fs.usda.gov/project/uwcnf/?project=49384; and Bighorn Sheep Helicopter Capture and Collar, Nez Perce and Clearwater National Forests, at https://www.fs.usda.gov/project/nezperceclearwater/?project=36611.

[7] Pub. Law 117-263 §§2905, 2931, designating Cain Mountain, Clan Alpine, and Desatoya Mountains Wildernesses, 136 Stat. 3040, 3042-3043, 3048 (Dec. 23, 2022).

[8] 16 U.S.C. §1133(b).

[9] *Id.* at §1133(c). This provision prohibits temporary road, use of motorized vehicles, equipment, motorboats, aircraft, mechanical transport, or installations within Wilderness "**except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter.**" The purpose of the chapter, as

of the Wilderness Act, however, is a special exception—Congress authorized the Secretary to choose to allow the public "the use of aircraft or motorboats, **where** these uses have already become established." 16 U.S.C. §1133(d)(1) (emphasis added). Section 4(d)(1) is for discrete, place-based exceptions where there was an established public use at wilderness designation, such as original backcountry landing strips in the Selway Bitterroot Wilderness. In contrast to identifiable backcountry landing strips used by the public, landing helicopters for wildlife management is not a public use. Nor is it discrete. State or federal agencies, for example could have landed a helicopter once anywhere to drop off a fish biologist in the backcountry. Forcing agency activities into an exception never created for it will open entire Wildernesses to agency helicopter landings, whether that be a state or federal agency.

Buffer zones and exceptions for all uses up to a Wilderness boundary

Since 1980, various legislations that have designated Wilderness have included "no buffer zone" language. Such provisions commonly include language similar to the following:

> *Congress does not intend for the designation of the wilderness area to create a protective perimeter or buffer zone around the wilderness area.*

Wilderness Watch agrees that the protections of the Wilderness Act stop at the Wilderness boundary. This doesn't mean, however, that agencies considering projects outside of Wilderness shouldn't consider how those neighboring projects affect wilderness character inside the Wilderness boundary. Under the National Environmental Policy Act, agencies must always consider how activities in one place affect other places nearby. The question isn't necessarily whether this stops the project, but rather how the project might be modified.

To fulfill the duty to preserve wilderness character,[10] the agency must analyze impacts to wilderness character when it considers the impacts of projects under the National Environmental Policy Act. For example, a federal district court in Minnesota found that the US Forest Service, because of its duty to administer Wilderness so as not to degrade wilderness character, should have considered impacts to the Boundary Waters Canoe Area Wilderness when it rerouted a snowmobile trail adjacent to the Wilderness boundary. The Court held this duty to preserve the wilderness character can apply to agency activities outside the Wilderness boundaries, though it doesn't necessarily prevent those activities—it depends upon the nature of the activity, existing character of the wilderness area, and the extent to which the proposed activity would change the essential, natural characteristics of the Wilderness. For example, the court cited if Wilderness is affected by sounds from recreationists on nearby private property, agency-authorized activities that affect the same Wilderness with sound similar in volume,

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stated in 16 U.S.C. §1131(a), is for an "enduring resource of wilderness," defined in subsection (c) as a place "where the earth and its community of life are untrammeled by man."

[10] 16 U.S.C. § 1133(b).

duration, frequency, and quality would likely not violate 4(b). But a louder, more constant, or different quality of sound might.[11]

Over the past decades, our organization has observed how the agencies interpret "no buffer zone" provisions for Wildernesses designated with this language. Agencies tend to treat this provision as a complete release from any duties to analyze wilderness impacts under the National Environmental Policy Act. Thus activities such as snowmobiles, logging, etc. could occur at the wilderness boundary, regardless of the intensity of its impact to the earth and its community of life inside the wilderness boundary. For the extreme end of ecosystem-disturbing activities, failing to consider the impacts that wilderness-adjacent activities have on Wilderness could result in the degradation or elimination of wilderness character within Wilderness, essentially creating a non-wilderness buffer *within* Wilderness.

Failing to consider impacts to wilderness character inside Wilderness undermines the goals of designating it in the first place. While "no buffer zone" language has not been rare in legislation that designates Wilderness, for the reasons above, Wilderness is best served when lawmakers opt to exclude this language.

Based on our general testimony above, for the Wilderness-designating provisions of the below bills, Wilderness Watch has specific commendations and suggestions for the bills considered in the February 12, 2026 hearing

1. S. 462, Truckee Meadows Public Lands Management Act

We understand this is bill has been introduced in earlier Congresses and was conceived and drafted before its current sponsor. Although we recognize that the lands that pertain to Section 401 are not Wilderness, grazing happens on most of our public lands, including Wilderness, so we follow grazing-related legislation. We support voluntary donations of grazing permits and leases and think this section is fair and forward-looking precedent. Please keep this.

We appreciate the proposal to designate Wilderness. However, in Section 302, which directs Wilderness administration, there are many nonconforming provisions that we discussed above that risk degrading the Wilderness System nationwide. For reasons articulated above, please seriously consider eliminating the following administrative provisions for the accompanying reasons:

- 302(d): "Military Overflights" because these are a nonconforming use, and low-flying aircraft will stress and harass wildlife.
- 302(e): "Wildfire, Insect, and Disease" because this is language from the Wilderness Act and therefore unnecessary and could potentially complicate judicial interpretation.

[11] *Izaak Walton League of America v. Kimbell*, 516 F. Supp.2d 982 (D. Minn. 2007).

- 302(f): "Climatological Data Collection" structures because they are nonconforming structures otherwise prohibited by the Wilderness Act.
- 302(h): "Adjacent Management" because this is the buffer zone language discussed above that, in practice, create a degraded Wilderness zone inside the Wilderness boundary.
- 302(i): Water Rights, subsections (1), (2), and (3) because wildlife and fish need water, and federally reserved water rights accomplish this need. We generally support subsection (4), but do not support guzzlers (for reasons below) and would recommend eliminating (4)(A)(ii).
- 302(j): "Wildlife Management" subsection (2) that codifies House Rep. 101-405, Appendix B, and subsection (3) that allows "Existing Activities" including helicopters to "continue to be used to survey, capture, transplant, monitor, and provide water for wildlife populations in the wilderness areas" because they are nonconforming provisions.
- 302(k): "Wildlife Water Development" because naturally distributed wildlife populations are where natural features like springs or water sources already exist, and this would allow structures that the Wilderness Act would otherwise prohibit.
- 302(m): "Cooperative Agreement" because it presupposes some projects are appropriate in Wilderness and will interfere with an agency's obligation under the Wilderness Act to preserve character.

If eliminating these provisions are not possible, we suggest considering an alternative designation to achieve the desired protection and not adding these areas to the National Wilderness Preservation System.

2. S. 3526, PUBLIC Lands Act

We appreciate the proposal to designate Wilderness. In Section 302, however, which directs how to administer Wilderness, there are many nonconforming provisions that we discussed above that risk degrading the Wilderness System nationwide. For reasons articulated above, please seriously consider eliminating the following administrative provisions for the accompanying reasons:

- 302(d)(2) "Fish and Wildlife" subsection "Management Activities" because this codifies House Rep. 101-405, Appendix B, which allows activities normally prohibited by the Wilderness Act, such as collaring animals, poisoning aquatic wildlife, etc.
- 302(e): "Buffer Zones" because buffer zones outside of Wilderness, in practice, creates a degraded Wilderness zone inside the Wilderness boundary.
- 302(f): "Military Activities" because they are a nonconforming use, and low-flying aircraft will stress and harass wildlife.

- 302(g): "Horses" because horses are not prohibited by the Wilderness Act, so they do not need a special exception. Further, there is a Wilderness Act narrow exception for commercial use that addresses the commercial aspect of this provision.
- 302(j): "Climatological Data Collection" structures because they are non-conforming structures that are otherwise prohibited by the Wilderness Act.
- 302(k): "Recreational Climbing" because this is already addressed with the EXPLORE Act's amendment to the Wilderness Act.

If eliminating these provisions are not possible, we suggest considering an alternative designation to achieve the desired protection and not adding these areas to the National Wilderness Preservation System.

We recognize and very much appreciate Section 303 in that it designates Wilderness after non-conforming activities have ceased (instead of designating Wilderness and then allowing exceptions). We also very much appreciate subsection (e), which is the administration section for this area and simply says that, once the area becomes designated Wilderness, it is administered under the 1964 Wilderness Act. We encourage amendments to the administration provision in Section 302 so that it reflects the administration provision in Section 303.

3. S. 3527, Montana Sportsman Conservation Act

Wilderness Watch opposes this bill. There is less than four percent Wilderness in the Lower 48. Human's tendency is to consume, and the Wilderness Act was enacted at a time when industrial and technological developments were allowing us to consume space and modify landscapes at rapidly increasing speed.

When Congress passed the Wilderness Act, the population was just a little over half of what it is now. The pressures are greater than ever. Habitat destruction is greater than ever, including habitat destruction in the name of forest "management." Wild areas, including areas we could add to the Wilderness System, are dwindling, and we do not support efforts to speed up development into undeveloped areas where nature is currently the primary driver.

4. S. 1981, Strategic Grazing to Reduce Risk of Wildfire Act

As mentioned above, Wilderness Watch follows grazing legislation because Wilderness has grazing. Grazing is grandfathered into Wilderness where it was active at the time of Wilderness designation. There are also many vacant grazing allotments in Wilderness.

We find it problematic that the premise of this bill assumes grazing can reduce wildfire when this premise is not supportable.

Grazing exacerbates wildfire in addition to degrading habitat for native species, and taxpayers heavily subsidize this. Grazing reduces native grasses and spreads non-native grasses, such as cheatgrass. Cows break up the biocrust and eat the native grass. Non-native grasses, with their shallow roots, germinate and establish in the broken biocrust and establish more quickly than native grasses. For example, cheat grass, a common non-native grass, spreads *because of grazing*, grows much faster in a season than native grasses, and dries out much sooner, too. As a result, it creates more flammable fuels and actually can exacerbate wildfire severity. We have included a factsheet and are more than happy to follow-up with more information.

Because grazing actually exacerbates wildfire risk and severity by spreading non-native grasses, it cannot be considered a wildfire risk reduction tool to address non-native grasses. Given time to recover, in many cases native grasses that establish and grow without being trampled and eaten by cows will outcompete invasive grasses in the long term. So the solution to mitigate wildfire severity is less grazing, not more.

We also are very concerned with the bill's proposed use for vacant allotments. Allotments that have been vacant for years have recovered from grazing degradation and have improved habitat for terrestrial and aquatic wildlife. Generally, an agency needs to conduct an environmental review when it proposes to restock livestock on a vacant allotment in Wilderness.

Some issues Wilderness Watch is currently encountering on-the-ground are proposals to restock vacant allotments in Wilderness that rely on very outdated environmental impact statements (some outdated by 40 years). A more serious issue we are currently investigating includes several instances where the US Forest Service has restocked vacant allotments in Wilderness clandestinely, without public notification and in reliance on these decades-old environmental reviews.

This bill would exacerbate wildfire and create more issues with restocking vacant allotments in Wilderness without proper environmental review, and for those reasons, we oppose this bill.

We welcome the opportunity on any further discussions of anything we have discussed above.

Thank you for the opportunity to submit testimony.

Sincerely,

Katie Bilodeau
Legislative Director / Policy Analyst
Wilderness Watch

Keeping the Wild in Wilderness:

Minimizing Non-Conforming Uses in the National Wilderness Preservation System

A Tool for Protecting Wilderness in Future Wilderness Designations

A Wilderness Watch Policy Paper
Prepared by George Nickas and Kevin Proescholdt
June 2005

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Forward

> It behooves us then to do two things: First we must see that an adequate system of wilderness areas is designed for preservation, and then ***we must allow nothing to alter the wilderness character of the preserves.*** [empahsis added]
>
> — Howard Zahniser, "The Need for Wilderness Areas," 1956

The Wilderness Act, passed in 1964, was a uniquely American idea and a tribute to the vision of Americans who saw the value in setting aside from human domination some valuable remnants of primitive North America. The Act established the National Wilderness Preservation System "for the permanent good of the whole people" to be protected and managed so as to preserve its wilderness character.

Forty years later, it is increasingly clear that, despite the best intentions of the law, the lands within the NWPS are degrading. One of the greatest emerging challenges to protecting the wild character of these lands is the preponderance of special provisions or non-conforming uses being included in Wilderness bills. These provisions not only allow activities within Wilderness that are inappropriate and degrade individual areas, but more importantly the cumulative impact of these provisions threatens to diminish the core values that distinguish Wilderness from other public lands.

It is with the hope of reversing this trend, and of better acquainting those involved in Wilderness designation and stewardship with the special challenges posed by non-conforming uses and of protecting Wilderness that this policy paper has been prepared.

Wilderness Watch was formed in 1989 to assure that the wilderness qualities and special values of areas within the National Wilderness Preservation System (NWPS) and Wild and Scenic Rivers System are preserved and not allowed to diminish over time. In this respect, Wilderness Watch fills a vital and unique niche not otherwise filled by our partners in the wilderness community. Wilderness Watch is the only national organization whose primary mission is to assure that the wilderness qualities of our designated Wildernesses remain protected into the future.

Wilderness Watch's Board of Directors and staff have decades of experience in wilderness protection as conservation organization leaders, wilderness stewards, and as wilderness guides. While Wilderness Watch as an organization does not lobby directly for passage of new designation bills, members of the board and staff have many decades of experience with and continue to be involved in campaigns to designate additional Wilderness across the country. Wilderness Watch strongly supports designating additional Wilderness and expanding the National Wilderness Preservation System, but believes that protecting additional Wilderness can and must be done in a manner that does not "alter the wilderness character of the preserves."

Executive Summary

Wilderness character in many parts of the National Wilderness Preservation System (NWPS) has been steadily declining. A primary reason is the growing number of exceptions or "special provisions" included in wilderness bills coupled with a lack of understanding for how those provisions are affecting the system. This white paper describes those values most at risk, how special provisions threaten those values, and provides a series of recommendations to ensure that new wilderness bills don't inadvertently further the erosion of those values that make Wilderness authentic, valuable, and unique.

I. Overview: Wilderness has its own Meaning and Worth

1. National Wilderness Preservation System (NWPS). Congress established a nation-wide system of wilderness, now covering lands administered by four federal agencies, with passage of the 1964 Wilderness Act. By creating a system of wilderness, Congress intended that each unit would be part of and add to the value of a cohesive, greater whole.

2. Wilderness – Legal definition. The Wilderness Act also established a statutory definition of wilderness. The Act defines it in part as: "A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."

3. Wilderness Character – What the law seeks to preserve. The Wilderness Act mandates the preservation of wilderness character within each unit of the NWPS. Wilderness character includes not only the physical attributes of a land unmanipulated by humans, but also many intangible values associated with opportunities for solitude, or primitive and unconfined recreation and all of its components.

II. How Non-Conforming Uses are Degrading Wilderness

Wilderness is being degraded by many things including increasing motorized uses, commercialization, manipulation of natural processes, and recreational pressures. Special provisions in some new wilderness bills exacerbate this degradation.

1. Non-conforming uses diminish an area's wilderness character and the opportunity for present and future generations to experience the unique benefits that authentic Wilderness provides. An array of non-conforming uses has decreased the recognizable core qualities that define wilderness across the system, and has brought about a gradual decline in the overall wilderness standards that govern the NWPS. Special provisions written into Wilderness bills since 1980 are proving to be particularly damaging to wilderness character.

2. Non-conforming uses allowed in one wilderness bill are often replicated—and sometimes expanded—in subsequent wilderness bills. The Congressional Grazing Guidelines, provisions exempting fish and wildlife management practices from the Act's prohibitions, and provisions fostering access to private "inholdings" are among the examples of how non-conforming uses allowed by some wilderness bills are placed in subsequent bills.

III. Suggestions for Ensuring that New Wilderness Bills Protect Wilderness Character:

Protecting the quality and integrity of the National Wilderness Preservation System requires that wilderness advocates oppose the use of special provisions in new wilderness bills. Specific suggestions for those drafting new bills include:

1. Avoid non-conforming uses in new wilderness designations. Keep proposals for designating new Wildernesses clean of non-conforming uses not already allowed under the 1964 Wilderness Act.

2. Keep wilderness bills brief and free of special management language, even if the intent of the language is simply to reiterate the provisions of the Wilderness Act. Resist the temptation of some in Congress to re-phrase the provisions of the Wilderness Act; instead insist on language that simply states that the new wilderness shall be managed in accordance with the Wilderness Act. Saying the "same thing" in different words inevitably leads to different interpretations of what was intended by the new law.

3. Minimize the impacts of any non-conforming uses in wilderness legislation. Place the non-conforming uses outside of the wilderness boundary if possible. Consider the use of phase-outs of non-conforming uses over time.

4. Consider alternative designations if special provisions that compromise the ability to protect the area as Wilderness can't be avoided. If the goal is to prevent other uses such as logging or ATVs, other land classifications may be more appropriate. The Rattlesnake Wilderness and National Recreation Area in Montana provide an example of a combination of classifications used by Congress to protect part of the Rattlesnake area from extractive uses and ATVs with other than wilderness designation.

Conclusion

Wilderness advocates must ensure that both special provisions in new wilderness bills and incompatible uses in existing wildernesses are not allowed to further degrade the wilderness character of the NWPS. We must seize opportunities to stem the erosion of wilderness standards and the gradual degradation of the system that is occurring due to special provisions in wilderness legislation. By taking an aggressive stance against new non-conforming uses, we can ensure that we pass on to future generations the "enduring resource of wilderness" that the framers of the Wilderness Act sought to preserve and that future generations deserve to enjoy.

I. Overview: Wilderness Has Its Own Meaning and Worth

Wilderness, above all its definitions, purposes and uses, is sacred space, with sacred power, the heart of a moral world.

— Michael Frome

To understand the manner in which wilderness conditions are being eroded and wilderness character degraded, we must first understand what wilderness is, what wilderness character means and symbolizes, and what standards are necessary for protecting wilderness as a unique resource.

1. National Wilderness Preservation System

With passage of the 1964 Wilderness Act, Congress established the National Wilderness Preservation System (NWPS). The system now includes lands within national forests, national parks, national wildlife refuges, and lands administered by the Bureau of Land Management.

Units in the NWPS range in size from the tiny Pelican Island Wilderness off the coast of Florida (less than 5 acres) to the 9.1 million acres in Wrangell-St. Elias Wilderness in Alaska. The NWPS has grown to include more than 660 areas that collectively total 106 million acres.

By creating a wilderness system, Congress intended that each unit would be part of a cohesive, greater whole. Like biological systems, the Wilderness system has been enhanced as it has grown larger and more ecologically and physiographically diverse. So too, however, have the risks to the health of that system grown. These risks come from incursions by incompatible uses and activities that undermine the authenticity of Wilderness. In this sense it is useful to think of the Wilderness system as analogous to a river. Each new tributary can bring strength and diversity to the river system. At the same time, however, each new tributary has the potential to harm the main current if the tributary is polluted. As is often the case with rivers, each additional pollutant might seem a small matter, but the cumulative effect of many impurities significantly degrades the river system as a whole. Unlike a river, where a polluted tributary only harms water quality downstream of where it enters the main stem, in the Wilderness system the damage also works it way "upstream" harming those areas that were seemingly protected with Wilderness designation years or decades before.

Congress, federal agencies, and citizen advocates must always be mindful that exceptions to generally established wilderness principles and prohibitions in one area pose the threat of setting precedents that could affect, and, in fact, have affected wilderness stewardship throughout the system.

2. Wilderness – Legal definition

Wilderness designation is a protective overlay given by Congress to some federally owned lands in the United States. With passage of the Wilderness Act in 1964, Congress created this new land classification and gave the concept of 'wilderness' a legal definition. The first paragraph of the Act refers to an "enduring resource of wilderness," with "resource" being singular. Congress specifically recognized wilderness as a unique resource in its own right, not just a collection of other natural resources.

The statutory definition of wilderness is found in Section 2(c) of the Wilderness Act. The framers of the Act intended that the first sentence of this section would establish the meaning of wilderness:

> A wilderness, *in contrast* with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are *untrammeled* by man, where man himself is a visitor who does not remain.[1] [emphases added]

By law, wilderness is to remain in contrast to modern civilization, its technologies, conventions, and contrivances. This intent is underscored in Section 4(c) of the Act expressly prohibiting commercial enterprises and permanent roads. With only very narrow exceptions it prohibits temporary roads, motor vehicles, motorized equipment, motorboats, aircraft landings, mechanical transport, structures, or installations in wilderness. These incompatible activities are prohibited because allowing their intrusion blurs the distinction between wilderness and modern civilization, diminishing wilderness character and the unique values that set it apart.

Congress also specified that Wilderness would be untrammeled, meaning free of the human intent to manipulate, alter, control, or subjugate nature. In Wilderness, the forces of nature would be allowed to shape the landscape and the interplay of plants and animals without intentional human interference. In this definition, Congress defined the core qualities of Wilderness. It also provided statutory direction for how humans will interact with Wilderness, what our relationship will be with these special places. In Wilderness, Congress clearly intended that human activities and technologies will not dominate or develop the landscape, and will not manipulate natural processes.

The Act further specifies that Wilderness 1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, 2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation, 3) generally covers at least 5,000 acres in size, and 4) may contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Taken together, the definition recognizes that areas designated as wilderness may have some signs of past human influence and uses, but that once designated, human influence will be restrained and minimized so that wilderness will remain untrammeled from that point forward, and signs of past human dominance will fade over time.

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[1] In testimony before the final Senate hearing on the wilderness bill in 1963, the bill's chief author Howard Zahniser testified that: "The first sentence defines the character of wilderness...In this definition the first sentence is definitive of the meaning of the concept of wilderness, its essence, its essential nature–a definition that makes plain the character of lands with which the bill deals, the ideal."

3. Wilderness Character – What the law seeks to preserve

> *The purpose of the Wilderness Act is to preserve the wilderness character of the areas to be included in the wilderness system, not to establish any particular use.*
> —Howard Zahniser testifying to Congress, 1962

The overarching statutory mandate in the Wilderness Act is to preserve the wilderness character of each wilderness within the NWPS. This principal tenet of the law is described in Section 4(b):

> "...each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character."[2]

Preserving wilderness character includes protecting the natural and scenic qualities of the landscape, natural soundscapes, and the free play of ecological and evolutionary processes. Wilderness character also includes the absence of those things that diminish it, such as human-built structures, roads, bridges, campsites, highly developed trails, motor vehicles, mechanized equipment, crowding, mining, and livestock grazing.

Like personal character, wilderness character is comprised of even more than these tangible attributes; it involves intangible qualities as well. These components include outstanding opportunities for solitude and primitive and unconfined recreation, and the associated experience of freedom, self-reliance, risk, adventure, discovery, and mystery. Wilderness is a place set apart – both physically and psychologically – from modern civilization and its commercial and material distractions.

True, the intangible values are subjective, but there is a direct correlation between maintaining these attributes and maintaining Wilderness on the ground. If these values erode and Wilderness becomes less wild and unique, there will be fewer opportunities for future generations to experience the benefits of an authentic Wilderness setting.

Perhaps the best attempt to define and embrace all these aspects of wilderness character came in the U.S. Fish and Wildlife Service's 2001 Draft Wilderness Stewardship Policy. This policy stated in part:

Preserving wilderness character requires that we maintain the wilderness condition: the natural, scenic condition of the land, biological diversity, biological integrity, environmental health, and ecological and evolutionary processes. But the character of wilderness embodies more than a physical condition.

> *The character of wilderness refocuses our perception of nature and our relationship to it. It embodies an attitude of humility and restraint that lifts our connection to a landscape*

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[2] Numerous courts have found that preserving wilderness character is the purpose of the Wilderness Act. See, for example, *Wilderness Watch v. Mainella*, 2004 (11th Circuit Court of Appeals) and *High Sierra Hikers Assn. v. Blackwell*, 2004 (9th Circuit Court of Appeals).

from the utilitarian, commodity orientation that often dominates our relationship with nature to the symbolic realm serving other human needs. We preserve wilderness character by our compliance with wilderness legislation and regulation, but also by imposing limits upon ourselves.

U.S. Fish & Wildlife Service, "Draft Wilderness Stewardship Policy,"
Federal Register, Vol. 66, No. 10, Jan. 16, 2001, p. 3714.

II. How Non-Conforming Uses Are Degrading Wilderness

The unique values that characterize lands within the National Wilderness Preservation System are being steadily degraded. The culprits can be broadly categorized as 1) increased motorized use, 2) commercialization, 3) manipulation of natural processes, and 4) changing types and levels of recreational use. The underlying causes of these threats include lack of commitment to wilderness protection at the highest levels within the agencies, lack of oversight or commitment to wilderness stewardship from Congress, limited public awareness of the risks threatening the integrity of the NWPS, and the willingness of some wilderness advocates to accept special provisions. These problems are exacerbated by special exceptions written into wilderness bills. Indeed, special provisions are becoming paramount in the overall threats to Wilderness nationwide.

1. Non-conforming uses diminish an area's wilderness character and the opportunity for present and future generations to experience the unique benefits that authentic Wilderness provides.

Wilderness must be kept whole, with all its physical as well as more intangible parts.
— Olaus Murie, biologist and former president of The Wilderness Society

Section 4(d) of the Wilderness Act is titled "special provisions." These so-called non-conforming uses are compromises that diminish wilderness character, but were nonetheless written into the original law. They include special provisions such as agency discretion to allow aircraft and motorboat use where previously established, mining, water developments, grazing, commercial services, fire suppression, timber cutting (in the Boundary Waters), and continued regulation of hunting, fishing, and trapping by the states. These special exceptions are qualified to various degrees so as to provide federal wilderness managers with the ability to regulate these uses to minimize their impacts on Wilderness. Moreover, many of the special provisions applied only to national forest and BLM-administered Wildernesses, not to Wildernesses in national wildlife refuges or national parks.

The damage caused by these exceptions varies, with some of the original provisions resulting in little or no impact. For example, the provisions allowing logging in the Boundary Waters Canoe Area Wilderness were later rescinded by Congress. The provision allowing the President to authorize new water developments has never been exercised, and the allowance for staking new mining claims expired in 1984.

Conversely, some of the special exceptions in the Act are resulting in serious degradation to wilderness character, most notably from livestock grazing and its administration, suppression of naturally ignited fires, expansion of commercial services (and their inappropriate reliance on motorized equipment and structures), and the conduct of state fish and wildlife agencies (including habitat manipulation, fish stocking, and motor vehicle use).

It is important to keep in mind that with the exception of honoring private existing rights and for fire management, where Congress gave the Secretary broad discretion, the Wilderness Act requires that the other activities be administered so as to protect wilderness character. For instance, the exception for commercial services allows for commercial outfitting and guiding, but those activities must be done in a manner that protects the wilderness character of the areas. In other words, while the Wilderness Act al-

lowed for some non-conforming activities, the law also provided managers with the tools they needed to ensure that the impacts from these exceptions would be rare and carefully controlled. Unfortunately, the good intentions of the law are not always being realized on the ground.

The responsibility for regulating the uses allowed by special provisions falls to federal agencies that have often not been supportive of good Wilderness stewardship. Special interests, especially economic ones, are particularly effective at influencing management and policies. The "nose in the tent" enabled by the special provision soon becomes the entire animal, if not the whole herd running roughshod over the area's wilderness character. It's not a matter of an isolated instance or occasional transgression. All four agencies are falling woefully short in meeting their stewardship responsibilities, and these shortcomings transcend the past several administrations.[3] Given the lack of commitment to or understanding of good stewardship on the part of some managers, exceptions in wilderness bills often result in far more damage to wilderness character than the writers and supporters of these exceptions anticipated.

Special provisions that have been included in Wilderness bills since 1980 are proving to be particularly damaging to wilderness character. In all likelihood, the impacts of these exceptions were expected to be small and carefully regulated at the time, but the reality has been far different. Relaxed restrictions on livestock grazing, expanded access to private inholdings, actions of state fish and wildlife management agencies, and myriad other exceptions are resulting in consequences far beyond what could ever be considered as appropriate in Wilderness. Similarly, exceptions in some Wilderness bills coupled with rapidly expanding technologies, growing affluence among the general public, and the popularity of motorized recreation have opened some of the most remote Wilderness lands to routine aircraft, jetboat, and snowmobile use.

The Central Idaho Wilderness Act (CIWA), which designated the River of No Return Wilderness, is a case in point.[4] When that law was passed in 1980 there were eight airplane landing strips in the Wilderness in public use on national forest land. Under the Wilderness Act, the Forest Service had the authority to close any or all of the landing strips and was moving in that direction on at least two. A special provision in CIWA prohibited the Forest Service from closing any landing strip "in regular use on national forest lands" at the time of designation without the express approval of the State of Idaho.[5] This provision effectively precluded closing any of the existing strips and in fact has resulted in a far worse condition. Under pressure from pilots and the State, the Forest Service recently recognized four meadows as additional historic landing strips, increasing the total number to 12. Furthermore, the landing of airplanes in the Wilderness has exploded to more than 5,500 each year, much of it for practicing touch-and-go landings and for "bagging" airstrips—activities that have nothing to do with accessing the area for wilderness purposes.

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[3] See, for example, Pinchot Institute for Conservation, *Ensuring the Stewardship of the National Wilderness Preservation System: A Report to the USDA Forest Service, Bureau of Land Management, US Fish and Wildlife Service, National Park Service, US Geological Survey*, September 2001.

[4] The name was later changed to the Frank Church-River of No Return Wilderness

[5] Beyond the on-the-ground impacts to the Wilderness, this provision has the dubious distinction of being the first so-called "Sagebrush Rebellion" provision in a Wilderness bill in that it granted the State decision-making authority over parcels of federal land.



Special provisions have allowed motorized recreation to skyrocket in many areas, such as here in Frank Church-River of No Return Wilderness in central Idaho.

Another special provision in CIWA prohibited the Forest Service from reducing motorboat use on the main Salmon River to a level below that which occurred in 1978. Forest Service reports prepared at the time indicate there was a relatively small number of jetboats using the main Salmon River, primarily to access private lands on the lower half of the river. The upper 40 miles of designated Wild River received fewer than one jetboat trip per day in 1978. Today, in addition to those using jetboats to access private property in the lower river canyon, the Forest Service permits 18 commercial companies unlimited use for hauling rafters, hunters, fishers, and sightseers up and down the entire length of the 85-mile-long Salmon River.

In 2003 the agency also tripled (to 40 boat-days/week) the amount of private jetboat use allowed during the summer season. There are no limits on off-season trips. In short, special provisions in the CIWA have allowed the largest contiguous Wilderness in the lower 48 States, an area that should provide the ultimate wilderness experience, to instead be riddled with unlimited airplane and jetboat use.

It is also important to note that much of the motorized use occurs in order to facilitate *commercial services* (outfitting and guiding), a Wilderness Act exception that itself is limited to the degree that the activity is both *necessary* and *proper* in a wilderness context.

Special provisions in the law opened the door for the damage that is seriously degrading the character of this Wilderness, and Forest Service managers have found the language in the law a convenient excuse to avoid adopting safeguards to protect the area from even greater abuse.

A similar problem has emerged from the 1980 Alaska National Interest Lands Conservation Act (ANILCA), which designated 56 million acres of Wilderness. This landmark law allowed airplane, snowmachine, and motorboat use for traditional activities, which to the bill's supporters were understood to be rather narrowly limited to subsistence uses like hunting, fishing, and berry-picking. Motorized access interests and their supporters in the agencies, however, have used the special provision to open most of Alaska's Wilderness to motorized recreation.

Today, recreational snowmobiling has become a popular pastime on parts of the Kenai Wilderness, and snowmobiles have penetrated nearly every drainage on the north slope of the Brooks Range in the 8 million-acre Arctic Wildlife Refuge Wilderness.[6] Arctic visitors complain about the inability to escape

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[6] The name "Arctic Wildlife Refuge Wilderness" is the name given to the area in 1980 and is still in common usage. However, the name was changed to the Mollie Beattie Wilderness in 1996.



Commercial outfitting camps catering to aircraft-intensive hunting parties are fairly common in many Wildernesses in Alaska. This camp is in the Arctic Refuge Wilderness.

the drone of airplanes shuttling trophy hunters in, out, and around the refuge in search of game, and landing strips now scar the arctic tundra in places where airplane landings were non-existent at the time of enactment of ANILCA. In one of the most egregious cases of abusing a special provision in ANILCA, the National Park Service (NPS) is proposing to open more than 40 percent of the 3.9 million acres of potential wilderness in Denali National Park to recreational snowmobiling. No one, at least not in the late-1970s, could have anticipated the development of the modern high-power, go-anywhere snowmobiles that we have today, nor would they have expected that the NPS would promote such a destructive plan. But the seeds for destruction were planted by the special provision in the 1980 wilderness bill, and they are bearing fruit that is growing more toxic to Alaska's wilderness character with every passing day.

Similarly, motorboats legally roar across one-fifth of the water surface area of the Boundary Waters Canoe Area Wilderness under special provisions of the 1978 BWCA Wilderness Act, and the Forest Service is promoting an increase in motorboat permits there. Due to a provision in the California Desert Protection Act (CDPA), State game and fish managers routinely use motor vehicles for access in dozens of desert Wildernesses in California, while motorized access for construction, maintenance, and operation of artificial water sources ("guzzlers") in Arizona has resulted in permanent roads in some areas. Construction of new guzzlers to artificially increase populations of game species is authorized in several recently designated Wildernesses in Nevada. As motorized allowances become the norm, special interests clamor for even more and all too many managers are forced – or are willing – to accommodate them.

One of the most widespread examples of the unanticipated consequences of special provisions is the Congressional Grazing Guidelines (CGG) that Congress first adopted in a Colorado national forest wilderness bill in 1980. They have been included in most national forest and BLM wilderness bills since that time. Livestock grazing was "grandfathered" in the 1964 Wilderness Act, which provided that, subject to reasonable regulation, livestock grazing shall be allowed to continue in those areas where it was an established use. The 1980 grazing guidelines, written to appease ranchers in the hope that it would lessen that industry's opposition to new wilderness designation, cracked open the door to a variety of more abusive uses. The guidelines authorized ranchers to use motor vehicles and equipment and to develop new "improvements" for certain livestock management activities provided there were no "practical alternatives" and where such activities cannot "reasonably and practically be accomplished on horseback or foot."[7]

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[7] The Congressional Grazing Guidelines have been incorporated in the Forest Service Manual at FSM 2323.22 and can be viewed at www.fs.fed.us/im/directives/fsm/2300/2320.1-2323.26b.txt.

Most wilderness advocates at the time felt the impact of the guidelines would be minor and result in motor vehicle incursions only under the rarest of circumstances. Most Wilderness areas designated prior to 1980 had little or no domestic livestock grazing within their borders. In those Wildernesses with substantial livestock grazing, the use of motor vehicles as part of those grazing operations was rare or non-existent.[8] To many, the impact of the CGG seemed very minor at the time.

That is changing. Many of the Wildernesses added to the system in the past two decades, particularly those in the Intermountain West and the desert Southwest, are extensively grazed by cattle and sheep. Ranchers have become increasingly accustomed to using off-road vehicles, including ATVs, in these areas. The BLM in particular, which now administers about one-quarter of all Wildernesses, has proven woefully lenient in allowing ranchers to drive off-road vehicles in Wilderness. For example, in administering the Steens Mountain Wilderness in eastern Oregon, BLM allows ranchers unrestricted use of motor vehicles for tending their cattle.[9]

Surely, the experience of 25 years with the grazing guidelines argues for stricter limits on grazing-related management practices in future Wilderness bills. But the trend is in the other direction. The recently released Owyhee Initiative covering nearly one million acres of land in southwestern Idaho would expressly allow ranchers to routinely drive motor vehicles, including ATVs, in wilderness to herd their cattle. This is a far cry from the standard of "no practical alternatives" established in 1980. What seemed like a narrowly crafted and rare allowance for vehicle use in a wilderness bill 25 years ago has morphed into vehicle use becoming the modus operandi for tending cattle and sheep, fixing fences, distributing salt, and "riding the range" in modern wilderness bills.

Further insults to the ecological and aesthetic values of Wilderness can be traced to the guidelines. In 2002 a federal court, relying on the grazing guidelines, ruled that the Department of Agriculture was justified in killing a large number of mountain lions in the Santa Teresa Wilderness in Arizona in order to protect domestic livestock. Without the grazing guidelines in place, one would be hard-pressed to make the case that the Wilderness Act allows for predator control to protect domestic livestock.[10] As Aldo Leopold succinctly stated in *A Sand County Almanac*, "One of the most insidious invasions of wilderness is via predator control."

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[8] In the late 1990s, as part of an appeal challenging a US Forest Service decision allowing motorized access to a line-shack on the Mazourka Allotment in the Inyo Mountains Wilderness in California, neither Wilderness Watch nor the Forest Service were able to identify a single instance where the Forest Service had permitted motorized access in a Wilderness for grazing purposes.

[9] The Congressional Grazing Guidelines are more restrictive than BLM's implementation of them on Steens Mountain. However, environmentalists have thus far been unsuccessful in trying to prevent unlimited driving, while local congress men have consistently pressured BLM to interpret the Guidelines in the most lenient fashion. BLM relies on ambiguous language in the Steens Act to justify its actions.

[10] *Forest Guardians v. Animal & Plant Health Inspection Serv.*, No. 01-15239, United States Court of Appeals for the Ninth Circuit, 309 F.3d 1141 (2002).

These examples represent just a few of the threats presented by special provisions in wilderness bills, and they highlight the *unintended consequences* that arise from making such exceptions. Most managers have been unable or unwilling to regulate or limit these non-conforming uses. Thus even when discretionary safeguards have been included in legislation, they have proven ineffective for protecting wilderness character from the harm resulting from special provisions. One can only guess what the extent of damage will be from proposed wilderness bills that allow for military training exercises, the construction of telecommunication structures, and that elevate recreation use, stock use, new trail construction, and commercial and other economic interests above preservation of wilderness character.

This array of non-conforming uses decreases the recognizable core qualities that define Wilderness across the system. It brings about a gradual decline in the overall wilderness standards that govern the NWPS. The growing number of exceptions for non-conforming uses provides excuses for those wilderness managers who are unsympathetic to the wilderness ideal to provide only lax management protections or shirk their wilderness stewardship responsibilities when they see Congress permitting all sorts of new non-conforming uses in wilderness legislation. Sadly, the growing number of exceptions is being used by some short-sighted conservationists as justifying additional exceptions in new bills.

Some non-conforming uses in Wilderness may seem small, or of little impact in a National Wilderness Preservation System that encompasses more than 660 areas and 106 million acres. But each non-conforming use violates the ideal and integrity of Wilderness and diminishes the wilderness character and symbolic value of all Wilderness areas in the system. The cumulative impact of hundreds of non-conforming uses is not small.

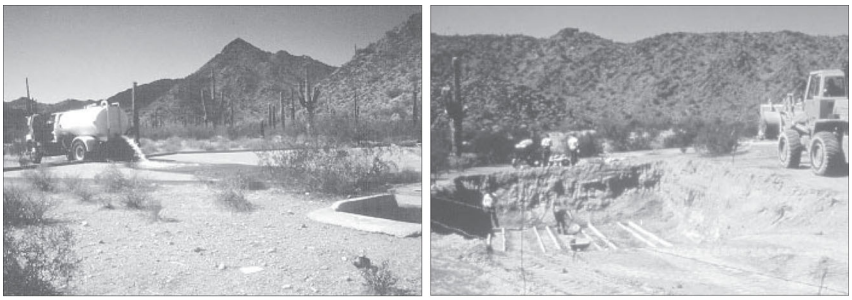
2. Non-conforming uses allowed in one wilderness bill are replicated — and often expanded — in subsequent wilderness bills.

Once an exception is made in one bill, it becomes politically harder to exclude similar exceptions in future wilderness bills. It also becomes psychologically easier for conservationists to accept exceptions and compromises when "it's already been done elsewhere." Adding non-conforming uses and special exceptions in wilderness bills results in lowering the standard for what wilderness means, how we interact with these special places, and diminishes the unique benefits that authentic Wilderness can provide.

Three noteworthy examples of provisions that have become troublesome precedents for other bills include 1) the Congressional Grazing Guidelines (CGG), 2) allowances for motorized access for State fish and game departments, and 3) access to inholdings (non-federal lands). While some may argue that there are no binding precedents, that each bill is a unique situation, history argues otherwise.

The grazing guidelines discussed earlier are a prime example that needn't be discussed further except to note that as precedents go, the guidelines have been included in nearly every new wilderness bill involving national forest and BLM-administered lands since they were first applied in 1980.

Special language allowing motorized access for fish and wildlife management provides another example of how a narrow exception in one bill evolves into highly destructive exceptions in future bills. The first specific exception allowing for vehicle use for wildlife management appeared in the 1984



Meals on Wheels. BLM-administered North Maricopa Mts. Wilderness, Arizona: A water truck fills a wildlife "guzzler" (left); constructing a "guzzler" (right). Both guzzlers utilize permanent access roads. Special provisions in recent Wilderness bills are used to justify this wilderness character-damaging activity.

Wyoming Wilderness Act, 20 years after the 1964 Act was signed. The provision allowed motorized access to a specific location in the Fitzpatrick Wilderness for capturing bighorn sheep.[11] Six years later, Congress allowed for greatly expanded motorized access and other wilderness-destroying activities under the guise of wildlife management in 39 new Wildernesses designated in the Arizona Desert Wilderness Act.[12] As a result there are now permanent roads in some Wildernesses used for constructing, operating, and maintaining artificial water developments, called "guzzlers," which are designed to artificially inflate the numbers of bighorn sheep and other game species. In various forms, this exception for motorized uses for fish and wildlife management has been continued in several subsequent wilderness designations including the Los Padres Condor Range and River Protection Act (1992), the California Desert Protection Act of 1994, the Clark County Conservation of Public Land and Natural Resources Act of 2002, and the Lincoln County Conservation, Recreation, and Development Act of 2004.

Unlike the first exception which appeared in the Wyoming bill – and applied to a specific place in only one of the 13 Wildernesses designated or added to in that bill – these subsequent bills have granted carte blanche exceptions for all the areas included in the bills. In short, a narrow exception applied once to a tiny portion of a single area in the first 20 years of Wilderness designation has become a broad and expansive exception applying to the entirety of more than 100 Wildernesses.

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[11] The provision applied only to a 6,000-acre addition to the Fitzpatrick Wilderness in order to allow occasional motorized access for capturing and transporting bighorn sheep. The trapping program had been conducted for many years to trans plant bighorns from the Wind River Mountains to other mountain ranges throughout the West where Rocky Mountain bighorns had been extirpated.

[12] The Arizona Desert Wilderness Act of 1990 referred to a memorandum of understanding (MOU) between BLM, the Forest Service, and the International Association of Fish and Wildlife Agencies (IAFWA) as guidance for the types of activities that should be allowed in Wilderness. The MOU allows for predator control, constructing artificial water sources, poisoning streams, stocking non-native fishes, and, in many cases, the use of motor vehicles and motorized equipment in carrying out these activities. While the federal land managers retain authority to regulate or limit any activity under the MOU they are often unable or unwilling to do so. MOUs are not legally enforceable unless they are incorporated into statutes, as is the case in a growing number of wilderness bills.

Access to private lands ("inholdings") that are surrounded by Wilderness provides a third example of how precedents are unexpectedly set when damaging provisions are included in a Wilderness bill. The framers of the Wilderness Act anticipated the potential conflict between Wilderness protection and the desires of private landowners wanting access to their inheld lands. In those cases where the desired access is incompatible with Wilderness protection, the 1964 Act offers the inholder "adequate access" or an "exchange[d] for federally owned land in the same state of approximately equal value" (Section 5(a)). An Opinion from the United States Attorney General in 1980 recounted the legislative history of this section and concluded that wilderness managers retained the right to deny access that would be harmful to Wilderness and could offer an exchange instead:

> *The language of 5(a) indicates that a landowner has a right to access or exchange. If he is offered either, he has been accorded all the rights granted by the statute. If you offer land exchange, the landowner has no right of access under 5(a).*[13]

It was an excellent solution to a problem with dangerous potential to degrade Wilderness. Within the 106 million-acre Wilderness System there are well over one-half million acres of inholdings in thousands of widely scattered individual parcels. By giving land managers the authority to offer an exchange rather than allow harmful access, the Act assured that the right decision for Wilderness could be made every time. Yet, here again, special provisions in new bills have begun to erode the protections ensured by the Wilderness Act.

A provision inserted into ANILCA in 1980 dealt the first blow to the protections afforded in Section 5(a). That provision states that the Secretary of Agriculture "shall provide such access to nonfederally owned land within...the National Forest System...adequate to secure the reasonable use and enjoyment thereof...." While every other provision in ANILCA applies only to Alaska, the reference to "National Forest System" led the Forest Service to conclude that the provision applies to all national forest lands, including Wilderness, in the lower 48 States.[14] Whether or not the agencies have correctly interpreted this special provision in ANILCA, its effect has been to eliminate the option of protecting Wilderness by offering a land exchange in lieu of allowing potentially harmful access.

As with other special provisions, the "access" exception in ANILCA is being repeated in subsequent bills. In 1994, the California Desert Protection Act included access language nearly identical to ANILCA, thereby ensuring that this weakening provision would apply to the 69 areas and millions of acres of Wilderness designated by the CDPA. Subsequent laws designating Wilderness in Oregon and Nevada have included variations on the language used in the CDPA.

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[13] 43 Op. Att'y Gen. 243, 269 (1980)

[14] The US Dept. of Agriculture has codified this interpretation in its regulations applying to all national forest Wildernesses. For its part, BLM has also applied the access language of ANILCA to all lands under its jurisdiction. It is important to note, however, that the Courts have not yet ruled on the question of whether this section (1323(a)) of ANILCA effectively amended the Wilderness Act.

As a result of access provisions included in the above mentioned laws, BLM and the Forest Service have begun approving motorized access (and related road development and improvements) for a variety of inappropriate uses such as weekend camping and stargazing (Palen-McCoy Wilderness, CA), building and operating a horse breeding and dude ranch (Mt. Tipton Wilderness, AZ), campground development (Kalmiopsis Wilderness, OR), and commercial outfitting and guiding (Steens Mountain Wilderness, OR). While many of these approvals are currently under appeal or litigation, they represent the tip of a very large iceberg that could melt away Wilderness qualities in hundreds of areas as more and more landowners demand access in areas where managers lack the affirmative option of offering an exchange.

III. Suggestions for Ensuring that New Wilderness Bills Protect Wilderness Character

In order to protect the quality and integrity of the NWPS and to realize the benefits that authentic Wilderness can and should provide, it is imperative that wilderness advocates oppose the use of special provisions in new wilderness bills. Forty years of experience in implementing the Wilderness Act have shown that the special provisions in various wilderness bills are leading to serious degradation to both the Wilderness ideal and to the Wilderness condition. The exceptions in the 1964 Act should be treated as the floor, not the ceiling, for protecting wilderness. Some specific suggestions follow:

1. Avoid non-conforming uses in new wilderness designations. Wilderness advocates should keep proposals for designating new Wildernesses clean of non-conforming uses, while working to remove such provisions from bills introduced in Congress. This can be very difficult at times and in certain states because of the particular political setting, but it can and must be done. Several wilderness bills have been crafted and drafted recently that do in fact avoid non-conforming uses.

2. Keep wilderness bills brief and free of special management language, even if the intent of the language is simply to reiterate the provisions of the Wilderness Act. Language that applies across the board, like the wildlife management language in some new bills, rather than to a particular situation in a specific area, is especially noxious. Even if a bill does not explicitly contain special provisions, putting in added verbiage or re-phrasing what the Wilderness Act says is guaranteed to result in differing interpretations and differing opinions about what Congress really intended for management of the area. The Steens Mountain Wilderness bill (P.L. 106-399) offers one example of where such language is subsequently being used by managers and wilderness opponents to allow activities destructive to wilderness character. Saying the "same thing" in different words inevitably leads to different interpretations of what was intended by the new law. The simplest and most straightforward way to address this problem is to eschew special language and instead include a statement akin to the one below that accompanied many of the early wilderness bills:

> *The [ ] Wilderness shall be administered by the Secretary of [Agriculture or Interior] in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.*

3. Minimize the impacts of any new non-conforming uses in wilderness legislation. In some cases it might be virtually impossible to avoid including a non-conforming use without seriously compromising other Wilderness values (as in the examples below). If the decision is made to still support such a bill, consider one of the following suggestions for reducing the long-term impact on the wilderness character of the area and for helping protect the integrity of the National Wilderness Preservation System:

> a) *Phase-out the non-conforming uses over time.* In this manner, wilderness character can be restored eventually. For example, in the 1978 Boundary Waters Canoe Area Wilderness Act, Congress included motorboat phase-outs on specific lakes for specific periods of time that ended

anywhere from 5-20 years after passage of the law. At that point motorboat use would end and full wilderness conditions would be restored to that particular lake. Similarly, the Dugger Mountain Wilderness Act of 1999 gave the Forest Service two years to use mechanical equipment and transport to remove an historic fire tower after which the road to the tower must be permanently closed.

b) *Limit the impacts from non-conforming uses allowed in the Wilderness Act that might not be phased-out over time.* For example, livestock grazing and associated management should be limited in accordance with the Wilderness Act and not the more permissive language of the Grazing Guidelines. If the Grazing Guidelines are incorporated in a bill, then it should be made clear that the special allowances are expected to be rare and carefully regulated. Similarly, where commercial services like outfitting and guiding occur, the use of permanent structures and motorized equipment and transport should be strictly prohibited.

c) *Place the non-conforming uses outside of the wilderness boundary if possible.* Often an area just outside of wilderness boundaries can serve the non-conforming use just as well as a location inside Wilderness. For example, if political reality requires watering facilities for either grazing or wildlife, advocate for placement of the water tanks or "guzzlers" in locations outside of the wilderness boundaries, so that the roads, motor vehicle use, and structures associated with these facilities remain outside the wilderness boundaries. In some cases a slight modification of the proposed wilderness boundary can exclude the non-conforming use.

4. Consider alternative designations if special provisions that compromise the ability to manage the area as Wilderness can't be avoided and if the goal to prevent other uses such as logging or ATVs can be achieved with another classification. For example, if the goal is to prevent logging or off-road vehicle use, but allow mountain bikes, unregulated numbers of day-use hikers, or if manipulation of natural processes is desired or inevitable, then consider other existing protective classifications such as national scenic area, national conservation area, national recreation area, national monument, wildlife preserve, etc. Such classifications are not new, and have worked well to protect undeveloped qualities of some areas while allowing some activities or levels of use that would not be appropriate in Wilderness. For example, in the 60,000-acre Rattlesnake area that borders Missoula, Montana, Congress designated the lower half of the area, which is popular for day-hiking, mountain biking, and horseback riding, as the Rattlesnake National Recreation Area and the upper half as the Rattlesnake Wilderness. The entire area is off-limits to resource extraction and road building, but only the more remote 30,000 acres are managed specifically to preserve Wilderness character.

Conclusion

Wilderness advocates must ensure that special provisions in new wilderness bills and incompatible uses in existing wildernesses are not allowed to further degrade the wilderness character of NWPS units. We must seize opportunities to stem the erosion of wilderness standards and the gradual degradation of the system that is occurring due to special provisions in wilderness legislation. By taking an aggressive stance against new non-conforming uses we can ensure that we pass on to future generations the "enduring resource of wilderness" that the framers of the Wilderness Act sought to preserve and that future generations deserve to inherit.

As Wilderness Act author Howard Zahniser wrote:

> *There is little hope for preserving wilderness by simply resisting here and there the particular projects that would destroy it; in other words, by only attacking the threats as such. Rather it must be defended in recognized, designated areas in accordance with a preservation policy and program that positively protect it, rather than by opposing, negatively, the forces threatening wilderness. Wilderness must be valued as such.*
>
> — from "Introduction" in Arthur Carhart, *Planning for America's Wildlands*, 1961.

Wilderness advocates must lead in this effort. Let us all commit to being the spirited people who, in the words of Bob Marshall, "will fight for the freedom of the wilderness" and for the integrity of the National Wilderness Preservation System.

APPENDIX I

POLICIES AND GUIDELINES FOR FISH AND WILDLIFE MANAGEMENT IN NATIONAL FOREST AND BUREAU OF LAND MANAGEMENT WILDERNESS

POLICIES AND GUIDELINES FOR FISH AND WILDLIFE MANAGEMENT IN NATIONAL FOREST AND BUREAU OF LAND MANAGEMENT WILDERNESS

(FS BLM & IAFWA--August 1986)

PURPOSE

This statement of policy and the following guidelines are intended to provide guidance to State and Federal personnel for the management of fish and wildlife in wilderness in accordance with the Wilderness Act of 1964 (16 USC 1131-1136). Both State and Federal agencies are responsible for fostering mutual understanding and cooperation in the management of fish and wildlife in wilderness. These guidelines should serve as a framework for cooperation among the Forest Service, Bureau of Land Management, and the States in the coordination of fish and wildlife management and in the development of cooperative agreements or other management plans.

These policies and guidelines were developed within the overall context of the purpose and direction of the Wilderness Act, and they should be made available to all agencies responsible for management of the National Wilderness Preservation System, to appropriate State fish and wildlife agencies, and to other interested parties.

GENERAL POLICY

Fish and wildlife management activities in wilderness will be planned and carried out in conformance with the Wilderness Act's purpose of securing an "enduring resource of wilderness" for the American people. The wilderness resource is defined in section 2(c) of the Act as an area essentially "untrammeled by man," where natural ecological processes operate freely and the area is "affected primarily by the forces of nature." The National Wilderness Preservation System will be managed to ensure that ecological succession, including fire and infestation of insects, operate as freely as possible with only minimum influence by humans.

Fish and wildlife management activities will emphasize the protection of natural processes. Management activities will be guided by the principle of doing only the minimum necessary to manage the area as wilderness.

Section 4(d)(7) of the Wilderness Act stipulates that "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the National Forests." Angling, hunting, and trapping are legitimate wilderness activities, subject to applicable State and Federal laws and regulations.

This nation is fortunate in having a National Wilderness Preservation System encompassing a wide range of ecosystems. Specific on-the-ground conditions will result in slightly different application of these guidelines in so vast a system. These different applications are spelled out in National Forest Plans or wilderness management plans. This is both appropriate and proper, if we are to allow nature to play the dominant role.

1. USE OF MOTORIZED EQUIPMENT

Section 4(c) of the Wilderness Act states:

> *Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for this administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.*

The emphasis is on the management of the area as wilderness as opposed to the management of a particular resource. This language is viewed as direction that all management activities within wilderness be done without motor vehicles, motorized equipment, or mechanical transport, unless truly necessary to administer the area or specifically permitted by other provisions in the Act. It means that any such use should be rare and temporary; that no roads can be built; and that wilderness managers must determine such use is the minimum necessary to accomplish the task. Any use of motorized equipment or mechanical transport requires advance approval by the administering agency.

2. FISH AND WILDLIFE RESEARCH AND MANAGEMENT SURVEYS

Research on fish and wildlife, their habitats, and the recreational users of these resources is a legitimate activity in wilderness when conducted 'in a manner compatible with the preservation of the wilderness environment' (Sec. 4(d)(1) of the Wilderness Act). Methods that temporarily infringe on the wilderness environment may be approved if alternative methods or other locations are not available. Research or management surveys must be approved in writing, on a case-by-case basis, by the administering agency.

Helicopters and fixed-wing aircraft overflights may be used to conduct approved fish and wildlife research activities. Aircraft must be used in a manner that minimizes disturbance of other users, including humans and wildlife.

All fish and wildlife studies within and over wilderness must be conducted so as to preserve the natural character of the wilderness. Aerial counts and observations of wildlife may be permissible for management of wilderness wildlife resources. Capturing and marking of animals, radio telemetry, and occasional temporary installations (such as shelters for cameras and scientific apparatus and enclosures and exclosures essential for wildlife research or management surveys) may be permitted, if they are essential to studies that cannot be accomplished elsewhere.

Guidelines

a. Obtain specific written approval or permits from the administering agency before erecting any structure, enclosure, or exclosure.

b. Locate and construct all structures so as to make them unobtrusive on the landscape.

c. Construct structures of native materials or camouflage to make them blend with their natural surroundings.

d. Plan aircraft flights over wilderness to minimize disturbance. Consider time of day, season of the year, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

e. Research projects underway when a wilderness is designated may continue, but modify research methods to minimize disturbance of the wilderness environment.

f. Installation of permanent base stations within wilderness is not permitted for monitoring of radio-instrumented animals.

g. The administering agency should only approve capture methods that minimize the impact on the wilderness environment.

3. FACILITY DEVELOPMENT AND HABITAT ALTERATION

In rare-instances, facility development and habitat alteration may be-necessary to alleviate adverse impacts caused by human activities on fish and wildlife. For the benefit of wildlife that spend only part of the year in wilderness, give first priority to locating facilities or habitat alterations outside wilderness.

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) may be permitted to remain in operation.

Clearing of debris that impedes the migratory movements of fish on primary spawning streams may be permitted, but only in a manner compatible with the wilderness resource. Maintenance of existing water supplies and development of additional water supplies may be permitted, but only when essential to preserve the wilderness resource and to correct unnatural conditions resulting from human influence.

Guidelines

a. Submit proposals for new structures or habitat alterations to the administering agency for approval.

b. Build or maintain new and existing structures permitted for wildlife management in a manner that minimizes the visual impacts on the landscape.

c. Limit clearing of debris from spawning streams to those identified in the wilderness management plan as being critical to the propagation of fish.

d. Use only nonmotorized equipment to clear debris. Use explosives only when the use of hand tools is not

practical, and only outside of heavy visitor-use periods.

e. The administering agency and the State agency will jointly make decisions to remove existing water-related improvements.

f. If it is necessary to restore essential food plants after human disturbance, use only indigenous plant species.

4. THREATENED AND ENDANGERED SPECIES

Many wilderness areas provide important habitat for Federally listed threatened and endangered species of wildlife. Actions necessary to protect or recover threatened or endangered species, including habitat manipulation and special protection measures, may be implemented in wilderness. But such actions must be necessary for the perpetuation or recovery of the species and it must be demonstrated that the actions cannot be done more effectively outside wilderness. Use only the minimum actions necessary and the methods most appropriate in wilderness.

Guidelines

a. Manage wilderness to protect known populations of Federally listed threatened or endangered species where necessary for their perpetuation and to aid in their recovery in previously occupied habitat.

b. When alternative areas outside of wilderness offer equal or better opportunities for habitat improvement or species protection, take actions to recover threatened or endangered species outside of wilderness first.

d. Threatened and endangered species may be transplanted into previously occupied habitat within wilderness.

c. All transplants or habitat improvement projects require approval by the administering agency.

d. To prevent Federal listing, protect indigenous species that could become threatened or endangered or are listed as threatened or endangered by States.

5. ANGLING, HUNTING, AND TRAPPING

Angling, hunting, and trapping are legitimate wilderness activities subject to applicable State and Federal laws and regulations.

6. POPULATION SAMPLING

Scientific sampling of fish and wildlife populations is an essential procedure in the protection of natural populations in wilderness.

Guidelines

a. Use only methods that are compatible with the wilderness environment.

b. Gill netting, battery-operated electrofishing, and other standard techniques of population sampling may be used.

c. Closely coordinate sampling activities with the administering agency and schedule them to avoid heavy public-use periods.

7. CHEMICAL TREATMENT

Chemical treatment may be necessary to prepare waters for the reestablishment of indigenous species, to protect or recover Federally listed threatened or endangered species, or to correct undesirable conditions resulting from the influence of man. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Undesirable conditions and affected species shall be identified in wilderness plans.

Guidelines

a. Use only registered pesticides according to label directions.

b. In selecting pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.

c. Schedule chemical treatments during periods of low human use, insofar as possible.

d. Immediately dispose of fish removed in a manner agreed to by the administering agency and the State agency.

8. SPAWN TAKING

The collection of fish spawn shall be permitted from wilderness when alternative sources are unavailable or unreliable, or where spawn taking was an established practice before wilderness designation.

Guidelines

a. Do not use motorized equipment to assist in collecting and removing spawn.

b. Use of techniques and facilities necessary to take spawn, which were in existence before wilderness designation, may continue as provided for in the wilderness management plan.

c. Facilities for spawn-taking stations approved after wilderness designation must be removed after the termination of each season's operation.

d. Decisions to prohibit spawn taking, where it was an established practice before wilderness designation, will be made jointly by the administering agency and the State agency.

9. FISH STOCKING

Fish stocking may be conducted by the State agency in coordination with the administering agency, using means appropriate for wilderness, when either of the following criteria is met: (a) to reestablish or maintain an indigenous species adversely affected by human influence; or (b) to perpetuate or recover a threatened or endangered species.

Selection of species for stocking will be determined jointly by the administering agency and the State agency. Exotic species of fish shall not be stocked. The order of preference for stocking fish species is (a) Federally listed threatened or endangered indigenous species, (b) indigenous species. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Numbers and size of fish and time of stocking will be determined by the State agency.

Barren lakes and streams may be considered for stocking, if there is mutual agreement that no appreciable loss of scientific values or adverse effects on wilderness resources will occur.

Guidelines

a. The State agency shall make fish stocking schedules available to the administering agency, indicating what species and numbers are planned each water within a wilderness.

b. Adjust stocking rates to minimize the likelihood of exceeding the carrying capacity of the water being stocked so as to reduce the chance of producing a population imbalance and to minimize the likelihood of attracting overuse detrimental to the wilderness resource.

10. AERIAL FISH STOCKING

Aerial stocking of fish shall be permitted for those waters in wilderness where this was an established practice before

wilderness designation or where other practical means are not available. Aerial stocking requires approval by the administering agency.

Guidelines

a. As justification for aerial stocking, the State agency will supply the administering agency a list of those waters where stocking with aircraft was an established practice before wilderness designation, indicating the type of aircraft used (fixed-wing or helicopter). This justification will become a part of the wilderness management plan.

b. To stock waters that had not been aerially stocked before wilderness designation, the State agency will demonstrate to the administering agency the need for using aircraft.

c. Plan aircraft flights over wilderness to minimize disturbance. Consider season of year, time of day, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

11. TRANSPLANTING WILDLIFE

Transplants (removal, reintroduction, or supplemental introduction) of terrestrial wildlife species in wilderness may be permitted if necessary: (a) to perpetuate or recover a threatened or endangered species; or (b) to restore the population of an indigenous species eliminated or reduced by human influence.

Transplants shall be made in a manner compatible with the Wilderness character of the area. Transplant projects, including follow-up monitoring, require advance written approval by the administering agency.

Guidelines

a) Motorized methods and temporary holding and handling facilities may be permitted if they are the minimum necessary to accomplish an approved transplant.

11. WILDLIFE DAMAGE CONTROL

Wildlife damage control in wilderness may be necessary to protect Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock. Control of nonindigenous species also may be necessary to reduce conflicts with indigenous species, particularly if the latter species are threatened or endangered.

Guidelines

a. Acceptable control measures include lethal and nonlethal methods, depending upon need, justification, location, conditions, efficiency and applicability of State and Federal laws.

b. Control measures will be implemented by the Animal and Plant Health Inspection Service, the administering agency, the State fish and wildlife agency, or other approved State agency, pursuant to cooperative agreements or memoranda of understanding. Wildlife damage control must be approved by the administering agency on a case-by-case basis.

c. Direct control at individual animals causing the problem.

d. Use only the minimum amount of control necessary to solve the problem.

e. Use pesticides only where other measures are impractical. Use only registered pesticides according to label directions and subject to the following restrictions:

   1) Pesticides may be applied only by certified pesticide applicators.

   2) The placement of pesticides shall be accurately indicated on the largest scale USGS map available.

   3) Place warning signs at the entrance to the area where pesticides are being used to warn the public of any dangers to themselves or their pets.

   4) In the selection of pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.

13. VISITOR MANAGEMENT TO PROTECT WILDERNESS WILDLIFE RESOURCES

Many wildlife species are sensitive to human encroachments on their ranges. Grizzly bear, bighorn sheep, elk, mountain goat, birds of prey (such as peregrine falcon and bald eagle), other migratory and resident birds, and certain other wilderness wildlife species cannot tolerate excessive human disturbance, particularly during certain seasons of the year.

When necessary to reduce human disturbance to a wildlife species, the administering agency, in coordination with the State agency, may take direct or indirect management actions to control visitor use.

Guidelines

a) Specify in the wilderness management plan the management actions necessary and the agency responsible to reduce conflicts with wildlife.

b) If and when it becomes apparent that public use is significantly degrading the wilderness wildlife resources, limitations on visitor use may be imposed and enforced by the appropriate agency. Any limitations will be applied equitably to all wilderness visitors.

13. MANAGEMENT OF FIRE

The objectives of fire management in wilderness are to: (a) permit lightning-caused fires to play, as nearly as possible, their natural ecological role within wilderness and (b) reduce, to an acceptable level, the risks and consequences of wildlife within wilderness or escaping from wilderness. Fire ignited by lightning will be permitted to burn or will be suppressed as prescribed in an approved plan. Prescribed fires ignited by man may be permitted to reduce unnatural buildup of fuels only if necessary to meet objectives (a) and (b) above. Although additional benefits may result from man-ignited prescribed fire, vegetative manipulation will not be used to justify such fires.

HOUSE REPORT NO. 101-405
February 21, 1990
[To accompany H.R. 2570]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 2570) to provide for the designation of certain public lands as wilderness in the State of Arizona, having considered the same report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arizona Desert Wilderness Act of 1990".

APPENDIX B.-WILDLIFE MANAGEMENT GUIDELINES

Subsection 2(h) of H.R. 2570 explicitly provides that, in furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats that support those populations may be carried out in wilderness areas, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines.

The Committee has reviewed the existing BLM policies and guidelines for fish and wildlife management in Bureau of Land Management wilderness areas, as set out in BLM's wilderness management manual, and has found them to be in furtherance of the purposes and principles of the Wilderness Act. Those policies and guidelines are as follows:

A. PURPOSE

This statement of policy and the following guidelines are intended to provide guidance to State and Federal personnel for the management of fish and wildlife in wilderness in accordance with the Wilderness Act of 1964 (16 USC 1131-1136). Both State and Federal agencies are responsible for fostering mutual understanding and cooperation in the management of fish and wildlife in wilderness. These guidelines should serve as a framework for cooperation among the Forest Service, Bureau of Land Management, and the States in the coordination of fish and wildlife management and in the development of cooperative agreements or other management plans.

These policies and guidelines were developed within the overall context of the purpose and direction of the Wilderness Act, and they should be made available to all agencies responsible for management of the National Wilderness Preservation System, to appropriate State fish and wildlife agencies, and to other interested parties.

B. GENERAL POLICY

Fish and wildlife management activities in wilderness will be planned and carried out in conformance with the Wilderness Act's purpose of securing an "enduring resource of wilderness" for the American people. The wilderness resource is defined in section 2(c) of the Act, as an area essentially "untrammeled by man", where natural ecological processes operate freely and the area is "affected primarily by the forces of nature." The National Wilderness Preservation System will be managed to ensure that ecological succession, including fire and infestation of insects, operate as freely as possible with only minimum influence by humans.

Fish and wildlife management activities will emphasize the protection of natural processes. Management activities will be guided by the principle of doing only the minimum necessary to manage the area as wilderness.

Section 4(d)(7) of the Wilderness Act stipulates that "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests." Angling, hunting, and trapping are legitimate wilderness activities, subject to applicable State and Federal laws and regulations.

This nation is fortunate in having a National Wilderness Preservation System encompassing a wide range of ecosystems. Specific on-the-ground conditions will result in slightly different application of these guidelines in

so vast a system. These different applications are spelled out in National Forest Plans or wilderness management plans. This is both appropriate and proper, if we are to allow nature to play the dominant role.

1. Use of motorized equipment

Section 4(c) of the Wilderness Act states:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

The emphasis is on the management of the area as wilderness as opposed to the management of a particular resource. This language is viewed as direction that all management activities within wilderness be done without motor vehicles, motorized equipment, or mechanical transport, unless truly necessary to administer the area or are specifically permitted by other provisions in the Act. It means that any such use should be rare and temporary; that no roads can be built; and that wilderness managers must determine such use is the minimum necessary to accomplish the task. Any use of motorized equipment or mechanical transport requires advance approval by the administering agency.

2. Fish and wildlife research and management surveys

Research on fish and wildlife, their habitats and the recreational users of these resources is a legitimate activity in wilderness when conducted "in a manner compatible with the preservation of the wilderness environment" (Sec. 4(d)(1) of the Wilderness Act). Methods that temporarily infringe on the wilderness environment may be approved if alternative methods or other locations are not available. Research or management surveys must be approved in writing, on a case-by-case basis, by the administering agency.

Helicopters and fixed-wing aircraft overflights may be used to conduct approved fish and wildlife research activities. Aircraft must be used in a manner that minimizes disturbance of other users, including humans and wildlife.

All fish and wildlife studies within and over wilderness must be conducted so as to preserve the natural character of the wilderness. Aerial counts and observations of wildlife may be permissible for management of wilderness wildlife resources. Capturing and marking of animals, radio telemetry, and occasional temporary installations (such as shelters for cameras and scientific apparatus and enclosures and exclosures essential for wildlife research or management surveys) may be permitted, if they are essential to studies that cannot be accomplished elsewhere.

Guidelines

a. Obtain specific written approval or permits from the administering agency before erecting any structure, enclosure, or exclosure.

b. Locate and construct all structures so as to make them unobtrusive on the landscape.

c. Construct structures of native materials or camouflage to make them blend with their natural surroundings.

d. Plan aircraft flights over wilderness to minimize disturbance. Consider time of day, season of the year, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

e. Research projects underway when a wilderness is designated may continue, but modify research methods to minimize disturbance of the wilderness environment.

f. Installation of permanent base stations within wilderness is not permitted for monitoring of radio-instrumented animals.

g. The administering agency should only approve capture methods that minimize the impact on the wilderness environment.

3. Facility development and habitat alteration

In rare instances, facility development and habitat alteration may be necessary to alleviate adverse impacts

caused by human activities on fish and wildlife. For the benefit of wildlife that spend only part of the year in wilderness, give first priority to locating facilities or habitat alterations outside wilderness.

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) may be permitted to remain in operation.

Clearing of debris that impedes the migratory movements of fish on primary spawning streams may be permitted, but only in a manner compatible with the wilderness resource.

Maintenance of existing water supplies and development of additional water supplies may be permitted, but only when essential to preserve the wilderness resource and to correct unnatural conditions resulting from human influence.

Guidelines

a. Submit proposals for new structures or habitat alterations to the administering agency for approval.

b. Build or maintain new and existing structures permitted for wildlife management in a manner that minimizes the visual impacts on the landscape.

c. Limit clearing of debris from spawning streams to those identified in the wilderness management plan as being critical to the propagation of fish.

d. Use only nonmotorized equipment to clear debris. Use explosives only when the use of hand tools is not practical, and only outside of heavy visitor-use periods.

e. The administering agency and the State agency will jointly make decisions to remove existing water related improvements.

f. If it is necessary to restore essential food plants after human disturbance, use only indigenous plant species.

4. Threatened and endangered species

Many wilderness areas provide important habitat for Federally listed threatened and endangered species of wildlife. Actions necessary to protect or recover threatened or endangered species, including habitat manipulation and special protection measures, may be implemented in wilderness. But such actions must be necessary for the perpetuation of recovery of the species and it must be demonstrated that the actions cannot be done more effectively outside wilderness. Use only the minimum actions necessary and the methods most appropriate in wilderness.

Guidelines

a. Manage wilderness to protect known populations of Federally listed threatened or endangered species where necessary for their perpetuation and to aid in their recovery in previously occupied habitat.

b. When alternative areas outside of wilderness offer equal or better opportunities for habitat improvement or species protection, take actions to recover threatened or endangered species outside of wilderness first.

c. Threatened and endangered species may be transplanted into previously occupied habitat within wilderness.

d. All transplants or habitat improvement projects require approval by the administering agency.

e. To prevent Federal listing, protect indigenous species that could become threatened or endangered or are listed as threatened or endangered by States.

5. Angling, hunting and trapping

Angling, hunting and trapping are legitimate wilderness activities subject to applicable State and Federal laws and regulations.

6. Population sampling

Scientific sampling of fish and wildlife populations is an essential procedure in the protection of natural populations in wilderness.

Guidelines

a. Use only methods that are compatible with the wilderness environment.
b. Gill netting, battery-operated electrofishing, and other standard techniques of population sampling may be used.
c. Closely coordinate sampling activities with the administering agency and schedule them to avoid heavy public-use periods.

7. Chemical treatment

Chemical treatment may be necessary to prepare waters for the reestablishment of indigenous species, to protect or recover Federally listed threatened or endangered species, or to correct undesirable conditions resulting from the influence of man. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Undesirable conditions and affected species shall be identified in wilderness plans.

Guidelines

a. Use only registered pesticides according to label directions.
b. In selecting pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.
c. Schedule chemical treatments during periods of low human use, insofar as possible.
d. Immediately dispose of fish removed in a manner agreed to by the administering agency and the State agency.

8. Spawn taking

The collection of fish spawn shall be permitted from wilderness when alternative sources are unavailable or unreliable, or where spawn taking was an established practice before wilderness designation.

Guidelines

a. Do not use motorized equipment to assist in collecting and removing spawn.
b. Use of techniques and facilities necessary to take spawn, which were in existence before wilderness designation, may continue as provided for in the wilderness management plan.
c. Facilities for spawn-taking stations approved after wilderness designation must be removed after the termination of each season's operation.
d. Decisions to prohibit spawn taking, where it was an established practice before wilderness designation, will be made jointly by the administering agency and the state agency.

9. Fish stocking

Fish stocking may be conducted by the State agency in coordination with the administering agency, using means appropriate for wilderness, when either of the following criteria is met: (a) to reestablish or maintain an indigenous species adversely affected by human influence; or (b) to perpetuate or recover a threatened or endangered species.
Selection of species for stocking will be determined jointly by the administering agency and the state agency. Exotic species of fish shall not be stocked. The order of preference for stocking fish species is (a) Federally listed threatened or endangered indigenous species, (b) indigenous species. Species of fish traditionally stocked before wilderness designation may be considered indigenous if the species is likely to survive. Numbers and size of fish and time of stocking will be determined by the State agency.
Barren lakes and streams may be considered for stocking, if there is mutual agreement that no appreciable loss of scientific values or adverse effects on wilderness resources will occur.

Guidelines

a. The State agency shall make fish stocking schedules available to the administering agency, indicating what

species and numbers are planned for each water within a wilderness.
b. Adjust stocking rates to minimize the likelihood of exceeding thecarrying capacity of the water being stocked so as to reduce the chance of producing a population imbalance and to minimize the likelihood of attracting overuse detrimental to the wilderness resource.

10. Aerial fish stocking

Aerial stocking of fish shall be permitted for those waters in wilderness where this was an established practice before wilderness designation or where other practical means are not available. Aerial stocking requires approval by the administering agency.

Guidelines

a. As justification for aerial stocking, the State agency will supply the administering agency a list of those waters where stocking with aircraft was an established practice before wilderness designation, indicating the type of aircraft used (fixed-wing or helicopter). This justification will become a part of the wilderness management plan.
b. To stock waters that had not been aerially stocked before wilderness designation, the State agency will demonstrate to the administering agency the need for using aircraft.
c. Plan aircraft flights over wilderness to minimize disturbance. Consider season of year, time of day, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

11. Transplanting wildlife

Transplants (removal, reintroduction, or supplemental introduction) of terrestrial wildlife species in wilderness may be permitted if necessary: (a) to perpetuate or recover a threatened or endangered species; or (b) to restore the population of an indigenous species eliminated or reduced by human influence.
Transplants shall be made in a manner compatible with the wilderness character of the area. Transplant projects, including follow-up monitoring, require advance written approval by the administering agency.

Guidelines

a. Motorized methods and temporary holding and handling facilities may be permitted if they are the minimum necessary to accomplish an approved transplant.

12. Wildlife damage control

Wildlife damage control in wilderness may be necessary to protect Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting other wildlife and humans, or to prevent serious losses of domestic livestock. Control of nonindigenous species, also may be necessary to reduce conflicts with indigenous species, particularly if the latter species are threatened or endangered.

Guidelines

a. Acceptable control measures include lethal and nonlethal methods, depending upon need, justification, location, conditions, efficiency and applicability of State and Federal laws.
b. Control measures will be implemented by the Animal and Plant Health Inspection Service, the administering agency, the State fish and wildlife agency, or other approved State agency, pursuant to cooperative agreements or memoranda of understanding. Wildlife damage control must be approved by the administering agency on a case-by-case basis.
c. Direct control at individual animals causing the problem.
d. Use only the minimum amount of control necessary to solve the problem.
e. Use pesticides only where other measures are impractical. Use only registered pesticides according to label directions and subject to the following restrictions:
(1) Pesticides may be applied only by certified pesticide applicators.

(2) The placement of pesticides shall be accurately indicated on the largest scale USGS map available.
(3) Place warning signs at the entrance to the area where pesticides are being used to warn the public of any dangers to themselves or their pets.
(4) In the selection of pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.

13. Visitor management to protect wilderness wildlife resources

Many wildlife species are sensitive to human encroachments on their ranges. Grizzly bear, bighorn sheep, elk, mountain goat, birds of prey (such as peregrine falcon and bald eagle), other migratory and resident birds, and certain other wilderness wildlife species cannot tolerate excessive human disturbance, particularly during certain seasons of the year.
When necessary to reduce human disturbance to a wildlife species, the administering agency, in coordination with the State agency, may take direct or indirect management actions to control visitor use.

Guidelines

a. Specify in the wilderness management plan the management actions necessary and the agency responsible to reduce conflicts with wildlife.
b. If and when it becomes apparent that public use is significantly degrading the wilderness wildlife resources, limitations on visitor use may be imposed and enforced by the appropriate agency. Any limitations will be applied equitably to all wilderness visitors.

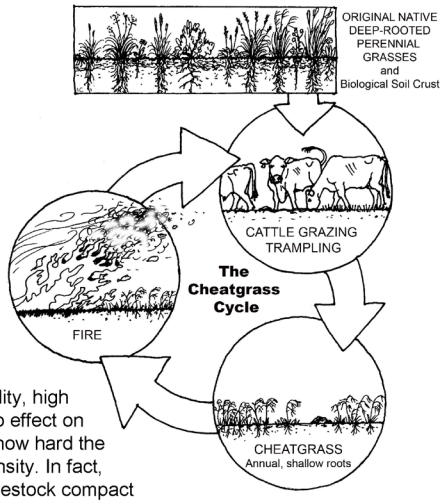
14. Management of fire

The objectives of fire management in wilderness are to: (a) permit lightning- caused fires to play, as nearly as possible, their natural ecological role within wilderness and (b) reduce, to an acceptable level, the risks and consequences of wildfire within wilderness or escaping from wilderness. Fire ignited by lightning will be permitted to burn or will be suppressed as prescribed in an approved plan. Prescribed fires ignited by man may be permitted to reduce unnatural buildup of fuels only if necessary to meet objectives (a) and (b) above. Although additional benefits may result from man- ignited prescribed fire, vegetative manipulation will not be used to justify such fires.

H.R. REP. 101-405, H.R. Rep. No. 405, 101ST Cong., 2ND Sess. 1990, 1990 WL 259127 (Leg.Hist.)
END OF DOCUMENT

Science Doesn't Support Livestock for Fire Prevention

The 119th Congress has already brought forward several pieces of legislation asserting that livestock grazing should be utilized to reduce wildlife risk and remove invasive species. Unfortunately, this contention is simply not supported by evidence or research. In fact, grazing largely has negative effects that increase wildfire risk by making lands less resilient and encouraging the spread of invasive species.



Grazing cannot reduce severe wildfires

Large wildfires are driven by drought, low humidity, high temperatures, and strong winds. Grazing has no effect on whether the weather is hot, whether it rains, or how hard the wind blows—factors that determine wildfire intensity. In fact, grazing can make drought conditions worse. Livestock compact the soil, reducing its ability to absorb and retain water. As a result, rainfall runs off rather than replenishing the ground, deepening arid conditions and increasing wildfire risk

Grazing spreads and increases highly flammable invasive grasses including cheatgrass

- Biocrust is a living organismal layer that coats the soil in arid and semi-arid regions. It contains mosses, cyanobacteria, lichens, algae, microfungi, and liverworts, which store moisture. Biocrust makes it more difficult for invasive grasses to establish and grow.
- Cows trample, rip up, and kill biocrust, leaving bare open soil devoid of these organisms
- Cheatgrass outcompetes and replaces native grasses on bare open soil because cheatgrass has shallow root systems that are quicker to establish and grow.
- Cheatgrass dies after about six weeks of spring growth and becomes highly flammable during the height of fire season.
- More cows and more grazing = more flammable cheatgrass

An honest discussion about the interactions between grazing, wildfire, and invasive species is long overdue. Congress can help by encouraging transparent, independent policy discussions without predetermining the outcome. Federal agencies already have the authority and flexibility to manage public lands for wildfire risk reduction. Thorough and scientifically based environmental analysis is essential to ensure that actions taken in the name of risk reduction don't lead to worsening conditions and a more difficult road to recovery for our public lands.



CENTER *for* BIOLOGICAL DIVERSITY *Because life is good.*

February 11, 2026

The Honorable Mike Lee, Chair
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich, Ranking Member
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Re: Oppose S. 2554, the "Alaska Native Landless Equity Act"

Dear Chair Lee and Ranking Member Heinrich:

On behalf of the Center for Biological Diversity, I am writing to express our opposition to S. 2554, the Alaska Native Landless Equity Act. This legislation would transfer 115,200 acres of federal public land from the Tongass National Forest to five newly created private, for-profit Alaska Native corporations. This privatization could lead directly to industrial-scale logging of ancient old-growth forests to meet corporate fiduciary duties.

The Center holds deep respect for the Indigenous Peoples who have served as the original stewards of the lands we work to protect across Alaska for generations. We believe it is essential to acknowledge and rectify the historical injustices faced by Indigenous communities in southeast Alaska. However, we believe that any meaningful resolution to these past wrongs must not degrade the health of the Tongass, keeping old-growth forests standing, protecting clean water, and sustaining fish and wildlife. S. 2554 fails to secure a healthy future for the Tongass because it relies on land privatization and for-profit corporate ownership, prioritizing extraction over long-term stewardship.

The more than 115,000 acres of land proposed for transfer, as identified on maps attached to the legislation, would expose some of the best remaining old-growth habitat and roadless areas in the region to further loss from logging. While we are still awaiting complete data layers, early analysis shows that roughly **80% of the acres proposed for transfer contain productive old-growth forest, the most carbon-dense and biologically significant habitat in the Tongass.** The bill does not restrict uses of lands to be transferred to corporations, and appears to anticipate logging by directing the Secretary of Agriculture to enter into a binding mutual use agreement with the new corporations for the use of "log transfer facilities, sort yards, and associated log rafting and storage areas" and other roads and transportation infrastructure.[1] Old-growth logging has tragically happened elsewhere throughout much of southeast Alaska on all land ownerships, including federal, state, and Native corporation lands. As proposed, the legislation could result in more destruction of considerable old-growth forest habitat in the Tongass, which we are firmly opposed to.

[1] S. 2554, section 6.

This legislation is particularly concerning given the current surge of threats to the Tongass. The recent finalization of the South Revilla project just weeks ago marks a return to massive, taxpayer-subsidized old-growth clearcut timber sales, authorizing the harvest of over 60 million board feet of timber across more than 4,300 acres of Tongass old-growth forests. Compounding this is President Trump's executive order for the "Immediate Expansion of American Timber Production," and the continued push for a Roadless Rule repeal, which aims to strip protections from over 9 million acres of the forest. S. 2554 would add to these threats by carving out inholdings for private harvest in some of the Tongass's most sensitive and threatened landscapes.

ANCSA specifically created 'at-large' shareholder status for individuals registered in a community that lacked a village or urban corporation because it did not meet ANCSA's village or urban corporation standards. For individuals enrolled in these five communities, these at-large shares provided residents with an ownership interest in the private lands conveyed to the Sealaska Corporation and have provided for increased financial dividends each year. Newly providing corporate status to these five communities despite their original ineligibility invites similar claims from over 80 other communities across the state. This could trigger a domino effect resulting in the privatization of nearly 2 million additional acres of public land and thousands of inholdings across Alaska.

This legislation would also upend ANCSA's requirement for village corporation land selections to have close geographic connection to the location of the village.[2] This would create new inequities between existing and new corporations regarding lands made available for selection, while increasing public land fragmentation and complicating land ownership patterns. This could lead to the 80 other communities noted above, as well as all ANCSA corporations, seeking to liberalize land selection opportunities afforded to the proposed five new corporations.

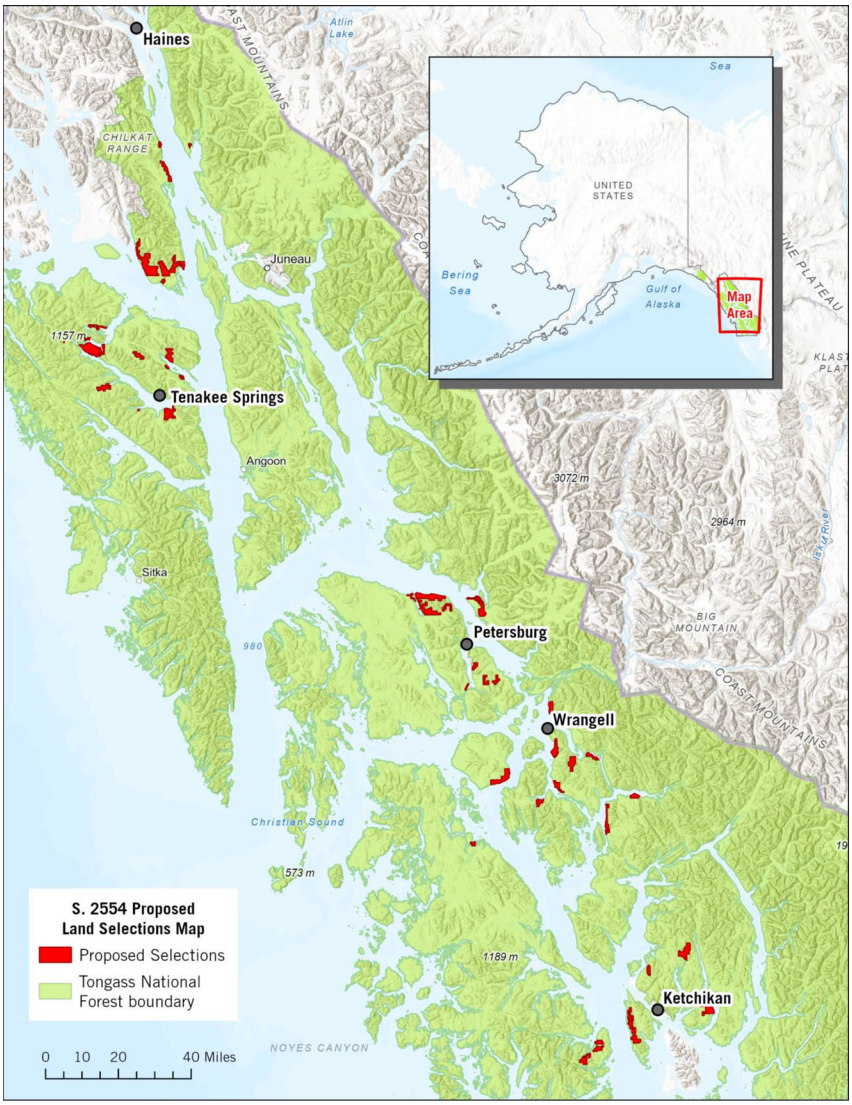
Finally, S. 2554 must be viewed within a broader, deeply concerning trend of legislation aimed at giving away federal public lands. From the HOUSES Act to the One Big Beautiful Bill Act, we are seeing an unprecedented push to convert public wildlands into private assets. We should be focused on reinforcing protections and public access for these vital ecosystems, which provide our best hope for climate resilience, biodiversity, and sustainable regional economies.

The federal government, including the Forest Service, has indisputably perpetuated systemic inequities against Alaska Native people that it must work to redress. The committee should consider alternate approaches that will also protect the enormous values and traditional uses of the Tongass's old-growth forests. We urge the Committee to reject S. 2554 and protect the Tongass from this permanent loss.

Sincerely,

Cooper Freeman
Alaska Director
Center for Biological Diversity

[2] 43 U.S.C. § 1615(a), (b).


Haines
Atlin Lake
CHILKAT RANGE
Juneau
1157 m
Tenakee Springs
Angoon
Sitka
3072 m
2964 m
Petersburg
980
BIG MOUNTAIN
COAST MOUNTAINS
Wrangell
Christian Sound
573 m
1189 m
Ketchikan
NOYES CANYON
Sea
UNITED STATES
Bering Sea
Gulf of Alaska
Map Area
S. 2554 Proposed Land Selections Map
Proposed Selections
Tongass National Forest boundary
0 10 20 40 Miles



NORTH AMERICA
FOREST INITIATIVE

Conservation Biology Institute
136 SW Washington Ave., Suite 202
Corvallis, OR 97333
https://consbio.org/the-north-america-forest-initiative/

Re: Written testimony opposing Senate Bill S. 2554 ("Alaska Native Lands Equity Act") submitted for the Congressional record to the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining hearing on February 12, 2026

Submitted via: fortherecord@energy.senate.gov

Dear Chairman Senator Barrasso and Subcommittee Members:

My name is Dr. Dominick A. DellaSala and I am a forest scientist that has worked on the intersection of ecological research and relevant policies for nearly a half century. My CV is hyperlinked to this testimony and includes over 350 peer-reviewed science papers and 9 co-authored books on forest ecosystems, biodiversity, forest carbon, forest restoration, climate change, and wildfire ecology. I have served on numerous forest research and policy committees appointed by governors and White House commissioned studies and have testified many times at Congressional hearings as an expert witness. Importantly, I conducted some of the first wildlife studies on the Tongass in the early1990s and have been continuing my research for over three decades that demonstrates the unique and irreplaceable values of Tongass old-growth forests and roadless areas.

My testimony makes a compelling case for why the Senate should reject Senate Bill S. 2445 (before the committee on February 12, 2026) that would transfer 115,200 acres of Tongass National Forest public lands to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, and Ketchikan) to form additional Southeast Alaska Native corporations under the Alaska Native Claims Settlement Act. I have also worked closely with tribal entities in the region on alternative funding sources and believe that if Congress determines further remedies are warranted for the "landless" community, consideration of alternatives other than federal public land transfer is needed. Privatization of public lands would most certainly result in significant losses to all Tongass users from logging, road building, mining, and other developments.

As one of the world's most relatively intact temperate rainforests, the Tongass is the "crown jewel" of the national forest system. The Tongass contains ~5 million acres of "productive" old-growth forests, more than any other national forest, and ~9.3 million acres of federally inventoried roadless areas (~16% of the national total)[1]. Together those forests (old growth, roadless) store more than 20% of all the carbon on the national forest system and provide key climate sanctuaries for fish and wildlife that otherwise are at-risk in heavily logged and climatically inhospitable landscapes (hotter, drier). Salmon are a keystone species connecting old-growth forests, rivers, marine, and indigenous communities on the Tongass. The abundance of fish and wildlife populations is directly related to the intact system of roadless watersheds and old-growth forests on the Tongass. Moreover, the Tongass is a vital climate sanctuary as its cool maritime climate is expected to heat up less than the Alaska interior and temperate rainforests

[1] DellaSala, D.A., et al. 2022. The Tongass National Forest, Southeast Alaska, USA: a natural climate solution of global significance. Land 2022, 11, 717. https://doi.org/10.3390/ land11050717. Law, B.E., 2023. Southern Alaska's forest integrity, habitat, and carbon are critical for meeting climate and conservation goals. AGU Advances https://doi.org/10.1029/2023AV000965

further south[2]. Development pressures on transferred lands would degrade these critical properties that need to be maintained in perpetuity as strongholds for salmon and wildlife and to sustain the food and cultural resources important to Indigenous lifestyles. Some of the impacts of development interests that would unfold in transferred lands was covered by the Seattle Times on January 3, 2026, attached to my testimony, that warrants your consideration.

As a global scientist that has worked in most of the world's temperate rainforests, I can assure you that the Tongass is globally significant and its old-growth forests and roadless areas hold the keys to lessening anthropogenic climate change impacts. Importantly, efforts have been underway to support a sustainable regional economy that does not rely on old-growth logging and road building and provides investments in Indigenous communities[3]. Transferring public lands, many of which include irreplaceable old-growth rainforest, then subject to development, would be a major setback to these forward-looking efforts.

I urge Congress to focus on win-win strategies that together resolve social injustices to the Indigenous community while maintaining the irreplaceable values for all Tongass users and especially future generations.

Sincerely,

Dominick A. DellaSala, Ph. D
Senior Conservation Scientist, North America Forest Initiative
Conservation Biology Institute, Corvallis, OR

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[2] DellaSala, D.A., et al. 2015. Climate change may trigger broad shifts in North America's Pacific Coastal Rainforests. https://www.fs.usda.gov/pnw/pubs/journals/pnw_2015_dellasala001.pdf. Silver, B. et al. 2024. Large reductions in temperate rainforest biome due to unmitigated climate change. Earth's Future https://doi.org/10.1029/2024EF004812

[3] Mater, C. 2014. Transitioning to a second growth strategy in SE Alaska (POW Region) https://geosinstitute.org/wp-content/uploads/2014/06/Mater_Second_Growth_Report_2014_05.pdf. USDA Southeast Alaska Sustainability Strategy Investment Projects September 2022. https://www.fs.usda.gov/sites/nfs/files/legacy-media/r10/Project%20List%20Nov.%202022.pdf

From: Beret Barnes
To: fortherecord (Energy)
Subject: S 2554 opposition comment
Date: Saturday, February 14, 2026 5:18:31 PM

I strongly oppose the current version of S 2554, because of the threats inherent in privatization and monetization of public land including deforestation and large scale cruise ship tourism.

S 2554 would create five new for-profit "urban" corporations and privatize 115,000 acres of national forest, exposing those lands to clearcutting and industrial-strength tourism.

I live in the remote Southeast Alaska community of Tenakee Springs, one of the communities identified in the bill. Our isolated island community has about 100 residents and is in no way "urban" in character.

Please do not allow S 2554 to advance.

Ms. Beret Barnes
PO Box 502
Tenakee Springs, AK 99841

From: Mary-Claire Bernstein
To: fortherecord (Energy)
Subject: Bill #S2554
Date: Saturday, February 14, 2026 6:35:19 PM

We strongly oppose the current version of S 2554, because of the threats inherent in privatization and monetization of public land including deforestation and large scale cruise ship tourism. S 2554 would create five new for-profit "urban" corporations and privatize 115,000 acres of national forest, exposing those lands to clearcutting and industrial-strength tourism.
I live in the remote Southeast Alaska community of Tenakee Springs, one of the communities identified in the bill. Our isolated island community has about 100 residents and is in no way "urban" in character.
Please do not allow S 2554 to advance.

MaryClaire Bernstein
POBox 501
Tenakee Springs AK 99841

Sent from Mary-Claire's iPhone

From: Steven Bogart
To: fortherecord (Energy)
Subject: Please Oppose S. 2554 – Tongass National Forest Land Transfer
Date: Saturday, February 14, 2026 12:19:16 PM

Dear Senator Andy Kim,

I respectfully urge you to oppose S. 2554, which would transfer 115,200 acres of the Tongass National Forest into private corporate ownership decades after the Alaska Native Claims Settlement Act (ANCSA) was intended to serve as a final settlement of aboriginal land claims. ANCSA conveyed 44 million acres and nearly $1 billion in compensation, and residents of the five so-called “landless” communities became at-large shareholders of Sealaska Corporation, now the region’s largest private landowner. Reopening land transfers now sets a troubling precedent and permanently removes nationally significant old-growth forest from federal oversight, public input, and environmental safeguards. If additional compensation is deemed appropriate, it should be addressed financially—not through the privatization of protected public lands. Please stand for the integrity of ANCSA and keep federal public lands in public hands.

Sincerely,
Steven Bogart
Gladstone, NJ 07934

From: Julia Buck
To: fortherecord (Energy)
Subject: Senate Bill S. 2554 — the Alaska Native Landless Equity Act: absolutely NOT
Date: Wednesday, February 11, 2026 11:18:34 PM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation would condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

The building block of Indigenous communities are not corporations. The original ANSCA was not an attempt at land back, but at forcing Indigenous lifeways into a settler-colonial paradigm where a minority benefit from passive income while the majority live in poverty. If we were to allow Indigenous peoples unfettered access and mitigate settler-caused catastrophes like climate change from interrupting their natural abundance, that's land back. This is extraction wearing a Native costume; this is a residential school that offers swell internship placement. Lisa Murkowski doesn't give a shit about the Indigenous peoples of Alaska; if she did, she'd be doing something about the Yupik village that melted into the ocean or the dwindling caribou herds. This is a sop to the logging companies that put her in office.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land. They made enough privatizing and razing the 44 million acres Alaska already gave them.

Thank you for considering my thoughts on this matter.

From: Paul Butler
To: fortherecord (Energy)
Subject: Opposed to S.2554, the Alaska Native Landless Equity Act
Date: Monday, February 16, 2026 10:39:09 PM

Good evening,
I live in Washington state, but have been fortunate to have done a number of river trips and sea-kayaking trips that put me in the heart of Tongass National Forest. What's left of these old-growth forests are too valuable to be clear-cut, which is what will happen if the past is any indication of the future. Despite the total denial of the climate chaos we now face by the current administration, and some senators, this change is well documented and threatens our very existence. Passing this legislation will only speed us down the road to ruining the future for our children and grandchildren. Do you really dislike them so much that you would subject them to such a bleak future? Please vote no on this thoughtless bill.

Paul Butler
Olympia, WA
prb1204@gmail.com

From: Kaitlyn
To: fortherecord (Energy)
Subject: Official Stance Tongass
Date: Wednesday, February 11, 2026 3:48:58 PM

I am a citizen of the United States with interest in preservation of public land for recreational viewing purposes only. I oppose 100% the privatizing and selling off of land for mining and other usage contracts. USA is not to be bought and sold, it is to be shared and enjoyed. A destructive move such as privatization must be rejected at every level and institition. Thank you for your time and admitting this to record. I will defend this official opinion and it is legal binding and forthright that I have demanded the lands be protected and stay pristine. Please defend my stance with vigor and might, Natural Resources Committee. We must become the stewards of Earth, lest she swallow us with fire. Thank you for your time and work for Earth!!!

- Kaitlyn M Carr
Lowell, Arkansas



Chichagof Conservation Council
Box 621
Tenakee Springs, Alaska 99841

chichagof.conservation@gmail.com

The Honorable Mike Lee
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Martin Heinrich
United States Senate
304 Dirksen Senate Office Building
Washington, D.C. 20510

RE: February 12, 2026 hearing on legislation including S2554, the Alaska Native Landless Equity Act

Dear Senator Lee, Senator Heinrich, and members of the Committee,

Please include these comments in the February 12, 2026 hearing record.

The Chichagof Conservation Council is a long-established non-profit organization based in Tenakee Springs, Alaska. Our members include fishermen, small scale timber operators, scientists, sport and subsistence hunters, and a wide range of residents and visitors that share a deep appreciation of Tenakee Inlet.

The Chichagof Conservation Council opposes S 2554, and will continue to strongly oppose any attempt to privatize public lands of Tongass National Forest. While we acknowledge with respect the connection of Alaska Native people with their Southeast Alaska home, it is not appropriate or justifiable to establish a new for-profit corporation nominally based in Tenakee Springs or to privatize additional acreage from the Tongass National Forest. We have submitted letters and hearing testimony many times on this topic and related matters.

The Chichagof Conservation Council, the City of Tenakee Springs and individual Tenakee residents have worked together to protect Tenakee's salmon-rich watersheds for more than 40 years. We recognize that our community's stability and health depend on the salmon that spawn and rear in Tongass watersheds.

The intact salmon producing rivers of Tenakee Inlet are incalculably valuable on every level, from local to global. The land is public land that is open to all as part of the Tongass National Forest. Salmon production from Tenakee Inlet streams provides local food security through subsistence, sport and commercial fishing. Tenakee Inlet salmon contribute mightily to region-wide salmon fisheries that supply food to businesses and consumers around the world. At that global scale, intact Tongass forestlands are vitally important carbon sinks that sequester and store atmospheric carbon, thereby helping mitigate the impacts of climate change.

In addition, specific research on the rivers of upper Tenakee Inlet indicates that these salmon watersheds have unique characteristics that make them a potential refuge for salmon in a warming world. The Chichagof Conservation Council has been collecting stream temperature data for the past 18 years, with the goal of providing credible evidence that the streams of upper Tenakee Inlet benefit from deeper and longer lasting snow pack than other non-glacial island streams. We are convinced that longer lasting snow pack and other characteristics make these salmon strongholds uniquely resilient during the climate change-driven episodes of hot dry weather that are becoming more and more common.

We are deeply disappointed that Senator Murkowski has chosen to ignore our repeated pleas that she only support policies that do NOT threaten the economic stability of our community and the long-term health of the salmon streams and forests that sustain us.

We will continue to oppose legislation or administrative action that exposes the irreplaceable remaining intact watersheds of Tenakee Inlet to large scale, industrial-strength clearcutting and other exploitation, whether by the Forest Service, private corporations, or any other entity.

Sincerely,
Molly Kemp
Board President
Chichagof Conservation Council

From: Karen Crandall
To: fortherecord (Energy); fortherecord (Energy)
Subject: Opposition to S 2554 from Tenakee Springs residents
Date: Wednesday, February 18, 2026 8:38:24 PM

We have called Southeast Alaska home for 50 of the 53 years we have lived in Alaska. For over 25 years we split our time between Juneau and Tenakee Springs. It is a privilege to live in such a beautiful, productive and wild place. For decades the community of Tenakee Springs has consistently supported and tried to advance preservation of the wild and productive areas of Tenakee Inlet. The intact salmon producing rivers of Tenakee Inlet provide food security for local community members through subsistence, sport and commercial fishing. The salmon produced in this inlet are caught region-wide. These watersheds nourish the entire forest ecosystem. As the climate warms, the north facing Tenakee Inlet watersheds with longer lasting snow packs help to make these systems more resilient to periods of hot, dry weather that are becoming more common. With protection, these intact watersheds are and will remain salmon strongholds into the future.

During 2022-2023 in response to the Senate's proposed version (S-1889) of the current bill S-2554, members of Tenakee's city council, the mayor and the community worked with Senator Murkowski and staff and felt that there had been some agreement to slightly modify the land selections made by the "Urban Corporation for Tenakee" by removing approximately 2,500 acres out of Crab Bay, Seal Bay and the head of Tenakee Inlet from their selection and replacing them with lands elsewhere. A second change was to provide Legislated LUD-II protected land status for the critical salmon streams on the southwest shore and head of Tenakee Inlet. In June 2023, the city council learned that none of these changes were included in the draft of S-1889. Again, those suggestions or any other provisions to help protect the productivity of inlet's watersheds are not incorporated into the current bill S-2554. Without protections, turning over these lands to private for-profit native corporations may result in unrestrained resource development probably including clear-cutting old growth forests and developing industrial scale tourism.

Without the addition of some guardrails to protect the inlet's watersheds and a way of life, we cannot support the passage of S-2554. We hope if this bill ever passes, the five "landless" urban corporations will uphold indigenous peoples' reputation as being dedicated stewards of the land.

Karen and Pete Crandall
706 W. Tenakee Ave.
PO Box 554
Tenakee Springs, AK 99801

From: Mowgli Daghero
To: fortherecord (Energy)
Date: Thursday, February 19, 2026 4:42:52 AM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

This bill is a ruse. Natives in the five communities are NOT Landless: The Alaska Native Claims Settlement Act (ANCSA), signed in 1971, extinguished aboriginal land claims in Alaska in exchange for 44 million acres of land and approximately $1 billion in cash. This settlement established 12 for-profit regional corporations and over 200 village corporations to manage these assets for Alaska Native shareholders. Natives in the five so-called “Landless” communities were NOT "left out.” Those communities simply failed to meet the uncomplicated eligibility criteria for village corporate status of having a majority of native residents and not being modern or urban in character. Instead of receiving shares in Village Corporations, Alaskan Natives in these communities became at-large shareholders of Sealaska, which owns 365,000 acres of surface and subsurface estate. As the regional Native corporation for the Tlingit, Haida, and Tsimshian people, this makes them the largest private landowner in the region: Sealaska Native Corporation recently announced a fall 2025 dividend distribution of $11.8 million. Not only did the so-called “landless” receive fair and substantial equitable benefits of the original ANCSA, but for decades have received dividends that substantially exceed those paid by the regional corporations to village shareholders.

In a press release the day the 2014 “Sealaska bill” passed, Senator Murkowski declared, “Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,” yet very shortly after that press release, she introduced a similar version of this bill, and others over the years. Now this latest version perpetuates additional native land claims. Senator Murkowski has a muddled concept of the words “final” and “settlement”.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Sincerely,
Mowgli Daghero
France

From: Paul Daniello
To: fortherecord (Energy)
Subject: Senate Bill S2554
Date: Wednesday, February 11, 2026 11:29:24 PM

Dear Natural Resources Committee,
I oppose Senate bill S.2554 (the Alaska Native Landless Equity Act). and urge the committee to protect our public lands instead of handing them over for private exploitation. The proposed bill will hand over 115,000 acres of important habitat including old growth stands to private interests.

I urge the committee to vote "NO".

Paul Daniello
509 NW 11 St
Pendleton, OR

"The party told you to reject the evidence of your eyes and ears. It was their final, most essential command." - George Orwell

From: Kirk Davidson
To: fortherecord (Energy)
Subject: Oppose S.2554
Date: Wednesday, February 18, 2026 4:08:15 PM

I am writing to you as a concerned American citizen in opposition to S.2554 - Alaska Native Landless Equity Act .

At stake are 115,200 acres of public lands containing some of the nation's last remaining old-growth forests and intact watersheds. More than half of these acres are protected under the 2001 Roadless Rule, protections that are now being dismantled. The landless legislation would overturn these safeguards and open the door to large-scale old-growth logging in one of the world's most intact remaining temperate rainforests. It would also remove critical public access to vast stretches of public land, transferring irreplaceable landscapes out of public ownership and putting them at immediate risk. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nations last intact old growth forests.

The Landless Bill is just the latest in a Pattern of Privatization that has brought devastation to Southeast Alaska's wild places. Over the past fifteen years, a series of land-transfer and privatization schemes have quietly enabled more old-growth logging in Southeast Alaska than the high-profile attacks on the Roadless Rule. Yet these massive land giveaways remain largely under the radar, receiving minimal attention and almost no meaningful pushback from national conservation NGOs. Collectively, they have opened the door to industrial-scale clearcutting in some of the world's last intact old growth rainforests, with consequences that will reverberate for generations.

The consequences are stark in Southeast Alaska. Between 1971 and 2020, Sealaska clearcut nearly all old-growth forests on these lands employing some of the most environmentally destructive logging practices seen anywhere in North America.

The landless legislation threatens to upend decades of settled law by creating land claims for five new corporations under the Alaska Native Claims Settlement Act (ANCSA). Passed in 1971, ANCSA was billed as a settlement of indigenous land claims in Alaska, transferring 44 million acres of public land to for-profit native corporations. Contrary to appearances, ANCSA did not return land to tribal governments. Instead, it established shareholder-owned corporations, led by a small cadre of highly compensated executives, whose mandate has been the extraction and liquidation of natural resources on these lands.

The bill claims that five communities were "left out" of ANCSA to justify another massive land privatization from the National Forest. Yet, these communities were never overlooked. The Department of the Interior confirms: "There is no inequity in ANCSA to redress. Each of the five communities was considered for village status during the formulation of ANCSA, and none met the general statutory criteria for eligibility." In fact, Alaska Natives from these five "landless" communities are enrolled as at-large shareholders in Sealaska and have received higher dividends than village shareholders.

Thank you for your consideration.

Kirk Davidson
862-248-7627

From: Sabina de cavi
To: fortherecord (Energy); Sabina de cavi; Sabina de Cavi
Subject: Natural Resources Committee
Date: Friday, February 13, 2026 2:11:38 PM

As an academic and civil citizen I oppose S.2554 and ask not to auction Natural Parks across the countries and states of the USA. This is a scandalous and inconstitutional behaviour going against the people of America and of the world.
sabina de cavi
PROF. DR. SABINA de CAVI

Prof. Dr. Sabina d'Inzillo Carranza de Cavi

Profesora auxiliar, Departamento da História da Arte FCSH
(Universidade Nova, Lisboa)

Integrated researcher IHA (Universidade Nova, Lisboa)

Lab HD collaborator & researcher Laboratório de Humanidades digitais
(Universidade Nova Lisboa)

scavi@fcsh.unl.pt

+351939060415

From: Rick Down
To: fortherecord (Energy)
Subject: Concerns Regarding Privatization of the Tongass National Forest and Old-Growth Harvesting
Date: Thursday, February 12, 2026 12:37:54 AM

Dear Members of the Senate Natural Resources Committee,

I write to you as a professor who has spent many years studying forest ecosystems and public land policy. I am deeply concerned about proposals to privatize portions of the Tongass National Forest in order to expand old-growth timber harvests.

The Tongass is globally significant. As the largest intact temperate rainforest in the United States, it represents an ecological system that has developed over centuries under relatively limited industrial disturbance. Old-growth stands are not simply older collections of trees; they are structurally complex systems that regulate hydrology, support salmon-bearing streams, store extraordinary amounts of carbon, and provide habitat that cannot be replicated in short-rotation forestry. Once removed, these systems are not meaningfully replaceable within any timeframe relevant to current generations.

From a policy perspective, privatization raises serious concerns about long-term stewardship. National forests are held in trust for the American public and are managed under a multiple-use framework that attempts—however imperfectly—to balance ecological integrity, economic use, and public access. Transferring ownership or control to private interests would likely shift priorities toward short-term financial return, particularly in the context of high-value old-growth timber. That shift would be difficult to reverse and could permanently alter watersheds and habitat systems that underpin fisheries, tourism, and subsistence lifeways in Southeast Alaska.

There is also the broader climate context to consider. Old-growth forests in the Tongass are among the most carbon-dense forest systems in the world. Their continued protection represents a practical and cost-effective component of national climate mitigation strategy. Large-scale harvest of these stands would release stored carbon and reduce the landscape's long-term sequestration capacity.

I fully appreciate the economic challenges facing rural communities in Southeast Alaska. Sustainable employment opportunities are essential. However, long-term economic resilience is more likely to be achieved through investment in fisheries, restoration, recreation, young-growth management, and locally value-added forest products than through liquidation of irreplaceable ecological capital.

For these reasons, I urge the Committee to approach any privatization proposal with extreme caution and to maintain strong protections for old-growth ecosystems within the Tongass National Forest. Decisions made now will shape this landscape—and the communities that depend upon it—for generations.

Thank you for your consideration.

Respectfully,

Richard Down, Ph.D.

From: Steve Flammer
To: fortherecord (Energy)
Subject: Public Comment: Strong Opposition to S. 2554 (Alaska Native Landless Equity Act)
Date: Sunday, February 15, 2026 10:54:00 AM

Dear Chairman Lee, Ranking Member Heinrich, and my CA Representative Alex Padilla,

I am writing to express my firm opposition to S. 2554, the Alaska Native Landless Equity Act. While resolving land claims is an important goal, this bill as currently written poses an unacceptable risk to the Tongass National Forest—a landscape of global significance for climate stability.

As a scientist and as a citizen who treasures the natural beauty of our country, I am particularly concerned for the following reasons:

Unmatched Carbon Impact: The Tongass serves as a premier "climate shield," holding approximately **44% of all carbon stored by the entire U.S. National Forest system**. S. 2554 would transfer over 115,000 acres of this public land into private corporate hands, likely resulting in high-volume clear-cutting that would release centuries of stored carbon.

Threat to Endangered Wildlife: The proposed land transfers on islands such as Etolin and Revillagigedo encompass the primary **habitat of the Alexander Archipelago wolf.** Fragmenting these forests with industrial logging and new road construction threatens the survival of this rare species and the regional predator-prey balance.

Irreparable Loss: Old-growth forests are irreplaceable. Once these ancient stands are logged, the resulting carbon debt and loss of biodiversity cannot be recovered for centuries.

I urge the Committee to reject S. 2554. We must not settle land claims by liquidating the most carbon-dense and ecologically sensitive old-growth forests in America.

Sincerely,

Steven Flammer, M.Sc.
San Jose, CA

From: Jesse French
To: fortherecord (Energy)
Subject: Opposition to S.2554, Alaska Native Landless Equity Act
Date: Wednesday, February 11, 2026 11:05:18 PM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Thank you,
Jesse French
Bellingham, WA

From: Stephanie Harold
To: fortherecord (Energy)
Subject: I oppose S2554
Date: Wednesday, February 18, 2026 7:34:46 AM

Dear Committee Members,

I strongly oppose this bill which will privatize national forests in my área. While I understand the unresolved inequities in the 1972 legislation, this Bill is wholly inappropriate. It will be very destructive to my community of Hoonah which has already seen the negative impacts of privatization of public land.

Please do not allow it to proceed.

Sincerely,
Stephanie Harold
Hoonah, AK

From: stacy holt jr
To: fortherecord (Energy)
Date: Monday, February 16, 2026 9:02:03 AM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

This bill is a ruse. Natives in the five communities are NOT Landless: The Alaska Native Claims Settlement Act (ANCSA), signed in 1971, extinguished aboriginal land claims in Alaska in exchange for 44 million acres of land and approximately $1 billion in cash. This settlement established 12 for-profit regional corporations and over 200 village corporations to manage these assets for Alaska Native shareholders. Natives in the five so-called “Landless” communities were NOT "left out.” Those communities simply failed to meet the uncomplicated eligibility criteria for village corporate status of having a majority of native residents and not being modern or urban in character. Instead of receiving shares in Village Corporations, Alaskan Natives in these communities became at-large shareholders of Sealaska, which owns 365,000 acres of surface and subsurface estate. As the regional Native corporation for the Tlingit, Haida, and Tsimshian people, this makes them the largest private landowner in the region: Sealaska Native Corporation recently announced a fall 2025 dividend distribution of $11.8 million. Not only did the so-called “landless” receive fair and substantial equitable benefits of the original ANCSA, but for decades have received dividends that substantially exceed those paid by the regional corporations to village shareholders.

In a press release the day the 2014 “Sealaska bill” passed, Senator Murkowski declared, “Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,” yet very shortly after that press release, she introduced a similar version of this bill, and others over the years. Now this latest version perpetuates additional native land claims. Senator Murkowski has a muddled concept of the words “final” and “settlement”.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Sincerely,

Stacy Holt Jr.

Born in Kansas!

From: Carolyn Prouty
To: fortherecord (Energy)
Subject: I oppose S 2554: from frequent visitor and recreational fisherman to Tenakee Springs, Alaska
Date: Saturday, February 14, 2026 5:14:15 PM

I and we **strongly oppose the current version of S 2554**, because of the threats inherent in privatization and monetization of public land including deforestation and large scale cruise ship tourism. This bill would create five new for-profit **"urban"** corporations and privatize 115,000 acres of national forest, exposing those lands to clearcutting and industrial-strength tourism.

I am one of the many fishermen and tourists who visit and spend time enjoying the water near the remote Southeast Alaska community of Tenakee Springs, one of the communities identified in the bill. This isolated island community has about 100 residents and has NO CARS and NO STREETS. **It is not "urban" in the least! Please do not allow S 2554 to advance.**

Carolyn Prouty
91 Lower Falls Creek Road
Elma, WA 98541

From: Schyan Kautzer
To: fortherecord (Energy)
Subject: Opposition to S. 2554 – Protect Tongass National Forest Public Lands
Date: Tuesday, February 17, 2026 3:51:45 PM

Dear Members of the Senate Natural Resources Committee,

I am writing to express my strong opposition to Senate Bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, and Ketchikan) to create additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

ANCSA, signed in 1971, extinguished aboriginal land claims in Alaska in exchange for 44 million acres of land and approximately $1 billion in compensation. It established 12 regional corporations and more than 200 village corporations to manage these assets for Alaska Native shareholders. Alaska Natives in the five communities identified as "landless" were not excluded from ANCSA; they became at-large shareholders of Sealaska, the regional Native corporation for the Tlingit, Haida, and Tsimshian peoples. Sealaska owns approximately 365,000 acres of land and provides ongoing financial dividends to its shareholders, including those from these communities.

S. 2554 would transfer intact national forest land—currently held in trust for all Americans—into private ownership. These Tongass lands include some of the nation's last remaining old-growth temperate rainforest ecosystems. Once privatized, they would no longer be subject to federal environmental safeguards, public input processes, or the multiple-use stewardship framework that governs national forests today. This change would open the door to industrial logging and extractive development in landscapes that are globally rare and nationally significant.

Beyond policy and precedent, this issue is deeply personal to me. My health, memories, and sense of belonging have been shaped on the backbone of America's public lands. As someone living with multiple sclerosis, intact natural landscapes—quiet forests, old trees, functioning ecosystems—are not abstract ideals; they are places that support my physical and mental well-being, resilience, and ability to live fully. These lands provide restoration, stability, and connection that cannot be replicated once lost.

Public lands like the Tongass also sustain far more than individual experience. They support biodiversity, fisheries, climate stability, recreation economies, cultural continuity, and tourism that benefits communities across the country. They are part of the shared natural heritage that defines the United States—places where generations build memories, stewardship ethics, and identity. Privatizing intact public forest at this scale would permanently diminish that shared inheritance.

If any outstanding claims related to ANCSA remain, they should be addressed through financial or land-base mechanisms within the existing Sealaska framework, consistent with Congress's original settlement structure, rather than by transferring protected national forest lands out of federal ownership.

Federal public lands should remain in federal public hands. I respectfully urge you to oppose

S. 2554 and protect the Tongass National Forest for the health, heritage, and future of all Americans.

Thank you for your time and consideration.

Sincerely,
Schy

From: Molly Kemp/Nick Olmsted
To: fortherecord (Energy)
Subject: Statement of opposition to S 2554 for 2/12/2026 hearing record.
Date: Wednesday, February 11, 2026 9:17:20 PM
Attachments: Review of ISER Report Native Land Claims.docx

As a resident of a Southeast Alaska community that is identified in S 2554, "*A bill to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes*" I was astounded to only learn **today** that there will be a Senate committee hearing addressing this proposed legislation **tomorrow.**

Please ensure that my 12/14/2025 letter (below) expressing opposition to S 2554 and the attachment are included in the hearing record for S 2554.

December 14, 2025

Dear Senator Lee,

I am deeply concerned by reports that Senator Murkowski is pressuring the Senate Energy Commitee to advance S 2554, which would modify the Alaska Native Claims Settlement Act of 1971 (ANCSA) to create five new for-profit "Urban" corporations and transfer to those corporations 115,000 acres of National Forest land along with millions of federal dollars.

Please do not allow this bill to progress.

One of the five named communities is Tenakee Springs, where I have lived for the past 50 years. **Tenakee Springs is in no way "urban" in character.** Tenakee Springs has approximately 100 full-time residents, and its location on Chichagof Island is very remote and not connected to any other municipal entity. Access is only by boat or float plane. The town core consists of a 1.5 mile gravel lane along the beach. There is very little municipal infrastructure. **To call this community "urban" is a farce.**

In addition, to the best of my knowledge **there is not a single actual resident of Tenakee who would benefit from S 2554,** while everyone who does make this place their home would be harmed by the privatization of public lands now equally available to everyone.

I think every thoughtful Alaskan recognizes that although ANCSA was a monumental achievement, like all legislation it was not perfect and created many inequities. However, S 2554 will only cause further division in Southeast Alaska.

I will attach a summary of the Institute of Social Economic Research findings on this issue that pertain to Tenakee Springs.

Sincerely,
Molly Kemp
Box 571
Tenakee Springs AK 99841
907-957-3073

Alaska Senators Lisa Murkowski and Dan Sullivan have introduced Senate Bill 872, which would create five new Native corporations in Southeast Alaska -- Tenakee Springs, Ketchikan, Wrangell, Petersburg, and Haines. Each corporation would be granted 23,000 acres, which the corporations would select, without constraints, from public lands. The bill is now making its way through the Senate Committee on Energy and Natural Resources, which Sen. Murkowski chairs.

In justification, the legislation states that enrollees to these five Southeast communities were "inadvertently and wrongly denied the cultural and financial benefits of enrollment in Village or Urban corporations established" under ANCSA. The statement is purportedly based on a report from the Institute of Social and Economic Research (ISER), which was commissioned by the US Senate in 1992 to address these issues. But the statement in the legislation is, in fact, directly and clearly contrary to the ISER Report's conclusions. The ISER Report documents that (1) the land claims of Native people in Southeast Alaska were carefully considered in the negotiations leading up to the Alaska Native Claims Settlement Act, (2) the people were duly compensated according to the terms of the Act, and (3) Tenakee Springs is unlike the other four study communities and the10 ANCSA corporation villages in significant respects, particularly the absence of a Native majority or strong historical Native presence.

Alaska's Senate delegation has based this bill on an erroneous interpretation of the ISER report. To correct the factual record, John Wisenbaugh has conducted a careful review of the ISER Report. His findings are summarized here.

A Comprehensive Review and Summary of the Institute of Social and Economic Research Report

"A Study of Five Southeast Alaska Communities"

By John Wisenbaugh, Tenakee Springs

June 2009, updated April 2015

Background

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA) to settle aboriginal claims of the Native peoples of Alaska. ANCSA conveyed 44 million acres of land and $1 billion to 13 regional corporations and over 200 village and urban corporations. In Southeast Alaska, the regional corporation was determined to be Sealaska. Ten villages were selected for village corporations, and two cities, Juneau and Sitka, were awarded urban corporations.

Two communities that were not listed, Tenakee Springs and Haines, appealed to the Alaskan Native Claims Appeal Board. The Appeal Board ruled that the list of 10 villages was exclusive and could not be increased. Later, Ketchikan appealed and received the same ruling.

Subsequently, Haines, Petersburg, Wrangell, and Ketchikan (the "big four") and Tenakee formed a group called the Southeast Alaska ANCSA Land Acquisition Coalition (SAALAC). SAALAC lobbied Congress to authorize a study of why they were left out, with the intention of amending the Settlement Act to include each of them in the list of villages.[i] Their lobbying was successful, and in 1993 Congress

directed the Department of Interior to study whether the five communities (the "big four" and Tenakee) were inadvertently overlooked, or were deliberately excluded from the listing of villages in ANCSA.

The Department of Interior tasked the United States Forest Service, the Bureau of Land Management, and the Bureau of Indian Affairs with preparing the report. These agencies in turn contracted with the Institute of Social and Economic Research (ISER) at the University of Alaska. ISER was directed to research and report the factual information available on why the SAALAC groups were omitted and compare the five communities' historical development and circumstances to other Southeast villages.

In February 1994 ISER submitted to Congress what is now referred to as the ISER Report.

Were the Five Southeast Villages "Inadvertently" Overlooked in the ANCSA? *No.*

ANCSA was the result of over 40 years of Native claims, congressional action, litigation, and legislative debate. Preceding ANCSA, many bills were proposed but were judged unsuitable. All of the enrolled ANCSA Natives received some compensation, and all Native residents were considered. All Natives were recognized as members of Regional Corporations. Some were also able to participate in their village corporations. Those not enrolled in village corporations received additional compensation as at-large members of their regional corporations. There were many different levels of compensation across Alaska and not all shared equally, nor did Congress intend that they should.

The ANCSA legislation provided concise and explicit criteria to determine which communities would be included in the bill as village corporations.[ii] According to these criteria, many places were eliminated. Congress directed that village corporations must meet these three requirements:

- Population must be greater than 25 on the date of the 1970 census, April 1, 1970.
- Native population must be a majority of the community.
- Community must be of other than urban or modern character.

The result in Southeast Alaska was a separate section of ANCSA, Section 16, which listed 10 villages eligible for village corporations. The list did not include the "big four," Tenakee, Juneau or Sitka. The list could not be appealed or added to; Section 16 did not contain any provision to appeal eligibility determination, although Section 11 provided appeals procedures for the rest of Alaska.[iii].

There was a strong lobbying effort on the part of the "big four cities," Juneau, and Sitka for inclusion. Senator Stevens was favorably inclined, but did not act. There was more vigorous lobbying of the conference committee reconciling the House and Senate versions, and someone, possibly Senator Stevens, introduced a new section to ANCSA. Section 14 created provisions for four new urban corporations that would receive land and money. The cities were Juneau, Sitka, Kodiak, and Kenai.[iv] The sense of the committee was that there would be not more than these four cities. [v]

Prior to the passage of ANCSA, a large number of bills to settle Alaska Native claims were introduced and debated in Congress from 1969 to 1971.There were at least six in the House and five in the Senate. Some versions listed the "big four." Some contained language to provide all unlisted communities a chance to prove able to meet the eligibility criteria and several did not.[vi] That language including Southeast villages was included in Senate Bill 35, the Senate ANCSA Bill, but it was not adopted in conference. As a result, Southeast enrollees had no standing to appeal their village status.

Subsequent appeals were all denied: Appeal of Tenakee 1974, appeal of Haines 1974, and the appeal of Ketchikan 1977, to the Alaska Native Claims Appeal Board. [vii]

One reason Southeast was treated differently was the passage of an earlier bill, the Tlingit and Haida Settlement Act of 1965. The legislation awarded $7.5 million and established the Tlingit and Haida Central Council to manage the funds. The Act was intended to extinguish aboriginal claims against the Federal Government. The Tlingit and Haida Settlement communities included the "big four" but not Tenakee Springs.[viii]

Another reason why Southeast was treated differently from the rest of Alaska was because of the immense value of its timberland.[ix] This had important consequences for the compensation of the Southeast members of Sealaska, as detailed below.

So, the view that the five study communities were inadvertently overlooked is completely unfounded. On the contrary, the community of Tenakee was excluded because, lacking a Native majority, it did not meet the criteria for a village corporation. Discussion of the criteria and the standards for compensation were prolonged and deliberate; the ISER report provides a detailed history of the ANCSA decision-making process.

Were People of the Five Southeast Communities Compensated Under ANCSA? *Yes.*

All Alaska Natives enrolled under ANCSA received some level of compensation from the pool of $1 billion and 44 million acres awarded by Congress.[x] The $1 billion ANCSA settlement fund was divided between the village, regional, and urban corporations.[xi]

Distribution of the $1 billion settlement was through the Alaska Native Fund. Each shareholder statewide received a $1,000 initial payment, about eight percent of the fund. Moreover, every enrollee, statewide, became a shareholder of their regional corporation. Forty-six percent of the fund, $6,000 for each shareholder, was distributed to the regional corporations, most of which, in Southeast, was paid out as a dividend. Each Southeast regional shareholder received 100 shares of Sealaska Regional Corporation stock. At-large members of the regional corporations received their payment directly.[xii] By the end of 1993, Sealaska had paid each at-large shareholder $13,569.22 per one hundred shares.

The remaining 46% of the ANCSA fund was paid to the village, regional and urban corporations as a lump sum payment. The village corporations decided what to do with the funds. Some paid it out in dividends and others invested it. Sealaska shareholders who were also enrolled in village corporations received $5,186.01.[xiii] Also, each village and urban corporation shareholder received 100 shares of village or urban corporation stock.

Each Sealaska shareholder has an ownership interest in 17 acres of timberland and receives the direct financial return from 8 acres. The Sealaska shareholders also receive a share of earnings from the subsurface mineral rights to all of the Southeast land conveyances, including the village corporation lands.[xiv] While Sealaska has ten times more land than any village or urban corporation (17 acres x 15,782 shareholders = 268,000 acres), it has six times more members than the largest urban corporation Goldbelt (2,600) and one hundred and thirty-one times more members than the smallest, Kaasan (120). Hence the at-large shareholders received less money overall than village corporation members.[xv]

In sum, the enrollees to the 5 study communities all received compensation under ANCSA. In fact, as at-large shareholders of Sealaska, they received more money from Sealaska than did the village corporation members and they continue to do so.

Should Tenakee be Considered in the Same Category as Ketchikan, Haines, Wrangell, and Petersburg? *No.*

There is a large body of law concerned with Indian rights and treatment, and a long history to ANCSA. In 1967, Governor Hickel proposed and caused to be created what became known as the Governor's Task Force. The Task Force parties eventually agreed to a settlement based on the following: Fee simple transfer of 40 million acres of land in trust to corporations formed under the laws of the State of Alaska, $20 million plus 9% state and federal royalties on outer continental shelf and state land development, grant of state money based on 5% of revenue earnings from state selected federal lands and lifting the land freeze to allow the State to resume state selection of federal land under the Statehood Act, and rights to use federal land for subsistence hunting and gathering.[xvi]

Congress spent the next four years defining this model.[xvii] During that process, powerful individuals in Congress insisted that natives in modern towns not receive land. Consequently, land would be conveyed only to majority native small communities with a subsistence lifestyle.[xviii] Representatives were concerned also about the potential divisiveness of conveying all vacant public land in and around the cities to a corporation controlled by a racially defined minority population.[xix]

The director of the Bureau of Indian Affairs office in Juneau was given responsibility for making the village eligibility determinations for the entire state. A village would be considered urban and modern and character if it possessed all six of these attributes: Population over 600, centralized water and sewer serving a majority of the residents, five or more established businesses, organized police and fire services, private resident medical and dental services, and fully maintained streets and sidewalks.

All of the "big four" studies communities have these attributes, although Tenakee Springs does not. The "big four" are urban and modern in character as are Juneau and Sitka. They were recognized, considered and deliberately eliminated from village corporation eligibility.

Tenakee Springs is a much different community than any of the "big four." Currently the population is estimated at 93.[xx] The 1970 census population used for ANCSA was 86. The Native population was 6. None of those six enrolled to Tenakee.[xxi] Sixty-one non-resident individuals enrolled to Tenakee.[xxii] Even these 61 non-resident individuals were not enough to make a majority population of Natives.

Tenakee and Haines applicants filed timely appeals with the Alaska Native Claims Appeal Board.[xxiii] These appeals were denied because the board ruled that the list of 10 villages could not be added to.[xxiv] Congress did not include language in ANCSA, Section 16, to allow an appeal of village eligibility as it had for the remainder of the State in Section 11.[xxv] The Appeal Board therefore did not rule on the merits.

However, it was the conclusion of the Sealaska attorney representing the Tenakee enrollees that if the Alaska Native Claims Appeal Board had ruled on the merits, the decision would not change. Tenakee would not be eligible, because it was not a majority native community.[xxvi] The Tenakee enrollees accepted the decision as final and Sealaska distributed to the at-large shareholders stock and the initial

payment on December 12, 1974.[xxvii] Then began the effort to contest the Appeals Board decision culminating in the ISER report.

The ISER report compares population and enrollment numbers for the 10 ANCSA villages, two urban corporations and the five study communities. There is a rather glaring computational error in the population figures for Saxman, which has in fact a Native population of 73%, rather than 27%. The error leaves the casual observer to conclude that Saxman, Tenakee, and Kasaan all had minority native populations. On the contrary, of the towns not modern and urban in character, Tenakee is the only one with a minority-enrolled Native population. The Report reaches the conclusion that there is "a significant difference between Tenakee and the other small communities which became certified as native villages." [xxviii]

Historical population data on Native populations for Tenakee are hard to find. Little information is found in the ISER Report beyond population numbers for 1970. Several generalizations are made about the presence of a Native village at the turn of the century, the growth of the native population from 1900 to 1930, and its subsequent decline. Appendix A provides the total decennial populations for Tenakee, 1910 to 1980, but without the ethnic breakout of Native population numbers, they are of little value. The author of the ISER Report takes the population increase and decrease as evidence of aboriginal migration, but the population changes also include whites, Asians, Filipinos and many from Scandinavia.[xxix] While the author states, "Natives were the majority population through mid-century," the only information backing this assertion is a statement from an unnamed 1950's census enumerator, who gives the 1946 population figures from memory.

In contrast, data from the archives of the Tenakee Historical Collection do not show a majority Native Population after 1900.

Year	Total Pop	Native Pop	% Native	Source
1900	17	14	82%	US Census
1910	125	17	14%	US Census
1920	185	16	12%	US Census
1930	210			ISER Appendix A, page 57
1939	188			ISER Appendix A, page 57
1942	138	43	32%	Tenakee Postmaster, Enumeration for the National Resources Planning Board
1946	153	96	63%	ISER Appendix A, page 57
1950	140			ISER Appendix A, page 57
1956	149	69	46%	Tenakee Weekly Newsletter Christmas Edition
1958	101	20	20%	ISER Appendix A, page 57
1960	109			ISER Appendix A, page 57
1967	125	30	24%	ISER, pg 17, Footnote 16 Fed. Field report
1970	86	6	7%	US Census
1980	138			ISER Appendix A, pg 57
1990	94	9	10%	State of Alaska Website, DCRA
2000	104	3	5%	State of Alaska Website, DCRA

The population data show an influx of itinerant people of all sorts to work in businesses (seafood processing) established by predominately white males. As those businesses closed, employees and their families returned home or moved to the next job. The figures do not show there was ever a substantial (greater than 25) permanent native population.

There is no doubt that there was early Native use of Tenakee. However there is no evidence in ISER that there were 25 or more people there at contact. The level of tribal or organized activity in

Tenakee never reached the level of Kasaan or Saxman.[xxx] Here is a comparison of Tenakee Springs with Kasaan and/or Saxman, relative to the 10 elements considered in the ISER report as evidence of Native activity:

1, Traditional native settlements before the arrival of whites. Ed Snyder bought a load of general merchandise in Juneau 1899. He loaded it in his boat and rowed it to Tenakee, where he promptly sold it all. He returned with another load and bought a piece of land from Andrew Jack Sr., head of the extended Tlingit family living near the hot springs. The 1900 Census enumerates 17 people in Tenakee. It is likely they are the 14 members of the Jack family, Ed Snyder, his partner Charles Carlson, and one other white man. There is one traditional Tlingit communal house evident in early (1900-1905) photos. [xxxi]

Kasaan was one of the first Haida communities in Alaska and perhaps the second-largest Haida community in the immediate pre-contact era. Early photos show several traditional communal houses, modern construction houses, and totem poles. Saxman was a "new community" formed through the encouragement of the Presbyterian Church and the Territorial School Authorities in 1897. It was initially settled by the Cape Fox (Sanya) kwan.[xxxii]

2. Indian occupancy of identifiable areas in early towns

In Tenakee, there were Natives living at the hot springs and some near what is now the harbor area. The Jacks and Walters eventually sold their holdings at the hot springs and moved to the harbor area. The harbor area was outside of the 1922 Town Site Survey, USS 1418.[xxxiii] Old Kasaan was patented to a mining company in 1902. The village moved to nearby "new Kasaan."[xxxiv]

3. Indian land excluded from the national forest. In Tenakee (USS 2459) was eliminated from the national forest by Executive Order of President Franklin Roosevelt. on September 3, 1935.[xxxv] In Kasaan, USS 1896 was eliminated from the national forest in 1939.

4. Indian possessions and native town site lands. In Tenakee, the harbor area had six dwellings, four outbuildings, and several gardens.[xxxvi] The elimination was never filed upon with the Bureau of Land Management for patent and subdivision.[xxxvii] The population declined in the 40s and 50s. The last family left in 1968. The area has been abandoned since then.[xxxviii] In 1939, Kasaan's elimination was subdivided into five blocks, 45 lots. In February of 1976, Kasaan incorporated as a second-class city under state law. The last tract was subdivided in 1981, 26 lots.[xxxix]

5. Federal schools for Indians. All ANSCA communities had federal Bureau of Education/Bureau of Indian Affairs schools as well as the "big four" and 13 others. Tenakee had a territorial school attended by all the children in town.

6. Church or missions serving Indians. In Tenakee, Native residents build a church on donated land, just east of the town center. Later it became the Salvation Army church and hall. It was active until 1950 when the Hall burned.[xl] Kasaan and Saxman churches or missions are not discussed in the ISER report.

6. Alaska Native Brotherhood/Alaska Native Sisterhood. Tenakee sent a delegate to the 1929 convention in Haines and had an active chapter until 1950 when the Salvation Army Hall burned.[xli] Kasaan and Saxman had early active chapters, and still do.

8. IRA organizations. In 1936, the Indian Reorganization Act was amended to include Alaska Natives. They were allowed to form village councils and incorporate. With the exception Yakutat, all the ANSCA communities and the "big four" formed IRA governments. Tenakee did not.

9. Recognized in the Tlingit and Haida settlement and membership in the Tlingit and Haida Central Council. As discussed earlier, the 1968 settlement was the culmination of almost 40 years effort to gain recognition of native claims. The act formed the Tlingit and Haida Central Council and awarded $7.5 million in 1971. All of the ANCSA villages, urban towns and the "big four" were Council members with local chapters. However, Tenakee was not recognized and did not participate.[xlii]

10. Native cemeteries and gravesites, totem poles. Tenakee has 2 cemeteries near town and one across the inlet on Strawberry Island. Kasaan has both gravesites[xliii] and totem poles.[xliv]

The level of organized village life in Tenakee Springs among Natives never reached the level of any of the recognized villages. Tenakee Springs had some aboriginal use by a small group of Natives at the turn of the century, and later a Native population that increased and decreased with the rest of the population. If the Native population post-contact was ever a majority, it was for only a few years. Native residents of Tenakee Springs had an ANB/ANS chapter for a while, but did not form a IRA Tribal Council, was not recognized in the Tlingit and Haida Settlement, did not have a Federal BIA School, and did not patent and subdivide the 1935 Tongass elimination. Tenakee Springs was considered, and eliminated from, ANCSA settlement consideration, according to the process laid out in ANCSA. The 61 non-resident enrollees all received compensation as at-large shareholders of Sealaska Corporation.

Summary

The intent of Congress and ANCSA was to fairly and equitably settle and extinguish for all time aboriginal land claims in Alaska. There was no part of Southeast Alaska that was not the dominion of one tribe or Kwan or another. Probably the same held for the remainder of Alaska. Clearly Congress was not going to return the entire state to the Native population. Congress has broad discretion in how it will award compensation. Congress and ANCSA did not intend that all natives should receive equal compensation. Land would be awarded to villages with a historic as well as present use, and a majority native population of more than 25 individuals who were living a subsistence lifestyle. Ten villages in Southeast were listed, and many more were not. Natives in modern urban cities would be compensated with cash, not land entitlement. ANCSA awarded 44 million acres of land, and $1 billion to Alaska's Native people.

The five communities studied in the ISER report were clearly not inadvertently overlooked, nor were they uncompensated. Natives enrolled to the modern urban "big four"-- Haines, Petersburg, Wrangell, and Ketchikan were compensated as at-large shareholders of Sealaska Regional Corporation. At the time of ANCSA, Tenakee Springs did not have sufficient current use and lacked a majority native population and the town was not listed. Non-residents who attempted to enroll to Tenakee Springs were also compensated as at-large shareholders of Sealaska.

[i] ISER report, Appendix E, memo: Stole, Rives, Boley, Jones, and Grey, to SAALAC.
[ii] ISER report, chapter 2.
[iii] ISER report, p.8, paragraph 3.
[iv] ISER report, p. 18, paragraph 2.
[v] ISER report, p. 11, bullet 2.
[vi] ISER report, p. 17, paragraph 2; p.16, paragraph 2.
[vii] ISER report, p. 17, paragraph 2.
[viii] ISER report, p. IX, table 1.
[ix] ISER report, p. 91, paragraph 4.
[x] ISER report, p.7, paragraph 3.
[xi] ISER report, p. 3, paragraph 4.
[xii] ISER p. 93, paragraphs 1-3.
[xiii] ISER report, Appendix D, letter: Review of Draft Report, Bob Loescher Ex. VP. Sealaska to Michael Barton, Regional Forester, USFS, page 4, chapter 2, paragraph 2.
[xiv] ISER report, p. 95, paragraph 1.
[xv] ISER report, p. 81, table 6.1.
[xvi] ISER report, p.12, paragraph 5.
[xvii] ISER report, p.13, paragraph 1.
[xviii] HR 3100. (ISER report, p.15, paragraph 1.
[xix] ISER report, p.15, paragraph 3.
[xx] State of Alaska database.
[xxi] ISER report, Table 4.2, p. 42,
[xxii] ISER report,Table 4.2, p.42.
[xxiii] ISER report, p. 22, paragraph 1.
[xxiv] ISER report, p. 22, paragraph 2.
[xxv] ISER report, p.22, paragraph 2-3.
[xxvi] ISER report, appendix D, volume 2, Sealaska memo, 9/24/74, from D.J. Beighle, attorney to John Borbridge, President, Sealaska, page 2, paragraph 2
[xxvii] ISER report, Appendix E, volume 2, letter from the Tenakee enrollee, John Martin, to John Borbridge, President, Sealaska; Certified list of Tenakee enrollees in Sealaska
[xxviii] ISER report, p. 44, paragraph 4.
[xxix] ISER report, Appendix A. p. 54, paragraph 3.
[xxx] ISER report, Chapter 5.
[xxxi] Tenakee and the O'Toole's, US Census, Tenakee Historical Collection.
[xxxii] ISER report, p. 47, paragraph 3.
[xxxiii] ISER report, Appendix A. p. 53, paragraph 3; p. 55, paragraph 1.
[xxxiv] ISER report, p. 60, paragraph 2; p. 62, paragraph 3.
[xxxv] ISER report, Appendix A, p. 54.
[xxxvi] ISER report, pp. 50, 55.
[xxxvii] ISER report, p. 64, paragraph 1,2.
[xxxviii] Author's conversation with Tenakee enrollee Donald See, early 1970's.
[xxxix] ISER report, p. 64, paragraphs 1, 3.
[xl] ISER report, p. 56.
[xli] ISER report, p. 56.
[xlii] ISER report, p. 36, paragraph 5.
[xliii] ISER report, Table 5.1.
[xliv] ISER report, p. 60, paragraph 2.

From: Mitchell E. Kilby
To: fortherecord (Energy)
Subject: Opposed to S.2554
Date: Friday, February 20, 2026 12:54:02 AM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. Senate Bill S.2554 threatens to privatize over 115k acres of the Tongass National Forest, and open up vast roadless old growth forests to clearcut logging.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible.

Federal public lands should remain in federal public hands.

Sincerely,

Mitch Kilby
San Antonio, TX

CITY OF TENAKEE SPRINGS

Linnea Lospenosochatel
MAYOR
citytke@gmail.com

P.O. Box 52
Tenakee Springs, Alaska 99841
Phone 907-736-2207
Fax 907-736-2249

February 18, 2026

The Honorable Mike Lee Chair
U.S. Senate Committee on Energy
and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
U.S. Senate Committee on Energy
and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 2554, "A bill to provide for the recognition of certain Alaska Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes."

Dear Chair Lee and Ranking Member Heinrich:

The City of Tenakee Springs, Alaska, wishes to express our concerns and our opposition to a bill addressed in the February 12, 2026, committee hearing, the "Alaska Native Landless Equity Act," S.B. 2554. This proposed legislation would establish five new for-profit Native Corporations in Southeast Alaska, including one nominally assigned to Tenakee Springs.

While we acknowledge with respect the connection of Alaska Native people with their Southeast Alaska home, it is not appropriate nor desirable to establish a new for-profit corporation in Tenakee Springs, or to withdraw substantial Tenakee Inlet acreage from the Tongass National Forest. We have submitted letters and hearing testimony many times on these and related matters in the past.

The City of Tenakee Springs has a long history of opposing similar legislation. This bill stands to benefit no current residents of this community, and stands to harm many. Tenakee Springs is a rural community and is classified as "rural" for subsistence purposes. However, S. 2554 proposes to establish an "urban" corporation. Tenakee cannot be rural and urban at the same time, and we cannot support anything that might cloud or diminish our subsistence standing.

Our community's stability and health depends on the salmon that spawn and rear in Tongass watersheds. Tenakee inlet is exceptionally well-endowed with intact and richly productive streams. Our freezers and canning jars are full, thanks to the coho that spawn and rear in the streams of upper Tenakee Inlet. Many of the young people living here are trollers whose cash income is supported by those same streams. Tourists and sport fishermen are drawn here by the abundant fishing, viewing, and hunting opportunities.

We have also long supported small-scale, locally based, value-added use of forest products from the remnants of the many areas that were clear cut in the pulp mill days; for example, on the scale of the current "Tenakee Logging Company" (TLC) operation in Corner Bay. TLC saws a wide variety of wood products for local residents and property owners, including framing lumber, trim lumber, poles, and pilings. They work with

CITY OF TENAKEE SPRINGS

Sitka spruce, western hemlock, and Alaska yellow cedar. Their footprint on the land is very modest. That kind of small, local timber business constitutes the limit of what the land can bear here in Tenakee Inlet. Such businesses also provide local jobs and materials that are important to our community. Under S. 2554, Corner Bay would be transferred to private ownership. What would happen to the current business? And how quickly would the remaining timber be liquidated?

The intact salmon producing rivers of Tenakee are incalculably valuable on every level, from local to global. The land is public land that is open to all, part of the Tongass National Forest, and salmon production from Tenakee Inlet streams provides local food security through subsistence, sport, and commercial fishing. The rivers contribute mightily to region-wide salmon fisheries that supply food to businesses and consumers around the world. At that global scale, intact Tongass forestlands are vitally important carbon sinks that sequester and store atmospheric carbon, thereby helping mitigate the impacts of climate change.

In addition, research on the rivers in upper Tenakee Inlet indicate that these salmon watersheds have unique characteristics that make them a potential refuge for spawning and rearing salmon in a warming world. Chichagof Conservation Council (CCC) has been collecting stream temperature date for the past 15 years, with the goal of providing credible evidence that the streams of upper Tenakee Inlet benefit from deeper and longer lasting snow pack than other non-glacial island streams. We are convinced that longer lasting snow pack and other characteristics make these salmon strongholds uniquely resilient during the climate change-driven episodes of hot, dry weather that are becoming more and more common.

We suggest that instead of opening critically important wild salmon habitat to development, the federal government could settle any valid claims through compensation primarily with money. Combined with support of and funding for cooperative stewardship and management, a new approach to legislation could protect and sustain salmon strongholds, create jobs, and bring people together around shared values.

Sincerely,

Linnea Lospenosochatel
Mayor – City of Tenakee Springs

From: Paula Mackrow
To: fortherecord (Energy)
Subject: Comment against S 2554
Date: Wednesday, February 18, 2026 4:06:54 PM

I am writing as a retired Alaskan commercial salmon fishing family. We silent 49 years watching the destruction of valuable salmon habitat by the sea Alaska corporation. The communities didn't get rich they got ruined. The bankers got rich. The gushing communities list their local coho stream habitat and the economies don't function fir the people anymore. More rape and pillage by out of state corporations will only make recovery worse. Please vote no ti thus devastating land deal bad for all Americans.

s. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Paula mackrow
Carlton WA 98814

Sent from my iPhone

From: Craig Mapes
To: fortherecord (Energy)
Subject: Oppose S 2554
Date: Wednesday, February 11, 2026 9:22:40 PM

Natural Resources Committee

To whom it may concern,

My name is Craig Mapes and I have been a resident of Tenakee Springs, Alaska since 1983. I would like for my comments to be included in the record.

I oppose S 2554, a bill which would privatize 115,000 acres of public National Forest Land. It is in the nations best interest to keep this public land public.

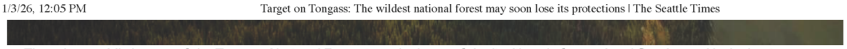
The lands selected in Tenakee Inlet have been cherry picked to include some of the last best old growth habitat which happens to provide some of the most important salmon rearing habitat anywhere.

I have sat in meetings with Native representatives in Tenakee Springs who have said they have no interest in subsistence food gathering on these lands, nor do they express interest in living as our neighbors, but rather simply want to MONITIZE the lands they would receive should this bill pass.

Please do not pass this bill to privatize these precious lands.

Sincerely, Craig Mapes
PO Box 46
Tenakee Springs, AK 99841


Target on Tongass
The wildest national forest may soon lose its protections



The otherworldly beauty of the Tongass National Forest is at the heart of the livelihood of many local Southeast Alaska businesses that host a booming tourism industry. "They don't come here to see clearcuts," says Dan Blanchard, whose small-boat cruise operation draws 7,000 to 10,000 visitors every summer to see the big trees, bears and wild salmon that have thrived under the protection of the federal Roadless Rule. (Amy Gulick)

Jan. 3, 2026 at 6:00 am | *Updated Jan. 3, 2026 at 6:00 am*

By Lynda V. Mapes

Special to The Seattle Times

Editor's note: *This story was supported by the Overlooked & Untold Stories Fund of Braided River.*

GRAVINA ISLAND, Tongass National Forest — Rain drips from the tips of branches of a grandmother cedar, growing for centuries. In verdant moss amid hip-high sword ferns, the bones of a salmon gleam, picked clean by feasting wildlife. "Gronk," intones a raven, from somewhere high overhead in the forest canopy.

This is the Tongass National Forest, in Southeast Alaska. At nearly 17 million acres, it is the largest national forest in our country by far — and its wildest. These public lands are home to more grizzly bears, more wolves, more whales, more wild salmon than any other national forest. More calving glaciers; shining mountains and fjords; and pristine beaches, where intact ancient forests meet a black-green sea. These wonders drew more than 3 million visitors from around the nation and the world to Alaska from May 2024 through April 2025 — a record.

In the forest, looming Sitka spruce, western hemlock and cedars quill a lush understory of salal and huckleberry. Life grows upon life, with hanks of moss and lichen swaddling trunks and branches. Nothing really dies here, it just transforms into new life. Fallen logs are furred with tree seedlings, as a new generation rises. After they spawn, salmon die — and transubstantiate into the bodies of ravens, bears and wolves they nourish.

Strewn across thousands of islands, and comprising most of Southeast Alaska, the Tongass was designated a national forest by President Theodore Roosevelt in 1907. The trees here were coveted by the timber industry even before Alaska was a state, and industrial logging began in 1947 with construction of two pulp mills, each with a federally subsidized 50-year contract for public timber.

Target on Tongass

The wildest national forest may soon lose its protections

Sources: Esri, Amy Gulick (Mark Nowlin / The Seattle Times)

While the Tongass is big, only about 33% of it is forested in old and second growth, and clear-cuts disproportionately targeted the most productive areas with the biggest trees. In North Prince of Wales Island, notes Kate Glover, senior attorney for EarthJustice in Juneau, more than 77% of the original contiguous old growth was cut.

The logging boom that began in the 1950s is long since bust; the last pulp mill in Alaska shut in 1997. But now, the prospect of greatly increased cutting is once again ramping up.

President Donald Trump wants to revoke a federal rule that could potentially open more than 9 million acres of the Tongass to logging, including about 2.5 million acres of productive old growth. The Roadless Area Conservation Rule, widely known as the Roadless Rule, was adopted by President Bill Clinton in 2001 to protect the wildest public lands in our national forests, after an extensive public process. Trump revoked it during his first term of office. President Joe Biden reinstated it. Now Trump has announced plans to rescind it again.

“Once again, President Trump is removing absurd obstacles to common sense management of our natural resources by rescinding the overly restrictive roadless rule,” said Secretary of Agriculture Brooke Rollins, in a June announcement. “This move opens a new era of consistency and sustainability for our nation’s forests ... to enjoy and reap the benefits of this great land.”

The Roadless Rule is one of the most important federal policies many people have never heard of, protecting nearly 45 million acres in national forests all over the country from logging, mining and other industrial development. In Washington state, the rule preserves about 2 million acres of national forest — magnificent redoubts of old growth and wildlife, such as the Dark Divide in the Gifford Pinchot National Forest.



Often shrouded in mist and fog, the Tongass National Forest in Alaska is one of the last and largest... (Amy Gulick) **More**



The Tongass National Forest has been home to the Tlingit, Haida and Tsimshian Native cultures for... (Amy Gulick) **More**

The rule is popular. After Rollins announced the proposed rollback, more than 500,000 people posted comments defending it in just 21 days during an initial public comment period. Another public comment period will open in the spring.

At stake in the Tongass is one of the last, largest coastal temperate rainforests in the world.

Dominick DellaSala is an independent scientist based in Oregon, who has studied the Tongass for three decades. The forest is of national and global importance, helping to blunt the effects of climate warming, DellaSala and his collaborators wrote in a 2022 paper. The Tongass sequesters about 20% of all the carbon stored in the country's entire national forest system — more than any other national forest.

Target on Tongass
The wildest national forest may soon lose its protections

The Tongass also is home to more productive old-growth trees (older than 150 years) than any other national forest. And the biggest trees store the most carbon.

In a world in which wilderness is rapidly disappearing, "the best is right here," DellaSala says. "If you punch in roads and log it, you lose it. You flip the system to a degraded state.

"What happens right now is what will make the difference in the Tongass."

"Who knew this could happen?"

Revoking the Roadless Rule isn't the only threat to the Tongass. It's also being clear-cut, chunk by chunk, through land transfers, swaps and intergovernmental agreements affecting more than 88,000 acres just since 2014.

Joshua Wright bends low over a stump, counting its tightly packed rings. Certainly 500, maybe 700, it's hard to tell in the driving rain. This stump he and DellaSala are standing on is as wide as they are tall. "Who knew this could happen?" says Wright, looking at the clear-cut, with nearly every tree taken, all the way to the beach fringe. So close to the beach, delicate domes of sea urchin shells sit amid the logging slash, as do abalone shells, dropped by seabirds, their shimmering opalescent colors so out of place in a bleak ruin of stumps.

This is representative of the type of logging that can happen when lands are removed from the national forest system, says Wright, who leads the Southeast Alaska program for the Legacy Forest Defense Coalition, based in Tacoma. More such cuts could be coming. Legislation proposed last summer would privatize more than 115,000 acres of the Tongass.

The legislation is part of a yearslong effort since 1985 to wrest more of the Tongass from federal control to private, for-profit Native corporations. In 1971, a federal land claims settlement act transferred 44 million acres of federal land to regional and village corporations owned by Alaska Native shareholders.

Five communities that were not included in that 1971 settlement would receive land under the so-called landless legislation, though none of them met the original criteria for eligibility. Native people in these communities were made at-large/landless shareholders, with payments to them managed by Sealaska Corporation, which owns

Target on Tongass
The wildest national forest may soon lose its protections

and manages a range of for-profit businesses and investments throughout Southeast Alaska.

First Foods

Wanda Culp, 77, says her Indian name is "Pissed Off Brown Bear Grandmother." She is only half joking: she despises clear-cuts, which she says have "nothing to do with the science of forestry.

"It hurts. It's painful when you walk through the forests then you see how it's been decimated, it has a huge impact, emotionally. I understand the need for wood and timber, but do it in a way that isn't invasive."

In her trailer home at the base of Thunder Mountain in Juneau, she shows off her prize: gleaming jars of First Foods. There are chunks of harbor seal; rosy hunks of salmon, both smoked and fresh pack. Dried salmon and halibut. Jars of seal oil.

"This is the kind of wealth we want, and the joy of knowing how to put it up," says Culp, who for nearly three decades practiced a traditional subsistence way of life on a waterfront homestead. The Tongass forest, and the salmon streams it protects, to her mean security. "The forest provides for us. It is all connected, and we have to take care of it," Culp says. "Don't take more than you need, that is a Tlingit rule."

A Tlingit elder and Sealaska shareholder, Culp derides the system of for-profit, private corporations set up when aboriginal land claims were extinguished. The policy resulted in extensive clear-cutting — some of the most devastating in Alaska — as cash-poor Native corporations, with mandates to make a profit for their shareholders, liquidated their only assets: forests in land claims often far from their communities. The Sealaska corporation is diversifying its economy, and has stepped away from old-growth logging — after extensive clear-cutting of its lands — and in 2018 enrolled 165,000 acres of forest — roughly half its land — in a carbon credit program, preserving it for the next 100 years.

But re-racking the original land claim deal now could open the door to more logging, and to more asks for more land claims and more transfers of public land. To some, carving yet more land out of the Tongass is a deeply personal threat.

As Culp warned in an editorial in the local paper, under the so-called landless legislation reintroduced in Congress last summer, lands selected for transfer to the new corporations include 80,000 acres of old growth. Of those acres, 60,000 are currently protected by the Roadless Rule — and would be opened to possible logging and other extraction.

She urges others to speak out on behalf of what is everyone's public land — and opposing the landless bill without fear of seeming anti-Native. "These are public laws that affect every one of us in the U.S., everyone should say something about it, don't feel delicate about it, because you are a landowner and have every reason to speak out."

She also defends the Roadless Rule, which she says offers the best defense for the forest, and Native cultures that depend on it.

Some have watched the Roadless Rule flip back and forth so many times, depending on who is in the White House, they say they are tired of hearing about it.

"What we've been trying to focus on, is, how do people in this place exist in a good way, given the system we've inherited," says Alana Peterson, vice chair of the tribal council for the Sitka Tribe of Alaska. "The more recent system is extractive and damaging and not what's good for us or for our future generations or the planet. And so trying to really change that system is what we're focused on."

Cultural revitalization has to be part of building healthy communities, Peterson says. "You have generations of people who live with a lot of shame because they were told they're not allowed to speak your language. You shouldn't. It's dirty, it's bad ... And so we're just trying to figure out, how do we reconnect with this knowledge?"

That work is healing a lot of past traumas, Peterson says, and reinvigorating traditional ecological knowledge, because it's embedded in the language, and the stories, and the songs and the dance.

Industrial scale clear-cut logging in the Tongass, in addition to its environmental destruction, has never made economic sense. U.S. taxpayers heavily subsidize the cutting, in part through the construction and maintenance of Forest Service roads to access the forest. A recent study done by the independent, nonpartisan group Taxpayers for Common Sense found that the Forest Service lost $16.1 million on Tongass timber sales in fiscal year 2019, and [illegible] ades. Most of Alaska's timber harves[illegible]

Target on Tongass
The wildest national forest may soon lose its protections

Now timber sales proposed during the first Trump Administration, the size of which haven't been seen since the pulp mill days, are coming back to life, says Maggie Rabb, executive director of the Southeast Alaska Conservation Council.

"That's not what we want for the Tongass," Rabb says. "We need to protect a vision for the future that is not just round log exports."

Only about 240 people work in the logging business in Alaska today, most of them at two sawmills. The industry, states the Alaska Forest Association, an industry group, will collapse unless it is fed more old growth from public lands. The AFA made the claim in a lawsuit, joined with other plaintiffs, against the Forest Service, demanding release of more old-growth forest from the Tongass for cutting.

Booming business

But while the timber industry is fighting for a lifeline, more than 8,263 people work locally in a thriving tourism business built on wild and scenic Alaska. In 2023, tourism became the largest economic sector in Southeast, according to a 2024 report by Southeast Conference, the regional economic development organization.

Mary Catharine Martin, spokesperson for SalmonState, a nonprofit based in Juneau, notes that the Mendenhall Glacier Visitor Center at the Tongass National Forest is visited by about 700,000 people annually from all over the world. "This is what people come to see," says Martin, regarding the glacier, its ice glowing blue as a husky's eye. "They come to see this amazing place, and to be out in it."

Nearby, an eagle atop a hemlock surveys its home with regal regard, and late-run chum salmon lumber up a creek. Twilight pinks the lake at the glacier's toe, and the jagged mountain tree line reflects in the mirror-calm water.

Local Southeast Alaska businesses, like Uncruise Adventures, a small boat tour company with offices in Seattle and Juneau, have built their livelihood on the wild beauty of the Tongass.

"Our entire focus is on the outdoors, it is not about the ship," says Dan Blanchard of Juneau, owner and CEO of Uncruise. "The Tongass is critical to our business." Today, fishing and tourism power an economy that relies on the resurgent salmon runs and whales and intact ancient forest that have thrived with federal protection, Blanchard says.

Target on Tongass
The wildest national forest may soon lose its protections

"They come to see these things they can't see at home anymore," he says of the 7,000 to 10,000 visitors he brings to the Tongass on a fleet of seven small boats each summer.

"They don't come here to see clear-cuts."

Lynda V. Mapes is a Seattle writer and a former reporter at The Seattle Times. Reach her at lyndavmapes.com. Amy Gulick is a Washington-based nature photographer and author and a founding fellow of the International League of Conservation Photographers.

View 20 Comments / 20 New

From: Parker Meade
To: fortherecord (Energy)
Subject: Stop 2554
Date: Saturday, February 14, 2026 3:16:43 AM

Dear Members of the Senate Natural Resources Committee,

I strongly oppose Senate Bill S. 2554.

This bill would transfer 115,200 acres of the Tongass National Forest to five Southeast Alaska communities—Haines, Tenakee, Petersburg, Wrangell, and Ketchikan—to create additional Native corporations under the Alaska Native Claims Settlement Act (ANCSA).

Let's be clear: this "landless" framing is misleading. ANCSA, signed in 1971, extinguished aboriginal land claims in exchange for 44 million acres of land and roughly $1 billion. It created 12 regional corporations and more than 200 village corporations to manage those assets for Alaska Native shareholders. The five communities in question were not excluded unfairly; they did not meet the straightforward eligibility criteria for village corporation status, which required a Native majority population and that the community not be modern or urban in character.

Instead, Alaska Natives from these communities became at-large shareholders in Sealaska Corporation, the regional corporation for the Tlingit, Haida, and Tsimshian peoples. Sealaska owns approximately 365,000 acres and is the largest private landowner in the region. It continues to distribute substantial dividends to its shareholders, including a recently announced $11.8 million fall 2025 distribution. The idea that these communities were left with nothing is simply not accurate.

In 2014, when the "Sealaska bill" passed, Lisa Murkowski stated that the federal government would "finally finish paying the debt" related to ANCSA. Yet subsequent versions of similar legislation have continued to appear. Calling something "final" while repeatedly reopening land transfers undermines the credibility of the original settlement.

S. 2554 is a high-stakes public lands issue that has received far too little attention. The Tongass belongs to the American people. It is subject to federal environmental protections and contains some of the nation's last intact old-growth forest. Transferring these lands to private ownership would remove them from meaningful public oversight and could open the door to large-scale logging or mining without the same level of accountability or public input.

If there are any remaining financial concerns related to ANCSA, they should be addressed within the existing corporate framework—not by privatizing additional public land. Congress intended ANCSA to be a settlement. We should treat it as one.

Federal public lands should remain in federal public hands.

Sincerely,
Parker Meade

Seattle, WA

From: Becca Cackler
To: fortherecord (Energy)
Subject: I oppose S.2554
Date: Wednesday, February 11, 2026 9:45:04 PM

Dear Members of the Senate Natural Resources Committee,

I oppose S. 2554 because it would transfer federal public land into private ownership.

As you know, this bill takes 115,200 acres of Tongass National Forest (land that belongs to the American public) and removes it from federal protection. These lands include some of the last intact old-growth forest in the country. Once transferred, they would no longer be subject to the same environmental laws, public process, or oversight.

I support honoring ANCSA. But honoring ANCSA does not mean reopening land claims decades later by privatizing existing public land. If there are financial or equity issues to address, they should be handled financially, not by carving up protected public lands.

This bill is unnecessary, risky, and irreversible. Public land should stay public.

Sincerely,

Rebecca Olson

Salt Lake City resident

From: Wyatt Pentz
To: fortherecord (Energy)
Subject: Senate Bill S. 2554
Date: Wednesday, February 11, 2026 10:17:30 PM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. Privatizing our public land, especially old growth forest is almost awlays a mistake. We will never be able to get these ancient forests back once they are cut down. Selling off this land, instead of using current sustainable logging methods is only going to rob future generations of the chance to experience old growth forests in South Eastern Alaska.

A few years ago, I spent the summer working in Skagway, and got to experience the stunning wilderness of SE Alaska for myself. Knowing that we might lose parts of this old growth forest forever fills me with a deep sadness. It's not fair to out kids and grandkids to rid them of the chance to see this pristine, untouched wilderness for themselves.

Federal public lands should always remain PUBLIC lands.

Sincerely,

Wyatt Pentz

Washington State

From: Jeanne Poirier
To: fortherecord (Energy)
Subject: Opposed to S. 2554
Date: Wednesday, February 11, 2026 10:16:05 PM

Please add my voice to those of us who want to protect nature, not profit by destruction or privatization!

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands. I will hopefully cc: Senator Murkowski.

Jeanne Poirier
Cashmere, WA

From: Conner Sage Fox
To: fortherecord (Energy)
Subject: Opposed to S.2554, the Alaska Native Landless Equity Act.
Date: Monday, February 16, 2026 3:36:04 PM

Dear Senate Natural Resources Committee,

I am a biologist by training and a current law student at UW Law. I write to strongly oppose senate bill S. 2554. This legislation would privatize 115,200 acres of Tongass National Forest public land and open it up to industrial logging - a process which cannot be reversed for many generations.

Old growth and structurally complex forests are a vanishing minority of land coverage worldwide, despite being among the most valuable land cover types. Such forests harbor immense aboveground biomass, much higher biodiversity than their industrially-logged counterparts, store carbon that otherwise contributes to climate change, and most importantly, are spectacular, spiritual, and productive places that nourish humanity. Put simply, our world cannot sustain the current rate of industrial logging, and there is no way to turn back the clock. Once forests are stripped, the soils and nutrients wash away, irreversibly degrading waterways and the coastal ocean and extinguishing any meaningful wildlife populations. The young monoculture "replanted" forests that replace old-growth are trivial in value by comparison, providing minimal habitat, holding very little wildlife, not securing soils or much carbon, and providing little to no value for recreation - visit one and you will plainly see the difference between that and the old-growth now found only in national parks and far-remote areas.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands and mature forests in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands. Most importantly, they should remain uncut. There is no other option.

Sincerely,

Sage Fox

From: Rose Shaye
To: fortherecord (Energy)
Subject: Deforestation
Date: Thursday, February 19, 2026 11:42:50 AM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

This bill is a ruse. Natives in the five communities are NOT Landless: The Alaska Native Claims Settlement Act (ANCSA), signed in 1971, extinguished aboriginal land claims in Alaska in exchange for 44 million acres of land and approximately $1 billion in cash. This settlement established 12 for-profit regional corporations and over 200 village corporations to manage these assets for Alaska Native shareholders. Natives in the five so-called “Landless” communities were NOT "left out.” Those communities simply failed to meet the uncomplicated eligibility criteria for village corporate status of having a majority of native residents and not being modern or urban in character. Instead of receiving shares in Village Corporations, Alaskan Natives in these communities became at-large shareholders of Sealaska, which owns 365,000 acres of surface and subsurface estate. As the regional Native corporation for the Tlingit, Haida, and Tsimshian people, this makes them the largest private landowner in the region: Sealaska Native Corporation recently announced a fall 2025 dividend distribution of $11.8 million. Not only did the so-called “landless” receive fair and substantial equitable benefits of the original ANCSA, but for decades have received dividends that substantially exceed those paid by the regional corporations to village shareholders.

In a press release the day the 2014 “Sealaska bill” passed, Senator Murkowski declared, “**Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,**” yet very shortly after that press release, she introduced a similar version of this bill, and others over the years. Now this latest version perpetuates additional native land claims. Senator Murkowski has a muddled concept of the words “final” and “settlement”.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Sincerely,
Brittany Donovan
Washington State, USA

From: Jack Shoup
To: fortherecord (Energy)
Subject: Bill S2554
Date: Wednesday, February 11, 2026 10:45:03 PM

The privatization of 115,000 acres of land is directly against the best interests of American citizens, and the natural world we live in.

Old growth forests, a feature that makes up a vast portion of this land, is a non-renewable resource. Logging and mining, and other extractive industries fragment and diminish these ecosystems, damaging the local and global climate at an irreversible and devastating level.

In addition, it is important to recognize the original stewards of this land, and respect their cultural claim to this land. To respect them means respecting the land itself, and advocating for its continued protection.

Do not let this pass, and protect our lands,
Jack Shoup

From: Nathanial Stewart
To: fortherecord (Energy)
Subject: I strongly object to Senate Bill S. 2554
Date: Friday, February 13, 2026 11:42:30 AM

Dear Members of the Senate Natural Resources Committee,

I am writing to express my strong opposition to Senate Bill S. 2554, which proposes the transfer of 115,200 acres of the Tongass National Forest to five Southeast Alaska communities to form additional Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

This legislation is unnecessary, as the communities in question were not excluded from the original settlement. Under ANCSA, these residents became at-large shareholders of Sealaska, the largest private landowner in the region, which currently manages 365,000 acres. These communities did not meet the original eligibility criteria for village corporate status, yet they have received substantial equitable benefits for decades, including recent significant dividends.

Furthermore, S. 2554 represents a significant threat to our public lands. These 115,200 acres are currently protected by federal environmental laws and contain vital old-growth forests. Transferring this land to private corporations would likely lead to industrial logging and mining without public oversight or input.

If there are any remaining claims, they should be settled financially or through the existing Sealaska land base, as Congress originally intended. Privatizing and potentially razing protected public land is an irresponsible solution that ignores the long-term value of these natural treasures. Native Americans have also expressed their objection to the way these corporations are destroying the land to extract resources, rather than managing the land in a way that reflects their traditions and values, preserving irreplaceable natural treasures for future generations.

Federal public lands should remain in federal public hands for the benefit of future generations. I urge you to oppose S. 2554.

Sincerely,
--
Nathanial Stewart, DVM
(253) 691-7537
8720 Foxglove Ct SE
Yelm, Washington

"Until one is committed, there is hesitancy, the chance to draw back, always ineffectiveness concerning all acts of initiative (and creation). There is one elementary truth the ignorance of which kills countless ideas and splendid plans; that the moment that one definitely commits oneself, then providence moves too. All sorts of things occur to help one that never would otherwise have occurred. A whole stream of events issues from the decision, raising in ones' favor all manor of unforeseen incidents and meetings and material assistance that no man could have dreamed would have come his way. Whatever you can do or dream you can, begin it. Boldness has genius, power, and magic. Begin it now."

Johann Wolfgang Van Goethe (1749-1832)

From: Nate Storey
To: fortherecord (Energy)
Subject: Opposition to S 2554 From Tenakee Springs
Date: Tuesday, February 17, 2026 12:23:15 AM

I live in the Southeast Alaska community of Tenakee Springs. We live simply, and appreciate the incredible public resources of our region- both because we depend upon them, and because they represent one of the great benefits of being an American- vast public spaces for public use and enjoyment. S 2554 privatizes public land, gifting it to for-profit corporations.

The private corporations that receive these generous gifts from the American Taxpayer/Voter have a the questionable business model of "1. Beg the US government to transfer land from public ownership to private ownership, 2. Strip mine land for minerals and timber, 3. Turn a small and inefficient profit on the back of incredible resource destruction, 4. Repeat process." This process has been repeated a few times now and will likely continue given the inability of native corporations to stand on their own two feet without constant government handouts.

The historical complaints, that have been neatly packaged into commercial requests for these handouts have been addressed, several times now, but previous address is not enough, and will never be enough for corporations that depend entirely on the largess of the US government to function.

I believe that if the American public knew and understood the nature of these handouts, they would be outraged regardless of their leanings. "Not giving private corporations public land to ravage," is a bipartisan issue. In an age of growing distrust of the government to provide value to the public and to use common sense, I urge you to oppose S 2554, oppose handouts for inefficient, poorly managed private corporations, and preserve public resources for the public and not for special interests.

Sincerely,

Nate Storey

From: Allan Street
To: fortherecord (Energy)
Subject: Opposed to S.2554, the Alaska Native Landless Equity Act
Date: Tuesday, February 17, 2026 10:03:10 AM

Dear Members of the Senate Natural Resources Committee,

I'm writing because I care deeply about the Tongass, and I'm alarmed by what S. 2554 would do. This bill would hand over more than 115,000 acres of public forest—some of the last truly wild, old-growth land in our country and the planet—to create new Native corporations in five Southeast Alaska communities. And the justification for this transfer simply isn't true.

These communities were not forgotten under ANCSA. In 1971, Alaska Natives received 44 million acres and nearly $1 billion, and those in these five communities became at-large shareholders in Sealaska. They have benefitted from that system for decades, sharing in the revenues of a corporation that already owns hundreds of thousands of acres. They were never "landless"—they were always included.

What troubles me most is that this bill reopens claims that Congress told the public were resolved long ago. Each new attempt erodes faith that "settlement" actually means what it says. More importantly, it puts irreplaceable public lands in immediate danger. Once Tongass forest is transferred into private hands, it can be logged or mined without the public having any say at all. These ancient forests—home to wildlife, cultural heritage, and some of the most resilient carbon sinks on Earth could be lost forever - our children and grandchildren never to enjoy their many benefits. Additionally, there is a known tie to Old Growth Forests and food security, clean air and water, and even the production of rain. We need ecosystems like this intact.

If there are truly unresolved issues for these communities, then those should be addressed within the existing Sealaska land base, not by carving up public land that belongs to every American.

I'm asking you, sincerely, to protect these forests. Protect the Tongass. Protect the idea that public land should stay public.

Thank you for your time and consideration.

Allan Street

From: Ian Suh
To: fortherecord (Energy)
Subject: Oppose S.2554: The Alaska Native Landless Equity Act
Date: Friday, February 13, 2026 10:06:19 AM

Hey Natural Resources Committee,

I am a high schooler from Flower Mound Texas.
I wanted to send this email to let you know about my love of nature and understanding of the importance of the environment. I hope to visit the Tongass National Forest one day, and I hope that you will oppose senate bill S.2554 and protect the Tongsss National Forest. I believe that this bill will set a dangerous precedent for the future where the environment will be degraded further and we will slowly lose the important functions and beauty of the forests we have today.

Sincerely,
Ian Suh

From: Allison Sykes
To: fortherecord (Energy)
Subject: "Opposed to S.2554, the Alaska Native Landless Equity Act"
Date: Wednesday, February 11, 2026 10:27:03 PM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. They contain some of the nation's last intact old growth forests. Trees that are hundreds if not thousands of year old reside in these forests and provide immense carbon storage which is critical at this time of notable climate change. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands. As a resident of Washington State I value the protects afforded to out National Forests and would expect the same protections be upheld for Tongass National Forest.

Sincerely,
Allison Sykes
Olympia, WA

From: dhara j uy taneo
To: fortherecord (Energy)
Subject: Opposing bill S.2554
Date: Thursday, February 19, 2026 11:48:09 AM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. This legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

This bill is a ruse. Natives in the five communities are NOT Landless: The Alaska Native Claims Settlement Act (ANCSA), signed in 1971, extinguished aboriginal land claims in Alaska in exchange for 44 million acres of land and approximately $1 billion in cash. This settlement established 12 for-profit regional corporations and over 200 village corporations to manage these assets for Alaska Native shareholders. Natives in the five so-called “Landless” communities were NOT "left out.” Those communities simply failed to meet the uncomplicated eligibility criteria for village corporate status of having a majority of native residents and not being modern or urban in character. Instead of receiving shares in Village Corporations, Alaskan Natives in these communities became at-large shareholders of Sealaska, which owns 365,000 acres of surface and subsurface estate. As the regional Native corporation for the Tlingit, Haida, and Tsimshian people, this makes them the largest private landowner in the region: Sealaska Native Corporation recently announced a fall 2025 dividend distribution of $11.8 million. Not only did the so-called “landless” receive fair and substantial equitable benefits of the original ANCSA, but for decades have received dividends that substantially exceed those paid by the regional corporations to village shareholders.

In a press release the day the 2014 “Sealaska bill” passed, Senator Murkowski declared, “**Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,**” yet very shortly after that press release, she introduced a similar version of this bill, and others over the years. Now this latest version perpetuates additional native land claims. Senator Murkowski has a muddled concept of the words “final” and “settlement”.

S. 2554 is one of the least known - yet highest stakes - attacks on our public lands in decades. These lands are currently owned by the American people, and are subject to federal environmental laws. They contain some of the nation's last intact old growth forests. In an instant, this legislation could condemn these lands to industrial logging and mining projects that would not be subject to public input or oversight.

S. 2554 is unjustified and irresponsible. If there were somehow any outstanding claims of the five Native communities under ANCSA, they should be settled by financial settlement from within the Sealaska Corporation land base as Congress originally intended, rather than by privatizing and razing protected public land.

Federal public lands should remain in federal public hands.

Sincerely,
Junice Uy

--
Please allow us to express our Beauty.
- Manobo elder

From: John Watts
To: fortherecord (Energy)
Subject: S. 2554
Date: Wednesday, February 11, 2026 10:49:02 PM

Dear Members of The Senate Natural Resources Committee,

I strongly object to senate bill S. 2554. The legislation would transfer 115,200 acres of Tongass National Forest public land to five Southeast Alaska communities (Haines, Tenakee, Petersburg, Wrangell, Ketchikan) to form additional Southeast Alaska Native corporations under the 1971 Alaska Native Claims Settlement Act (ANCSA).

The bill is unjustified.

It goes against statements made by Senator Murkowski in 2014 that stated the 2014 Sealaska Bill finished paying the debt under the Alaska Native Claims Settlement Act.

These are public lands that should be preserved for the public.

Thank you,

John Watts
333 Lawrence
Port Townsend WA 98368
Johnw@olympus.net

From: Karen Wilson
To: fortherecord (Energy)
Cc: Jeff Wilson
Subject: Opposition to S 2554
Date: Wednesday, February 18, 2026 10:15:12 PM

To All Concerned:

We are absolutely opposed to S 2554, the Alaska Native Landless Equity Act. Over our adult lifetimes, we have watched massive, devastating deforestation take place on Native-controlled lands in Southeast Alaska. Clearcutting and overrunning with large scale tourism from cruise ships are real-world, extremely likely results for the remaining wild, old-growth areas proposed to be privatized.

Our understanding is that members of the five designated landless communities are actually at-large shareholders in Sealaska; and furthermore they have received higher dividends than village shareholders. They were never "left out".

We spend much of our year in the small community of Tenakee Springs and the surrounding inlet. It will break the hearts and spirits of all who love and respect this wild and remote area, if S 2554 moves ahead.

Sincerely,
Karen and Jeff Wilson
Juneau and Tenakee Springs

From: Carter Wynn
To: fortherecord (Energy)
Subject: No To S.2554, 115k Acres
Date: Wednesday, February 18, 2026 9:38:07 AM

Dear Members of The Senate Natural Resources Committee,

I would like to express my sincere and devout "No VOTE" to this Bill, S.2554, as it will open-up the Tongass National Forest to road building, logging and habitat loss. Even though the Bill purports to divvy-up the lands to various tribes (sounds good on the surface), while the real intent is for these Federally protected lands to lose their current Congressionally mandated environmental protections.

In case you don't really know about the Tongass, here is a brief synopsis and why it is so important to be left intact, for future Americans to enjoy:

About
"The Tongass National Forest in Southeast Alaska is the largest U.S. National Forest at 16.7 million acres, an expanse larger than 10 U.S. states and 75 U.N. member nations. Most of its area is temperate rain forest and is remote enough to be home to many species of endangered and rare flora and fauna." -Wikipedia

This is a national treasure, and divvying-it-up, will allow more roads, more logging, more habitat loss, and more destruction of our precious environment. Don't be fooled by the "it's going to the Natives rhetoric", for such talk is a ruse and guise to be able to skirt Federal protections, and to damage and harm what we hold dear, our precious public lands.

Most Sincerely,

Thomas C. Wynn
2033 Abbey Lane
Memphis, TN 38134
901-581-7669
Salmoncreek7@yahoo.com

WRITTEN STATEMENT OF
SEALASKA CORPORATION

Submitted for the Record
to the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING

Regarding

S. 2554, the Alaska Native Landless Equity Act

February 26, 2026

Chair Barrasso, Ranking Member Cortez Masto, and Members of the Subcommittee:

Sealaska Corporation appreciates the opportunity to submit a written statement regarding the Subcommittee's February 12, 2026 hearing on S. 2554, the Alaska Native Landless Equity Act.

Sealaska is one of 12 Alaska Native Regional Corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971. Our 26,000 shareholders are descendants of the original Native inhabitants of Southeast Alaska – the Tlingit, Haida, and Tsimshian people. S. 2554 would address the unfulfilled aboriginal land claims of thousands of shareholders of Sealaska, and we would like to speak in strong support of enactment of this legislation.

Background

S. 2554 would resolve the outstanding aboriginal land entitlement of five Alaska Native communities. We have submitted testimony on multiple occasions in support of our five Landless communities; our comments here once again attempt to provide some sense of the historical context that gave rise to the need for this important legislation.

In 1907, President Theodore Roosevelt established the Tongass National Forest, which, along with Glacier Bay National Park, now covers most of Southeast Alaska. The creation of the Tongass National Forest, named somewhat ironically for the Tongass Tlingit people, was in effect an act of legal confiscation.

Two documents attached to this written testimony present an historical perspective on the long struggle to return lands in the Tongass to Native people: (1) the draft document funded by the U.S. Forest Service and authored by Dr. Charles W. Smythe, "A New Frontier: Managing the National Forests in Alaska, 1970-1995" (1995) ("A New Frontier"); and (2) a paper by Walter R. Echo-Hawk, "A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska" ("Indian Policy in Southeast Alaska").

The brief findings and observations summarized below are derived from the work of Dr. Smythe and Mr. Echo-Hawk. For the sake of brevity, we have summarized or paraphrased these findings and observations.

Dr. Smythe's research, compiled in "A New Frontier," found, among other things:

- By the time the Tongass National Forest was created, the Tlingit and Haida Indians had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.

- The Act of 1884, which created civil government in the Alaska territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim exclusively areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.

- For decades prior to the passage of ANCSA, the U.S. Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. The efforts by the Department of the Interior in the 1930s and 1940s to establish reservations in Southeast Alaska greatly alarmed the Forest Service – which at the time opposed the principle of aboriginal rights and its serious conflict with Forest Service plans for a pulpwood industry in Alaska. As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska.

Walter Echo-Hawk's paper, "Indian Policy in Southeast Alaska," recalls:

- Tlingit leader and attorney William Paul won a (short-lived) legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which ruled that lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To combat this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass National Forest "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). The Court concluded that American Indians and Alaska Natives do not have Fifth Amendment rights to aboriginal property, and Congress, in its sole discretion, must decide whether there is to be any compensation whatsoever for lands taken.

Starting in the 1930s, the Tlingit and Haida people of Southeast Alaska led the fight for the land that had been taken from the Alaska Native people. In 1935, the Tlingit and Haida successfully persuaded Congress to direct the U.S. Court of Claims to adjudicate the claims of the Tlingit and Haida people against the United States, "including compensation owed both for land and other tribal property rights in southeastern Alaska expropriated by the United States and for the failure of, and refusal by, the United States to protect those property rights from usurpation by non-Indians."

On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida had established their claims of aboriginal Indian title to the land in Southeast Alaska and were entitled to recover compensation for the uncompensated taking of their lands, and for the failure to protect their hunting and fishing rights. On January 19, 1968, after cutting the settlement by more than half, the U.S. Court of Claims found that

the Tlingit and Haida Indians were entitled to recover just $7,546,053.80. The payment was ultimately distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431).

In 1971, just one year after Congress authorized a payment of $7.5 million to the Tlingit and Haida Indians, Congress, in ANCSA, authorized the distribution of approximately $1 billion and 44 million acres of land to Alaska Natives and provided for the establishment of 12 Native Regional Corporations and more than 200 Village Corporations to receive and manage the funds and land to meet the cultural, social, and economic needs of Native shareholders. The Tlingits and Haidas were included in the settlement, but because the Tlingit and Haida people had received a limited settlement one year earlier (however miniscule, and which did not include land), the Southeast region of Alaska was dealt with by Congress in a strikingly different manner.

Sealaska – the Regional Corporation for Southeast Alaska – ultimately would be permitted to recover just 365,000 acres of land under ANCSA (less than 1% of the settlement acreage). However, under ANCSA, the Secretary of the Interior was not immediately able to withdraw any land in the Tongass for selection by and conveyance to Sealaska. The only lands available for selection by Sealaska in 1971 were slated to become part of the Wrangell-St. Elias National Park or consisted essentially of mountain tops. The Tlingit and Haida people – this time as Sealaska Corporation – were thus forced to return to Congress to request an amendment to ANCSA to permit Sealaska to select lands in Southeast Alaska located near its villages. In 1976, Congress authorized Sealaska to make its selections from within the 10 withdrawal boxes established under ANCSA for the 10 Southeast Native villages listed by that Act. Even then, 44% of the ten withdrawal areas were comprised of salt water. No other Regional Corporation was treated in this manner under ANCSA. In 2014, Congress finally authorized Sealaska to move the final 70,000 acres of its selection rights to areas outside of those 10 withdrawal boxes.

With a shareholder population that represented more than 20% of Alaska's Native population in 1971, Sealaska ultimately would receive title to less than 1% of land returned to Alaska Natives under ANCSA. The Tlingit and Haida people thus led the fight for Native land claims, and Congress, in turn, handed the Tlingit and Haida people a grossly inequitable land settlement under ANCSA as a reward for their persistence in seeking justice.

Purpose and Need

S. 2554 would amend ANCSA to authorize the five Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to organize as ANCSA Urban Corporations, entitling each, upon incorporation, to receive one township of land (23,040 acres) in Southeast Alaska from local areas of historical, cultural, traditional, and economic importance.

Alaska Natives from each of the five unrecognized villages have strong historic, cultural, and familial ties to their traditional homelands. As such, the five unrecognized villages are no different from other villages recognized in ANCSA, as was illustrated in a 1994 report prepared at the direction of Congress by the Institute of Social and Economic Research at the University of Alaska – Anchorage.

The 3,425 Alaska Natives who originally enrolled to Haines, Ketchikan, Petersburg, Tenakee, and Wrangell comprised over 20% of the Native shareholders of Sealaska Corporation when Sealaska incorporated in 1972. Although these Sealaska shareholders have received revenue-sharing distributions from Sealaska pursuant to section 7(j) of ANCSA, they have not had the opportunity to enjoy the social, economic, and cultural benefits of being shareholders in a Village, Urban, or Group Corporation, as did

Sealaska's other shareholders. The Village and Urban Corporations in our region provide additional local economic development, employment, and cultural benefits beyond that which Sealaska alone can provide. More importantly, Alaska Natives from the five villages have been wrongfully deprived of the significant cultural benefits of owning an interest in lands located within and around their traditional homelands.

Congress in 1971 gave no reason whatsoever for excluding the five unrecognized Southeast Alaska Native villages, which share the same histories and characteristics as the other Native villages in the region that were recognized.

Whatever the reason that Congress excluded these five villages from ANCSA in 1971, whether purposeful but undisclosed, or unintentional, Congress today can remedy the wrong. Our people have lived in the area that is now the Tongass National Forest for more than 10,000 years. The Tongass is the heart and soul of our history and culture. This important legislation will finalize the aboriginal land claims of the five unrecognized Native villages in our region. We strongly support enactment of this legislation.

Conclusion

In closing, thank you for the opportunity to submit written testimony into the Record for S. 2554 on behalf of Sealaska Corporation and its 26,000 shareholders.

If you need any further information from Sealaska, please do not hesitate to contact Sealaska President Sarah Dybdahl at (907) 586-1512.

A New Frontier

Managing the National Forests in Alaska, 1970-1995

by Robert D. Baker, Charles W. Smythe and Henry C. Dethloff

Intaglio, Inc

1995

DRAFT

Funding was provided by the U.S. Forest Service for the research and preparation of this draft manuscript. As a draft, this manuscript may contain errors of fact, typographical errors, and reference errors and may not be directly quoted.

The statement above is required by the U.S. Forest to enable the distribution of these chapters. Responsibility for factual and reference errors in Chapters 1-3 is the sole responsibility of the author, Dr. Charles W. Smythe.

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INTRODUCTION

In no other Region of the USDA Forest Service are the affairs and resources of the National Forests so intertwined with the daily lives and welfare of the people. The Chugach and Tongass National Forests account for six percent the total land area of Alaska. Within those areas the peoples of Alaska historically depended upon the resources associated with those forested areas for their livelihood. That dependence is still very significant. Regional Forester Michael Barton put it succinctly: "The National Forests are dominant in the lives of the people who live within or adjacent to them." Paul Brewster, Assistant Director of the Division of Recreation, Heritage and Wilderness Management in Region 10, commented in a similar vein: "Nowhere have I been where anything approaches the tie or closeness of the people to the land, as is true in Alaska." The greater dependence of the people on the land and resources of the forests is only one of the many features distinguishing Region 10, Alaska, from the other Forest Service Regions in the United States.

One of the distinctive characteristics of Alaska is that it is considered by many inside and outside of the State to be the nation's last frontier. In the American mind a frontier suggests rugged individualism, nature, wilderness, and opportunity. Alaska is the nation's largest state with the smallest population per square mile. The two National Forests in Alaska, the Tongass and Chugach, are respectively the largest and second largest in the National Forest System. The Tongass, occupying most of the southeastern region of Alaska, contains 16.9 million acres including the Admiralty Island and Misty Fiords National Monuments, and the state capitol, Juneau. The Chugach, with 5.7 million acres, covers much of the southcentral coastal region. It once included the site of the City of Anchorage. The two Alaska forests comprise about ten percent of the total acreage administered by the USDA Forest Service.

Forest management has changed since statehood from a largely custodial/inventory function to an active "conflict management" role involving the allocation of resources among many diverse and changing uses. The social and economic context in which management decisions are made has changed. The legislative guidelines are markedly different. Interestingly, what has changed least in the National Forests are the forests themselves, and the fish and the wildlife, and even the people themselves who live within and adjacent to the forests. Therein lies a good part of the problem of managing finite and renewable resources in times of rapid change.

The National Forests in Alaska are often the focus of a very large and diverse external constituency. They variously champion conservation, environmental, wilderness, wildlife, tourist, timber, mining, fishing, hunting, subsistence, and recreation interests, among others. Much of the history of Alaska has been determined by "outside" influences. As the "last frontier" Alaska represents economic opportunity on the one hand, and a pristine and sensitive environment on the other. Thus, Kimberly Bown, Acting Director of Public Services and formerly Regional Director of Recreation, Heritage and Wilderness Resources, characterizes Region 10 as being "at the cutting edge of political intervention." The Alaska Forests have become the legislative and ideological battleground for clashes between preservation and developmental partisans. These conflicts markedly affect forest resource use and management.

The Alaska National Forests are unique in several respects. They are the home of a very large native American population who have historically subsisted on the resources of the lands in the National Forests and its tributaries and adjoining waters. Moreover, many new non-native communities have been formed who also consider themselves very close to the land and practice a new subsistence lifestyle modelled on that of the older native communities. The interests of the Native Americans and the new subsistence communities affect the allocation and use of National Forest resources in Alaska. The Statehood Act of 1959, the Alaska Native Claims Settlement Act of 1971, the Alaska National Interest Lands Conservation Act of 1980, the Tongass Timber Reform Act, court cases, and environmental legislation have made it so. This study necessarily focuses on this unique management environment.

Another distinctive characteristic of the Alaska National Forests are that they can best be described as wild, wilderness, or roadless areas. Over one-third of the Tongass National Forest is designated Wilderness or National Monument area. The Chugach National Forest is variously coastal lands and islands, and inland glacier and arctic type tundra. It adjoins the Kenai National Wildlife Refuge administered by the Fish and Wildlife Service, and the Chugach State Park administered by the State of Alaska. Large portions of the Chugach and Tongass National Forests are roadless, and generally accessible only by boat, foot, or aircraft. They are, moreover, generally remote from the nation's large metropolitan areas and heavy concentrations of population.

The climate and geography of the Alaska forests are different. The Tongass National Forest is a "rain forest" with average annual rainfall of almost 100 inches. The Tongass is essentially a "marine" forest, a forest on "mountains in the sea" in that its lands are either surrounded by or generally adjoin the sea and inland waterways. The Chugach is geographically two forests, one a "marine" forest, and the other an inland and essentially alpine or near-arctic forest with large areas of ice and tundra. Annual mean temperatures are lower on the two Alaskan forests than other national forest areas. Employment, and activity, tends to be much more seasonal.

The regional economy, until contemporary times, has been heavily extractive and has focused on furs, fishing, mining and timber. Since World War II, government employment, tourism, and petroleum are becoming leading sectors for economic growth. But the traditional industries, and subsistence, account for the occupation and welfare of a large portion of those who live within and adjacent to the National Forests.

Petroleum, which is not produced on any national forest lands, has only since 1970 come to dominate the state's revenues and affects the welfare of all the people—and indirectly the management policies and practices in the National Forests. Because of its petroleum-based revenues, the State of Alaska has created a more substantial infrastructure and bureaucracy, prominently in the areas of forestry, fisheries, wildlife and tourism, which are at once both complimentary to the work of the USDA Forest Service, but also sometimes competitive.

Today, instead of timber and fishing being the leading employers in Alaska, the local, state and federal governments are collectively the largest employers. Many of those state and federal employees, along with the traditional timber, fishing, and mining industries, use resources in the lands and waters related to the Chugach and Tongass National Forests. Subsistence users, including a large portion of the Native Americans and a large population of non-Native Americans, are directly dependent on National Forest resources. The nature and the mix of the uses of forest resources have changed markedly since World War II.

Tourism and recreation are the most rapidly growing sectors of the state economy and are primary uses of National Forest scenic and recreational resources. Recreation and tourism have, within the past three decades, generated considerable expansion in the retail trades and services industries. Most of the hotel, motel and restaurant accommodations in Alaska were not there two or three decades earlier. A host of cottage industries, ranging from Bed and Breakfast establishments to sport fishing, boating, kayaking, packing, hunting, and wilderness guide and outfitting operations have come into being only within the past twenty-five years. Home-based craft industries, both Native and non-Native, support the burgeoning tourist and recreation sectors of the Alaska economy. All of these things comprise what is now collectively referred to as the "visitor industry." The National Forests are critical to the developing visitor industry and it with the more traditional timber, fishing and mining industries, affect management decisions and the administration of the National Forests.

Until 1960 professional foresters in the USDA Forest Service were almost exclusively responsible for forest management policies and resource utilization. Each Region exercised considerable autonomy. "Although the Forest Service had a unified and dynamic national program, it early delegated most administrative authority for the Alaska program to the Regional Forester." Within each Region Forest Supervisors and their staff were responsible for the implementation of rather broadly constructed policies and guidelines. District Rangers frequently had almost exclusive jurisdiction and exercised considerable license in the management of the Ranger District. In recent times management policies have become more narrowly defined. Management decisions increasingly have been elevated from the District to the Forest, and from the Forest to the Region, from the Region to the Chief, and from the Chief, USDA Forest Service to the Office of the Secretary of Agriculture, then to Congress and the courts.

In 1954, the Forest Service began operating under the first of several "long-term" timber contracts, in part as a mechanism to assure the survival and welfare of Alaska communities whose traditional dependence on fishing was being threatened by declining harvests and foreign competition. These contracts have been significant factors in the regional economy and continue to affect management decisions in the Region. Beginning in 1959, a number of important developments wholly external to the National Forests, began to impact upon the long-term timber contracts, the use of forest resources, and the very nature of

forest management and planning. The long-term timber contracts are a continuing part of this study of forest resource management.

Awarded statehood only in 1959, the State of Alaska has since that time increasingly influenced the determination of National Forest management policies. Alaska statehood, which coincided with the beginning of a new era of Congressional mandates affecting forest management, precipitated almost revolutionary changes in the way Alaska forest resources were used and administered. The state obtained rights to 103 million acres of federal land, including 400,000 acres of land formerly a part of the Chugach and Tongass National Forests. The state assumed control over wildlife management on the National Forests, entered into cooperative agreements with the Forest Service, and developed a governmental infrastructure that both cooperated and conflicted with federal management systems.

The Multiple Use-Sustained Yield Act approved by Congress in 1960 required that forest managers must sustain renewable resources and make just or equitable allocations of the use of forest resources among the diverse users including timber, recreation, camping, hunting, grazing, fishing or other uses. The Wilderness Act of 1964 mandated the designation of appropriate portions of National Forests as Wilderness areas where humans should leave no permanent imprint of their passage. The National Wild and Scenic Rivers Act (1968) supplemented the Wilderness Act by requiring that certain (to be) designated rivers remain in their "free-flowing" natural state.

Finally, in 1969, the National Environmental Policy Act (NEPA) required the Forest Service to assess potential damage or change to the forest environment that might be caused by any significant federal actions such as road building, timber-cutting, water impoundments or drainage systems (usually elements of timber sales)—or anything that might change or disturb the existing environment. In Alaska, NEPA had a more substantial impact on forest management than in the "lower 48," since National Forest lands existed, for the most part, in their natural pristine condition. NEPA criteria discouraged altering that environment moreso than was true in the second growth, more used, forests of the other states. By 1970, forest management, which only a decade earlier had been largely the responsibility of the Region, its administrative divisions and staff, had become subject to Congressional directives and a host of diverse and often divergent interest groups who used the legislation and courts to challenge, monitor, and implement policies affecting national forest management by the Forest Service managers. In this, Region 10 was no different than those in the lower forty-eight states.

Legislation approved by Congress after 1970, however, created policies and directives that applied only to Alaska. The Alaska Native Claims Settlement Act (ANCSA) conveyed title to approximately 44 million acres of federal land in Alaska (including 550,000 acres of land in the National Forests) and $962 million to Alaska's native peoples organized into corporations, rather than reservations. The Act also set in motion the processes for decisions on the use and ownership of much of Alaska's remaining 375 million acres of land by mandating the reservation of large conservation areas on Federal lands which comprised 59% of the total land area. ANCSA sought to determine issues of aboriginal titles to land in Alaska that had remained unresolved since the Alaska purchase in 1867. It was the first major land legislation following statehood. It created, among other things, the "ANCSA corporation," which allowed native communities for the first time to enter into commercial timber sales and operations. The ANCSA settlement was precipitated by industry, and state and federal interests anxious to facilitate petroleum exploration and other commercial development. ANCSA and subsequent amending legislation, land transfers, and exchange acts created an institutional framework that transformed Alaska, and the administration of the National Forests.

The Forest and Rangeland Renewable Resources Planning Act (RPA or Resources Planning Act of 1974) initiated comprehensive studies leading to long-range forest planning. The Act imposed more constraints on timber harvest and gave greater importance to recreation and watershed uses. The Sikes Act of 1960, amended in 1974, established cooperative programs between National Forest managers and state authority relating to wildlife management on the National Forests. The National Forest Management Act of 1976 amended the 1974 Planning Act and established additional criteria and definitions for multi-use management policies. Region 10's major management products and efforts of the 1970s, relating to this legislation, included the Tongass Forest Management Plan (1979) and the Chugach Forest Management Plan completed in 1981.

Those plans immediately became subject to the revisions imposed by ANILCA, the Alaska National Interest Lands Conservation Act (December 2, 1980). ANILCA evolved directly out of ANCSA, which authorized the federal government to set aside 80 million acres of Alaska's land for study and potential selection as "National Interest Lands" (referred to as "d-2" lands). Federal and state agencies, under the authority of the Secretary of the Interior, established a joint Federal/State Land Use Planning Commission to make recommendations on the allocation and use of the undesignated "d-2" lands. Those studies engaged Region 10 personnel in intensive evaluation, surveys and negotiation for much of the decade between 1970 and 1980. Indeed, the studies and relevant land transfers are still an on-going part of Forest Service business in the 1990s.

ANILCA established fourteen Wilderness areas totaling 5.4 million acres in the Tongass National Forest. The Act also changed the proscriptions on the use of Wilderness. In the Alaska Region, unlike in Wilderness areas of the lower forty-eight states, wilderness users could under certain conditions build shelters and use motorized vehicles. ANILCA added 1.4 million acres to the Alaska National Forests. On December 1, 1978, in an executive action related to pending ANILCA legislation, President Jimmy Carter created the Admiralty Island and Misty Fiords National Monuments. ANILCA prescribed a new maximum production level (4.5 billion board feet per decade) for timber harvests.

ANILCA recognized one particularly unique use of some National Forest resources (and resources on other federal lands) in Alaska. The Act allowed subsistence use on the National Forests for both Native peoples and all rural residents. Subsistence is defined as:

> the customary and traditional uses by rural Alaska residents of wild renewable resources for direct, personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of inedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Subsistence meant that rural Alaskans might continue to enjoy the customary and traditional non-commercial uses of the forests such as hunting, fishing, and gathering. These rights were, in some cases, anterior to other uses and allocations of forest resources. But, insofar as ANILCA subsistence rights applied to rural residents, the Act conflicted somewhat with the Alaska State Constitution which reserved fish, wildlife, and waters for the common use of all the people—rural and urban. In any event, the recognition of subsistence rights by ANILCA, with the earlier ANCSA and NEPA provisions, made forest resource management considerably different in Alaska as compared to other Regions of the National Forest System.

Many Region 10 foresters expected approval of ANILCA in 1980 to mark the final stage of the land allocation process which had begun with the Statehood Act of 1958 and the ANCSA legislation of 1971. Rather, the Act led to oversight hearings, revision of the basic forest land management plans, and new legislation affecting land uses and allocations. Oversight hearings on ANILCA initiated in 1985 led to legislation introduced in Congress in 1986 and yet another amendment to ANCSA/ANILCA legislation. The Tongass Timber Reform Act of 1990, recognized land use designations (LUD's) unique to the Alaska National Forests, legislated buffer zones for timber harvest areas, created six new wilderness areas and reformed the long-term timber contracts. The Act removed the specified maximum annual board feet limit for timber production while stating that the Forest Service "should seek to provide a supply of timber which meets market demand...."

ANCSA, ANILCA, and the Tongass Timber Reform Act are legislative packages that affect forest management practices only in Alaska. The legislation recognizes the unique environment of Alaska, the cultural distinctiveness of its Native peoples, and the special qualities of life for all peoples on the last frontier. Since 1970, much of the business of the USDA Forest Service in Region 10 has evolved around ANCSA, ANILCA and the Tongass Timber Reform Act. Although the Alaska Constitution of 1959 provided the initial parameters for collaboration, cooperation, and sometimes competition between the State of Alaska and the National Forests, since 1970 the relationships have been redefined largely because of the new federal legislation and the rapidly developing Alaska economy and state governmental infrastructure made possible by revenues from Alaska's oil discoveries.

Thus, for the twenty-five years, 1970 to 1995, Alaska's two National Forests, the Tongass and Chugach, have

been significant elements in the rapidly changing social, political and economic order within Alaska as they have been in the past. During those same twenty-five years Alaska's National Forests have become an ideological battleground for developmental and anti-developmental interests at the local, state, and national levels.

But there are many gradients among those who might support commercial development and expansion, and among those who would leave the forests largely untouched by humankind. The traditional users of Alaska forest resources, the timber, mining, and fishing industries believe that the value of the National Forests lies in their consumptive uses. On the other hand, some wilderness advocates and environmentalists may object to timber cutting or mining because it might impair a scenic view. Others may not want the timber cut because it might impair a view believed vital to the tourist trade. Thus their interest, like that of the timber industry, is equally commercial. Others would preserve the natural forest environment in order to protect recreational uses that may also have a strong commercial context as in sport fishing and hunting, packing and kayaking. Other recreation advocates may wish to strip timber from certain areas and build lodgings for ski slopes, or cabins for wildlife viewers. Ironically, many of those who supported or initiated the organic legislation creating the National Forest system at the turn of the century, did so for the same reasons: that the resources might be conserved or preserved for use by future generations.

Native Alaskans are similarly divided over corporate versus traditional use of forest resources and vary as to the degree of their support for policies that would basically conserve and those that would facilitate the development and utilization of forest resources. Natives tend to oppose timber sales on National Forest lands in the interest of protecting their own subsistence rights. Until recently, Natives have shown little disposition to curb timber sales from Native-owned lands. Alaskans who advocate commercial expansion and development, native and newcomers, often tend to view federal regulatory policies as restrictive if not stifling. Those who seek subsistence rights on National Forest lands have sometimes collaborated with larger out-of-state environmental constituencies to influence federal legislation affecting their interests in the use of Alaska forest resources. The National Forests have traditionally provided the subsistence, timber, mining, fishing and recreational and other opportunities associated with the livelihood of many users.

Multiple-use management largely involves the allocation of resources among competitive interests under guidelines established in contemporary times, by Congress and the USDA Forest Service. The business of managing the National Forests has changed since statehood, and more markedly since 1970 under the influence of ANCSA, ANILCA and the Tongass Timber Reform Act.

The study entitled A New Frontier: Managing the National Forests in Alaska, 1970-1995, examines the history and dynamics affecting forest management in Region 10 over the past quarter-century. It attempts to do so, however, within the context of the previous sixty-five years of USDA-Forest Service administrative history, and in the context of the historical experiences of the people of Alaska. ANCSA and ANILCA have created a definitive imprint on forest management since 1970, thus the authors have emphasized resource management in the context of this legislation and Alaska Native populations and cultures and the developing economy.

Fundamental changes are occurring in the economy of Alaska and in its social and governmental structures. The inception of the state, and especially the development of state government since 1970 are important elements in the administration of federal forest resources. There have been dramatic changes in relevant Federal legislation. There have been significant changes in public attitudes and in the public's understanding of conservation and ecosystem management. This study seeks to define the issues and to profile the conservation, ecology, mining, subsistence, fishing, hunting, outfitting, visitor, recreation, timber, petroleum and other industries that are so much a part of the dynamics of resource management in Region 10.

Multiple use resource management is as much a matter of managing social and economic change as it is managing renewable and non-renewable resources. The dynamics of forest management go far beyond growing or harvesting timber, providing wildlife habitat, or wilderness, or recreational environs. The dynamics are a microcosm of a people, a state, and a nation. In some respects the Tongass and Chugach National Forests have been at the vortex of changes that are both Alaskan and national in scope. This then is a very contemporary history of change and the impact of change on the Alaska Region, USDA Forest Service.

The authors hope that this history will provide insight and a better understanding of the events and issues confronting forest managers, and environmental, business, and cultural groups who use or have an interest in the use of National Forest resources—in Alaska and elsewhere.

ACKNOWLEDGMENTS

The authors are very appreciative of the editorial review and general management of this research and writing project by Gerald H. Clark, Heritage Program Manager for the Alaska Region. We are indebted to those who read and reviewed all or parts of the manuscript as it was being developed and offered careful and constructive advice and criticism. They include John A. Sandor, Michael A. Barton, Paul Brewster, Steve Ambrose, Rai Behnert, Dave Gibbons, Walt Sheridan, Dick Wilson, Ron Klaudt, Dick Estelle, David Rittenhouse, Gary Morrison, Ron Knowles, Alan Aitken, Robert W. Williams, Susan Rutherford, John Mattson, John Autrey, and Karen Iwamoto, among many others. Each has contributed significantly to the quality and accuracy of the final product. The authors received free rein to research, organize and write the book as they thought it should be done. The work (including hopefully precious few errors and omissions) is the responsibility of the authors.

The authors conducted approximately sixty interviews ranging from about thirty-minutes to several hours each with Forest Service personnel and retirees located variously in Juneau, Anchorage, Petersburg, Ketchikan, and Sitka. Without exception each was very helpful and responsive. Their time and contributions are greatly appreciated. Their names are listed in the bibliographic essay. We were very privileged to include Governor Walter J. Hickel among those interviewed.

Chapter I

The Alaska National Forests: The Land And Its Peoples

"Nowhere have I been where anything approaches the tie or closeness of the people to the land, as is true in Alaska," commented Paul Brewster, a forest manager with the USDA Forest Service, Alaska Region. That interdependence of the land and the peoples of Alaska has shaped the history of Alaska. That closeness continues to affect the management of the National Forests in Alaska in very distinctive ways. Alaska statehood, approved by Congress in 1959, markedly affected the administration of National Forest resources in Alaska. So too has passage of what might be termed the "environmental" legislation of the 1960s, including the Multiple Use Sustained Yield Act (1960), the Wilderness Act (1964), the National Wild and Scenic Rivers Act (1968), and not least, NEPA, the National Environmental Policy Act approved in 1969. Statehood, and certainly the legislation of the sixties, provided new directions for forest resource use and management.

The Forest Service began to implement the new policies of the sixties through practical management programs prescribed by Congressional enabling legislation in the 1970s. The Forest and Rangeland Renewable Resources Planning Act (Resources Planning Act or RPA, 1974) initiated comprehensive studies leading to long-range forest planning. The Act imposed more constraints on timber harvest and gave greater importance to recreation and watershed uses. The Sikes Act, also approved in 1974, established cooperative programs between National Forest managers and state authorities relating to wildlife management on the National Forests. The National Forest Management Act of 1976 amended the 1974 Resource Planning Act and established additional criteria and definitions for multiple-use management policies.

But no federal legislation has created such a distinctive management environment as has ANCSA, the Alaska Native Claims Settlement Act, approved by Congress on December 18, 1971. That Act, and related acts including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and most recently, the Tongass Timber Reform Act (1990), have created a management environment that is unique to the Alaska Region. While Alaska may be considered the nation's "last frontier," the Alaska National Forests comprise a "new frontier" in resource management.

ANCSA sought to determine and settle issues of aboriginal title to land in Alaska that had remained unresolved since the Alaska purchase in 1867. ANCSA and ANILCA incorporate the history of the Native peoples of Alaska and their traditional resource uses with Alaska's contemporary populations and forest resource uses. Alaska's past has been legislatively commingled with the present. Thus, the more ancient history of the land and the people of Alaska are a necessary precurser to understanding this new frontier of National Forest management that has emerged since 1970.

The Organization of the National Forests

Curiously, the first federal forest legislation relating to Alaska had to do with fishing rather than forests. In response to visibly declining salmon populations in the late 1880s, the U.S. Commission of Fish and Fisheries sponsored a research study of salmon and salmon fisheries on Kodiak and Afognak Islands. The researchers observed fish traps and set nets erected so as to prevent the ascent of every returning fish upriver, and beach seining methods that completely obstructed the mouths of salmon streams, that were commonly carried out by commercial fishing enterprises in Alaska. They visited Afognak River at the mouth of which two canneries were operating, and reported a Native village of about 40 dwellings located on the stream. Conditions here were ideal for the establishment of a fish reserve: unobstructed streams with all five species of Pacific salmon, a mild climate, absence of development (mines, sawmills or railroads) or private holdings, sufficient timber for construction purposes, and a Native village nearby that could provide a labor force. Drawing a comparison with the passing of the buffalo on the plains and the Indian of California, the investigator suggested that the salmon, too, were helpless before the "white man's advancing civilization," as well as fishermen's greed.[1]

At the request of the fish commission, President Harrison created the Afognak Forest and Fish Culture Reserve by executive proclamation on Dec. 24, 1892. Thus, as Lawrence W. Rakestraw explains in his *History of the United States Forest Service in Alaska*, the very birth of the national forest system in Alaska is connected with the need for conservation of one of Alaska's principal resources in the face of development pressures, and with the inter-connectedness among Alaska's resources, in this case forest and fishery resources.[2] This beginning prefigures the more modern management concept of multiple use.

It is perhaps ironic that the 1891 legislation that gave to the executive branch the powers to establish fish culture stations on Kodiak and Afognak Islands was also that which permitted new townsites to be surveyed and

conveyed, and extended the Trade and Manufacturing Act to Alaska which authorized the transfer of numerous sites used for commercial mining, fishing and logging, to the new white settlers in Alaska. The legislation also stated that the Natives of Alaska shall not be disturbed in their use and possession of occupied land until future legislation is passed. The dynamics between white settlement and aboriginal title remained unresolved until the 1970s.

Creation of the Tongass National Forest, 1902-1909
Between 1902 and 1909, President Roosevelt issued several proclamations establishing the Tongass National Forest in southeast Alaska. The first of these reservations, created on August 20, 1902, and entitled the Alexander Archipelago Forest Reserve, was completely insular. It encompassed the Prince of Wales (and associated islands to seaward), Zarembo, Kuiu, Kupreanof, and Chichagof Islands (also with associated islands to seaward). The second reservation encompassed the mainland of southeast Alaska from the southern border north to Lynn Canal and Skagway; it was made on September 10, 1907, and named the Tongass National Forest. On July 1, 1908, the Reserve and the Forest were consolidated into a single national forest, the Tongass, with a total area of 6,756,362 acres. The largest withdrawal occurred in the proclamation of February 16, 1909, when the mainland area near Yakutat (from Dry Bay to Yakutat Bay), the Chilkat Peninsula (on the western side of Lynn Canal) and the remaining islands (including Admiralty, Baranof, Etolin and Wrangell Islands) added another 8,724,000 acres to the Tongass National Forest.[3] The existing mostly caucasian towns and cities were excluded from the forest.

The first forest reserve was made upon the recommendation of Lt. G.T. Emmons, whom the President asked to prepare a report on possible forests in Alaska.[4] Emmons found that the best timber was on the islands, where it was not affected by the colder climate associated with the glaciers found on the mainland, and he selected the more sparsely populated islands. The principal inhabitants were about 800 Tlingit Indians in villages on Kuiu Island, in the village of Kake on Kupreanof Island and the villages of Hoonah and Tenakee on Chichagof Island. The largest of these was Kake, with a population of about 500. There were also small sawmills located at Howkan, Shakan, Kasaan Bay, and Hetta Inlet, and a few canneries in the area; Zarembo Island was uninhabited.[5]

Among the protestors to this action was the Rev. Henry Corser, the Presbyterian minister to the Tlingit and Haida Indians in Wrangell, near Zarembo Island. He wrote that the restrictions on logging would force the Indians to "revert to primitive conditions or else starve," since they were "loggers by occupation."[6] After the demise of fur-bearing animals and the subsequent collapse of the fur trade, the Wrangell Indians had very limited means and access to cash income. At the turn of the century, they derived a substantial portion of their cash from the occasional, but regular, sale of logs to Wrangell residents to be used as firewood. The provision of firewood had been a common pursuit of local Indians since the arrival of white settlers in Wrangell. Furthermore, the operator of the then recently-established Wrangell cannery preferred to import white and Chinese labor rather than employ local Natives, and the sawmill likewise did not hire Natives. Thus, as Corser knew, the newer economic opportunities were not available to the Indians in Wrangell. Corser also objected on the grounds that the reservation was an immoral confiscation of Indian property, since the Indians considered the land to be theirs by the prior right of occupation and ownership.[7] As described below, Tlingit and Haida property rights in southeast Alaska were eventually upheld by the U.S. Court of Claims in Alaska's first Native land claims settlement in 1951.

The white population in the reserve was mainly engaged in mining and fishing, and there was need for timber in both industries. At this time, loggers were unrestricted and cut trees anywhere that was convenient. Rakestraw has noted that "the standard procedure was for the logger to go where he pleased and cut whatever he wanted, without getting permission from anyone and without notifying any official of the action."[8] Non-reserve land was managed by the Department of the Interior's General Land Office, and in lieu of holding timber sales loggers were routinely assessed minor fines for "trespass" based on self-reported footage (until 1903, when the General Land Office initiated a sale policy). Proposing that Forest Service management would bring in more revenue than the GLO and also serve to protect the land from speculative development, the Forest Supervisor for Alaska, Langille, concluded that an additional reserve of two million acres on the mainland near Ketchikan should be made.

There were a few small sawmills in the area, but the largest mills were located at Juneau, Douglas, Wrangell and Ketchikan outside the reserve. According to Rakestraw, the owners of these large sawmills "wanted more reserves created in order to tap the potential export market." In 1907, the Forest Service proposed the area located on the mainland to be withdrawn as

the Tongass National Forest, and it was favorably acted upon by President Roosevelt. The final acreage was smaller than that suggested in the Service's initial report. The Ketchikan Power Company supported the proposal for another reserve because it would provide them with export timber. According to Rakestraw, "Its original creation was ... as a timber reservoir for the Ketchikan lumber industry and to curb Canadian log theft across the Portland Canal."[9]

The policy decision to create another national forest at this time was partly in response to a movement within Congress to curb the president's power to establish reserves by executive order. In 1909, the Forest Service made another recommendation for a reserve near Yakutat, which also included the remaining islands in the Alexander Archipelago, and another presidential proclamation putting 8.7 million additional acres into the Tongass National Forest was the result.[10]

Authorized by the Antiquities Act of 1906, the president was also empowered to set aside areas containing natural wonders or historic and prehistoric sites. Shortly thereafter, the Forest Service played a role in the creation of three such areas in southeastern Alaska. In 1910, the Sitka National Monument was created by the president at the urging of the Secretary of Agriculture, who submitted the proposal for such to the Secretary of Interior for the president's approval. Local Forest Service personnel assisted the Sitka Arctic Brotherhood with a petition to request better protection for the historic Sitka Indian Village and fort, the site of the 1804 battle with Baranof, from vandalism. Earlier, Olmsted had submitted recommendations for the preservation of totem poles and community houses at the former Tlingit and Haida villages of Tuxekan and Old Kasaan, and these were acted upon favorably within the decade.[11]

Creation of the Chugach National Forest, 1904-1909
Like the Tongass, the Chugach National Forest was the product of several executive actions by President Roosevelt, in this case between 1907 and 1909. The initial proclamation creating the Chugach National Forest was issued on July 23, 1907. Comprising 4.96 million acres, it extended westward from the Copper River to the Kenai Peninsula, encompassing Prince William Sound and the islands such as Montague, Hitchinbrook, Hawkins, and Latouche Islands.[12] President Roosevelt added the Afognak Fish Culture and Forest Reserve to the Chugach by executive order on July 2, 1908; it remained under joint management of the Forest Service and the U.S. Fish Commission. Further additions were made to the Chugach by presidential proclamation on February 23, 1909, when areas in the west (most of the timberland on the Kenai Peninsula, Turnagain Arm and Knik Arm) and the east (from the Copper River to Cape Suckling) increased the total region to 11,280,640 acres.

Prince William Sound and the Kenai Peninsula was first examined by Langille in 1904. The proposal to reserve the Prince William Sound area came about in 1907 when, as described above, the Forest Service grew concerned about a movement within Congress to restrict the president's ability to create reserves by executive order. In response, the Service moved to create both the Chugach and Tongass National Forests. The timber in the Chugach was mainly Sitka spruce, black spruce and hemlock, and the most valuable trees were on the islands. As in the Tongass, mining and fishing were the principal economic activities of the new white settlers in Prince William Sound, and copper mining was paramount. In 1907, there were active mines at four locations: Landlocked Bay, Boulder Bay, Ellamar and Latouche Island; and the great copper mine at Kennecott was soon to be developed. Commercial salmon fishing was mainly confined to the east, near Orca by Cordova and eastward at Katalla in Controller Bay, and on Wingham Island. In 1907, there was only one mill operating in the region, at Valdez; most of the lumber used in the region was imported from Puget Sound. But local trees provided logs for railroad ties, piling and mining tunnel supports.[13] Shortly after the forest was created, 82,000 acres were eliminated in Valdez Arm as pre-existing mining interests.

Various syndicates were engaged in developing railroads during the first decade of this century at Seward, Valdez, Cordova, and Katalla (which was abandoned in favor of the Cordova route). The railroad boom brought abuses, which was a principal factor in Forest Service recommendations to make additions to the Chugach. Wasteful cutting by the Alaska Central Railroad along Turnagain Arm in the Rainbow, Indian, Bird and Glacier Creek areas was noted by Langille in 1907; the railroad was responsible for cutting three million board feet which had been left in the woods to decay between 1905 and 1907.[14] The timber resources were seen as necessary for the development of railroads, which in turn were needed to develop the coal resources, and to support gold placer mining; the additional reserve would provide a system of forest production that would save the timber from overexploitation by larger interests at the expense of the individual. In a report of his inspection in 1907, Langille wrote of the need to protect the rights of the individual and to encourage small-scale

efforts to develop minerals against the "unscrupulous" mining and industrial interests "who seek by every known method of extortion to obstruct and hinder every enterprise undertaken."[15]

Similar waste occurred east of Prince William Sound around Controller Bay, near Katalla, where two million board feet were left on the ground to rot by one of the railroad syndicates competing for a route to the Kennecott field. Most of this eastern block was under fraudulent coal mining claims since 1904 or 1905. This area, as well as the western area around the Kenai Peninsula and Turnagain and Knik Arms, was added to the Chugach in 1909. In 1913, several mining (coal) claims in this eastern area, which were known as the Cunningham claims, were cancelled by the Department of Interior, after investigations determined that their true purpose was to acquire the timber, rather than being legitimate mining pursuits.[16]

In 1904-05, Langille observed that there was an influx of wasteful white game hunters into the Kenai Peninsula, and as result of their influence the Tanaina Indians had become less mindful of their traditional conservation practices of animal populations. Langille observed that the white sports "stayed for a short time, killed as many good heads as they saw, and then took out the best." He explains, "Traders also hired Indians to kill trophy-sized heads for sale to sportsmen."[17] Langille identified an area of the Kenai Peninsula suitable for a national forest, and he suggested that a portion of the forest region ought to be set aside as a game preserve, to protect the natural populations of bear, mountain sheep, moose and caribou from overharvesting.[18] He provided cursory reports of the human population centers, estimating 200 permanent residents at Seward (mostly connected with the railroad), 200 at Kenai and 100 at Hope, with additional settlements in the interior and fishing villages along the coast (such as Homer).[19] He also reported that, in the vicinity of the Knik River, there were several Dena' ina villages and one trading post inhabited by four white men. He observed that the coming of the railroad would likely encourage market hunting among these Indians, much as had occurred on the Kenai, and would degrade the indigenous cultural practices and traditions.[20]

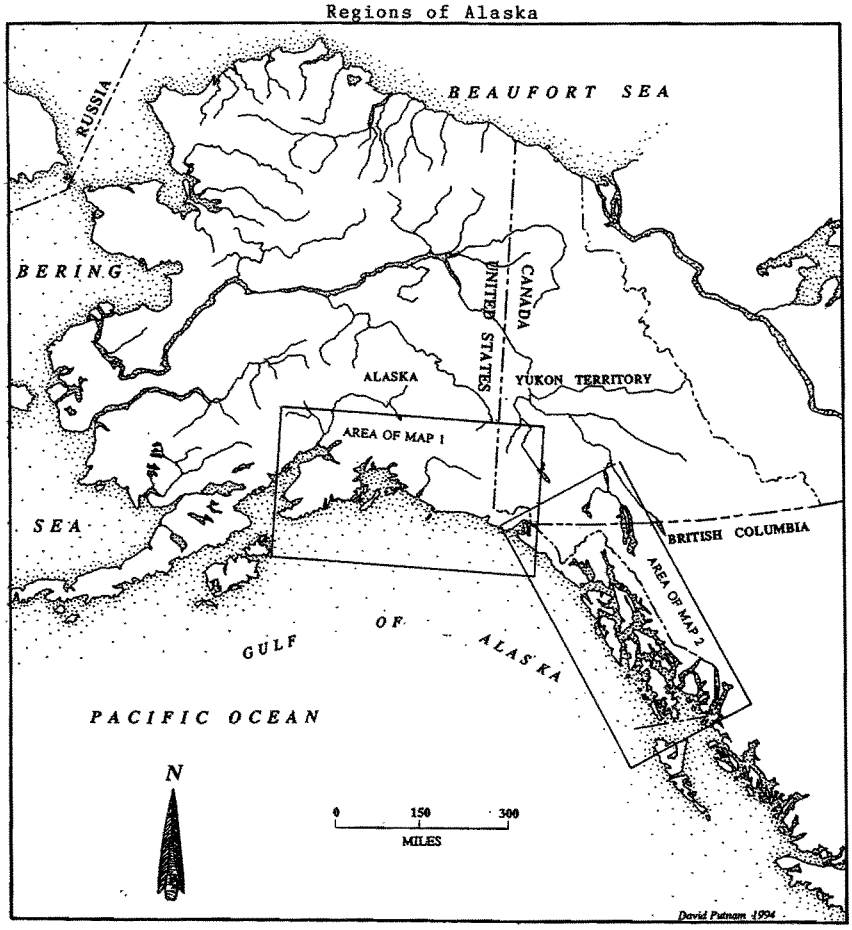
Other Alaskan Proposals
The proposed Norton Bay area forest reserve was withdrawn in 1903, but was restored to the public domain in 1907 after Langille investigated and recommended against its creation. Following investigations in the Cook Inlet area in 1905, Langille recommended a Talkeetna National Forest of 10.3 million acres, encompassing the drainages of the Talkeetna, Yentna, Susitna, and the Matanuska rivers. No action was taken regarding this recommendation.

Peoples Of The Forests Before The Establishiment Of National Forests In Alaska

Chugach Region
The boundaries and dimensions of the Chugach National Forest have changed since 1909, when its 11.2 million acres covered the vast south central coastal region of Alaska from the Copper River to the southern tip of the Kenai Peninsula. Although most of the Kenai Peninsula, the interior, and the eastern extremities are no longer part of the Chugach National Forest, the central coastal core of the original forest is the modern Chugach. The Chugach National Forest encompasses all of Prince William Sound and extends inland into the Chugach range. The forest boundary extends from Cape Suckling, east of Prince William Sound, to the north and west through the sound to northeastern Kenai Peninsula as far as the Russian River, and to Hope on Turnagain Arm. A short distance southeast of Cape Suckling is Yakutat Bay, which marks the start of the Tongass National Forest in southeast Alaska. The 5.8 million acres of the Chugach is the second largest forest in the United States. The coastal margin and islands of Prince William Sound are covered with stands of spruce and hemlock supported by the substantial rainfall in the region, but proximity to glaciers in the mountains of the Chugach range brings lower temperatures and inhibits the growth on the mainland, as compared to the islands. Enormous wetlands on the Copper River Delta to the east serve as the nesting, staging and feeding grounds for over 20 million birds each year. To the west, on the Kenai Peninsula, the spruce forest is outside of the rainbelt. The beautiful scenery and abundant fish and wildlife attracts substantial recreation, wildlife viewing, sport and commercial use in the region. These lands and fisheries were used by the ancestors of contemporary Native Alaskans in pre-historic times.

Prehistory of the Chugach Alutiiq (Pacific Eskimo) People
Information on the early prehistory of the Chugach region is derived from assumed associations with trends in nearby coastal areas since there have been only two major excavations in the region, the older of which shows human occupation at about 4400 years ago.[21] Judging from the prehistory of adjacent regions to the west and southeast, the first inhabitants of the Chugach region could have arrived as long as 11,000 years ago when late Pleistocene glaciers receded from

PLATE I. The Chugach (Map 1) and the Tŏngass (Map 2) Regions of Alaska



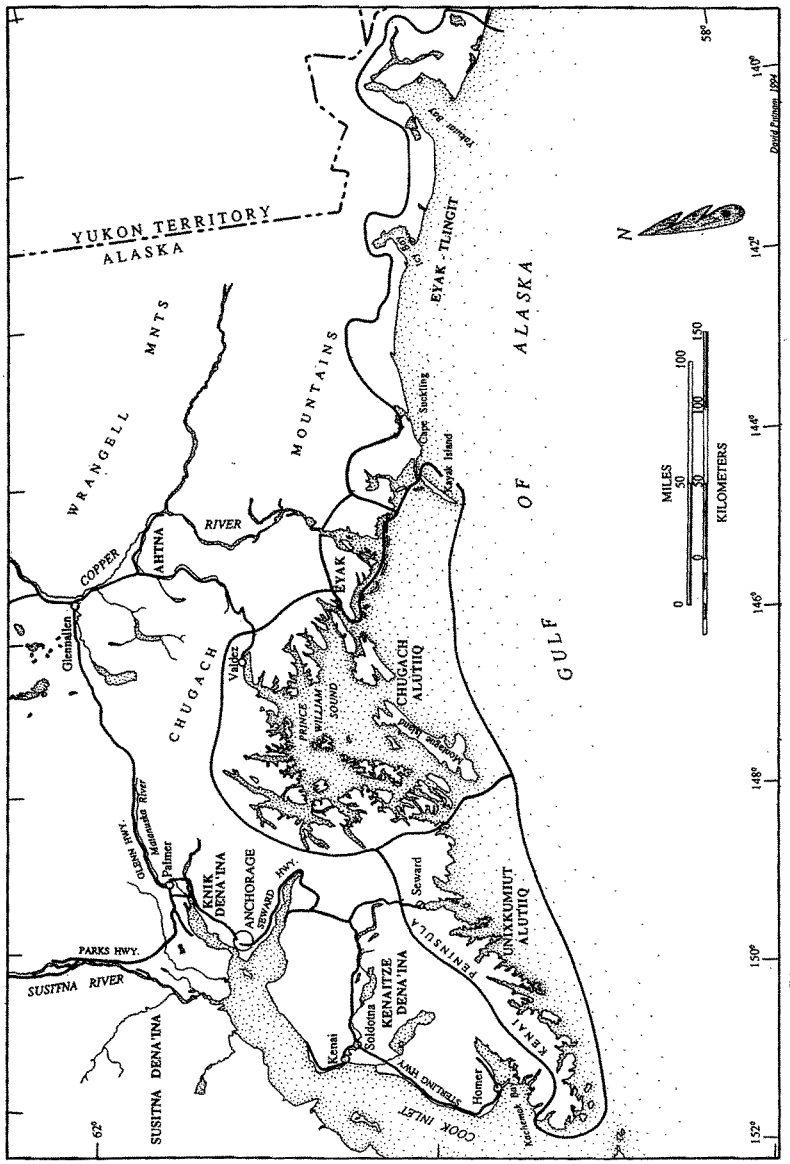
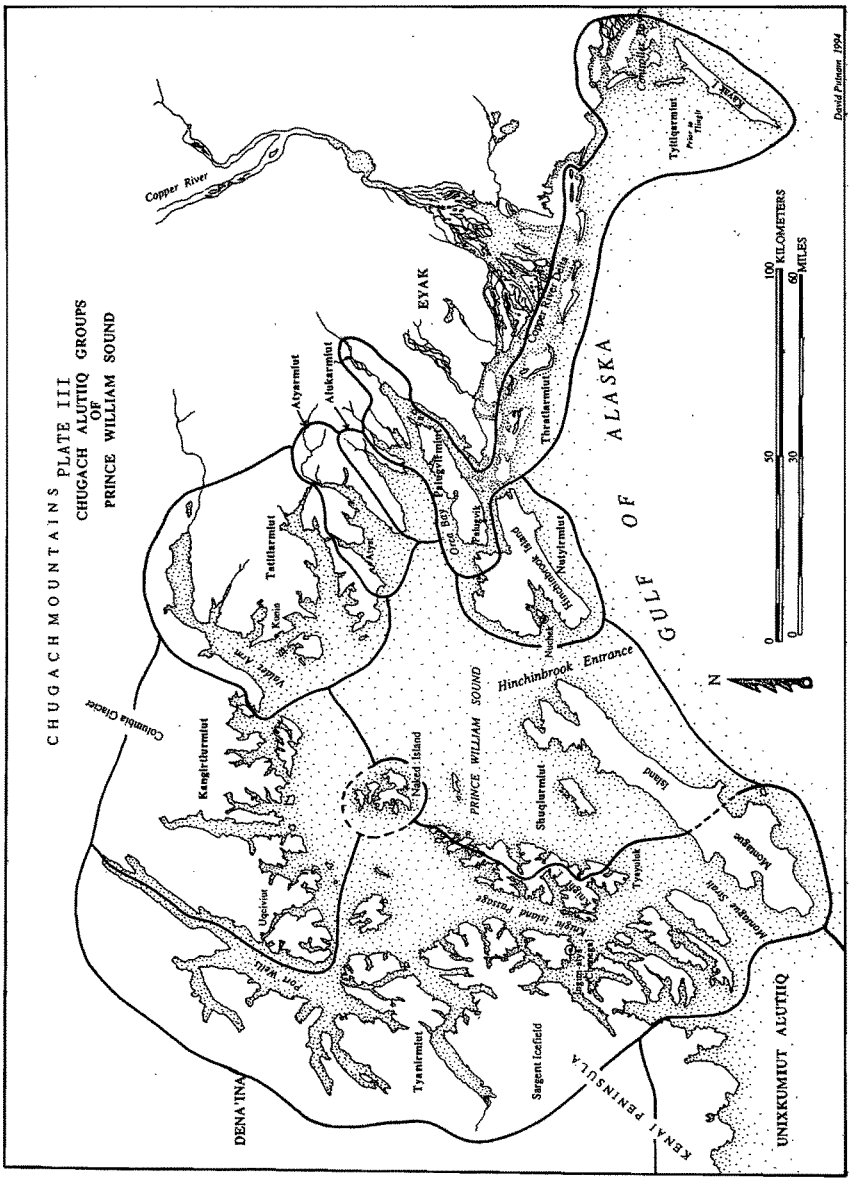


PLATE II. The Chugach Alutiiq (Pacific Eskimo) and People of the Chugach Region


CHUGACH MOUNTAINS PLATE III
CHUGACH ALUTIIQ GROUPS
OF
PRINCE WILLIAM SOUND
Copper River
EYAK
Atyarmiut
Alutkarmiut
Tatitlarmiut
Kanglitarmiut
Naked Island
PRINCE WILLIAM SOUND
Hinchinbrook Entrance
GULF OF ALASKA
Shoqlarmiut
Tyniarmiut
Sargent Icefield
DENA'INA
KENAI PENINSULA
UNIXKUMIUT ALUTIIQ
Tyitligarmiut
Cordova
KILOMETERS
MILES
N
David Putnam 1994

the area.[22] Specialized maritime hunters and fishers were living on Kodiak Island and on the adjacent Alaska Peninsula by 7,000 years ago. A modified form of this culture, called the Ocean Bay tradition, probably extended to the Chugach region including the southern Kenai Peninsula and Prince William Sound. These people exploited salmon runs during the summer while residing in fish camps, and pursued sea mammals (seals, sea lions, sea otters, porpoises and whales), ocean fish, birds, land animals and shellfish at other seasons.

The production of ground stone (slate) implements commenced about 4500-4000 years ago, introducing a new phase in the Ocean Bay tradition in the Kodiak and Alaska Peninsula area which lasted until about 3500-3000 years ago. This overlaps with the earliest known human habitation in Prince William Sound which occurred between about 4400 and 3300 years ago and which the Yarboroughs call the Uqciuvit phase based on their work at the site of that name.[23] They report that very little is known about these people, "except that they hunted sea mammals, used red ocher, and were familiar with slate grinding." From 3200 to 2500 years ago a glacier advance probably drove the inhabitants of the inner sound out of the area, but there is evidence that the outer areas, such as at Knight Island, were occupied at this time.[24] By about 2400 years ago, Uqciuvit was reoccupied and Palugvik (on Hawkins Island on the eastern sound) was first inhabited. These two sites provide the substance of the more recent prehistory for the sound.

Starting about 3500 years ago, a new culture — the Kachemak tradition — appeared in the Alutiiq region. Although centered in lower Cook Inlet, evidence for this culture has also been found in sites on Kodiak Island, the Alaska Peninsula, and at Palugvik in Prince William Sound. This culture, also based on a maritime economy, became progressively more elaborated until about 1000 years ago when it reached an apex.[25] There is some association between the late Kachemak culture and the early Palugvik occupation during the second or third century A.D. at Palugvik, where people lived in houses constructed of timbers. A change to a later cultural form at Palugvik, which occurred a few centuries later, may have been associated with the development of conifer forest communities in the sound that became established during this millennium.[26] At Uqciuvit, on the other hand, the assemblage does not reflect a Kachemak association and an in situ development can be seen from its reoccupation to the protohistoric or early historic period (Chugach phase).[27] Further, a continuity in lithic technology is noted at both sites, suggesting there was more independent development and stability in the Sound, more of an outlier of the Katchemak culture, within prehistoric Alutiiq traditions. Residents of both sites relied heavily on marine resources, particularly mammals; but there was more dependence on fish at Uqciuvit than at Palugvik indicating there was a larger supply of other resources at Palugvik.[28]

The formation of historic Alutiiq Eskimo culture is traced to the last centuries of the first millennium A.D., for the earlier traditions (the Norton and Kachemak) cease to exist as distinct assemblages by about 1000 A.D. In the west (Alaska Peninsula and Kodiak Island), this shift is associated with assimilation and then partial rejection of elements of a new northern Eskimo culture (Thule), before the formation of the Koniag phase on Kodiak Island, while in Prince William Sound there was a more gradual change incorporating localized antecendants and new artifacts.[29] Modern Alutiiq culture is associated with the simultaneous appearance of Koniag (Kodiak Island) and the Chugach (Prince William Sound) phases, as well as with related communities on the Alaska Peninsula and southern Kenai Peninsula. The modern Chugach had close cultural, linguistic and archaeological ties with the Koniag, but they also showed great similarities with many traits of Yakutat archaeology, including recent trends in the use of copper and woodworking tools, as well as traits that are very much older.[30]

The Aboriginal Cultures of the Chugach Region

At the time of the arrival of the first European explorers, the Chugach region was inhabited by members of three groups: Chugach Alutiiq Eskimo, Eyak and Tanaina Athapaskan. The Chugach Eskimo occupied all the coast and islands of Prince William Sound, and a closely related group lived on the southern Kenai Peninsula. The Eyak were living along the coast from the mouth of the Copper River at Cordova east to Cape Suckling and beyond, where they had become intermixed significantly with the northernmost Tlingit. The Tanaina Athapaskan people appeared in the upper Kenai Peninsula area, supplanting the prehistoric Eskimo culture in this area, sometime before the first arrival of Europeans. There is substantial ethnographic and archaeological information showing elements of a north Pacific maritime culture shared by Aleut, Alutiiq, Eyak and Tlingit (Northwest Coast) peoples. The Chugach culture is essentially an Eskimo culture, but it is highly modified by influences from the Northwest Coast, and to a lesser extent from the interior of Alaska. The Eyak language is distantly related to the interior Athapaskan, but their culture is maritime with character-

istics of Northwest Coast and Chugach societies.

Chugach Eskimo

The Chugach are the easternmost of the Alutiiq-speaking Eskimo people.[31] They occupied the coast and islands of Prince William Sound, extending east nearly to Cordova, and at one time also the mainland farther to the east as far as Controller Bay. In the eighteenth century, they occupied Kayak, Wingham and Middleton Islands, while the area between Cordova and Point Martin belonged to the Eyak, a different cultural group with distant linguistic affinities with the Athapaskan Indians of the interior. After the advent of the Russians, who enforced peace between the Chugach and the Eyak, the latter extended their hunting area northwest into Prince William Sound to Port Gravina and as far as Ellamar. To the southeast, Tlingitized Eyak drove the Chugach from Controller Bay in the nineteenth century when, under the influence of Russian settlement, the eastern Chugach concentrated at the village of Nuchek on Hitchinbrook Island.[32] A related Alutiiq group, called "unixkumiut" by the Chugach, inhabited the area on the south shore of the Kenai Peninsula from Puget Bay (near Seward) to Cook Inlet.

There were numerous settlements in the region, although the overall numbers of the Chugach did not approach those of the Koniag to the west, or the Tlingit to the east. Veniaminov counted 471 Chugach in the 1830s, after the smallpox epidemic of 1834-36 had taken its toll. The Chugach were divided into eight local groups comprised of one or more permanent villages, and seasonal camps. These groups were geographical divisions named after the principal village or some other locality in their territory (see Plate III). Each group had its own customary hunting grounds, but there were no sharp boundaries between them and families did not claim exclusive use of certain areas, although villages would chase away intruders from their salmon or trapping places.

Each village, or perhaps a few villages in common, had a head chief and a chief assistant. He directed the scheduling of hunting activity, led hunting expeditions, sent people whaling, and decided when to put up fish or undertake military excursions. He presided over meetings in the village and was considered to be the richest man in the village. However, a rich man was not made chief just because of his wealth; the Chugach chief served as the node in a redistribution network. The Chugach chiefs owned slaves who were captives in wars with the Koniag, or were purchased from the Eyak and Yakutat Tlingit.

Chugach villages were always located close to the sea. The settlement pattern was adjusted to the seasonal requirements of the subsistence economy, with some dispersal to hunting and fishing camps depending upon the availability of resources. Some villages were inhabited on a year-round basis. People would congregate in winter villages with more permanent structures that housed several families. Chugach houses were rectangular with sprucewood plank walls and roofs and sleeping rooms along the sides. The houses were semi-subterranean, with walls ascending to about 3-4 feet above ground, and a steam bath was always attached. Summer houses were similar in construction, but were above ground and were used as smokehouses.

Hunting and fishing was the basis of the Chugach economy. Sea mammals, salmon and, on the mainland, mountain goat, were mainstays of the diet, and small rodents and birds were regularly pursued. Sea mammals (fur and spotted seal, whale (humpback, fin and minke), sea lion, porpoise, and sea otter), salmon (all five species, depending upon availability), ducks and geese, salt water fish (cod, halibut and sculpin), land mammals (mountain goat, black and brown bear, squirrel and marmot), eulachon, herring, shellfish, berries and roots were taken for food. Berries, plants and vegetable products played a part in the Chugach diet that far exceeded that of other Eskimo societies, according to Birket-Smith.[33]

There were sub-regional variations in this general subsistence pattern depending upon local availability of resources. For example, the Nuchek people, inhabiting the west coast of Hitchinbrook Island, had the best sea otter grounds in the sound, as well as abundant whales and salmon, while the neighboring Sheep Bay people of Port Gravina were poorer and fewer in number, and utilized mountain goat heavily.

The natural resources used as food, as well as stone and copper, also provided raw materials for tools, weapons, clothing, boats, and trade. The Eyak served as middlemen in trade between the Chugach and the Ahtna Athapaskans, and the Chugach also traded with the Tanaina, Koniag and Aleut, but less so with the Tlingit with whom they were more often at war. The Chugach hunted and travelled by one- and two-hatch kayaks, dugout canoes and umiaks. A portage from Passage Canal to Turnagain Arm on Cook Inlet provided access across the foot of the Kenai Peninsula.

Eyak

The Eyak culture represents an older form of Northwest

Coast culture and suggests what may have been characteristic in northern Tlingit territory before historical changes occurred, particularly influences from more southerly Tlingit cultures.[34] In the eighteenth century, the Eyak territory extended along the coast of the Gulf of Alaska between the Chugach Eskimo in Prince William Sound and the Tlingit-Athapaskan people of Dry Bay. Many place names from Cordova to Cape Suckling are Chugach in origin, while those further east are often Eyak or Tlingit translations, which suggests prehistoric cultural distributions. In the early nineteenth century, much Tlingit influence was spread westward from Dry Bay and a more Tlingitized Eyak occupied the coast from Yakutat to Controller Bay, while a more traditional Eyak population had already pushed deeper into Chugach territory to the Copper River and as far as Eyak village near the present town of Cordova.

In the nineteenth century, the Eyak formed four regional groups that were geographical, not tribal or political, sub-divisions: those living in the Cordova-Copper River area, in Controller Bay, near Cape Yakataga and around Yakutat Bay. Each of these groups was associated with one or more villages. The Eyak of Cordova were the more purely Eyak and inhabited their own village ("Eyak"), while those in Yakutat have become completely Tlingitized. Within this area, 47 sites have been identified that were at one time occupied by the Eyak.[35] The Eyak language is related to the proto-Athapaskan family; there is only one speaker presently alive.

Salmon (five species) was the most important food in the Eyak economy. They also caught halibut, sand sharks, trout, whitefish, and eulachon, and gathered shellfish. Seal and sea otter were the only sea mammals hunted; they hunted harbor and hair seals but were afraid of fur seals. Mountain goat and bear (brown and black) were the most valuable land animals hunted by the Eyak. They took beaver, fox, lynx, mink, martin, muskrat, weasel and ermine, as well as ptarmigan, grouse, swan, and several species of ducks and geese. The Eyak built wooden dugout canoes: small ones were used for sea otter hunting, fishing, and hunting seals, while larger craft were used exclusively for transportation. They also purchased kayaks from the Chugach for use in sea otter hunting, while under Russian influence.

The Eyak had a similar concept of territorial rights as the Chugach, that is, hunting and fishing places were not used or claimed exclusively by any one group. There were no exclusive family, moiety or village rights over fish camps and streams, although in a few instances individual families did claim certain places for setting salmon or seal nets. The Eyak lived in rectangular houses built of hemlock planks laid in a structure of four corner houses posts, with two more on either side of the door, and roofing planks laid over a structure of poles and covered in bark. They had both single family and communal houses.

Each village also had two ceremonial potlatch houses, one for each moiety. All the Eyak potlatch houses had names (such as "Goose House," "Raven House," "Skeleton House"), most of which correspond with Tlingit names for houses in southeast Alaska. The potlatch was primarily a moiety ceremony; and the principal activities were feasting and distribution of gifts. Potlatches were held on four occasions: to dedicate a new house, to mourn those slain in battle, to commemorate a death, and to honor visitors.

The Eyak are divided into two exogamous, matrilineal moieties, the Eagles and the Ravens, but there was no formal subdivision of the moiety into smaller groups such as clans or house groups.[36] Both moieties were represented in each village. Each moiety was headed by a chief; one of them was also recognized as the head of the village or group while the other was a moiety leader. Below the head chief was a sub-chief in each moiety. The chief commanded war parties, led hunting parties, and was regarded as the richest and strongest man in the village. Eyak society was divided into three strata: chiefs and their families, commoners and slaves. Slaves were captives taken in war, or offspring of the same. Most of the Eyak wars were with the Chugach; and all of the slaves of the Eyak were Chugach.

Kenaitze Dena'ina Athapaskan

In the upper Kenai Peninsula, archaeological sites on the Kenai River and in Turnagain Arm show affinities with both earlier and later Eskimo traditions, and indicate that this area was part of the prehistoric Alutiiq culture area for two thousand years, at least until the fourteenth century A.D. However, by the time of the earliest contact with westerners in the eighteenth century, the upper Kenai Peninsula area was settled by Dena'ina Athapaskan Indians. The traditional history recounts that the Dena'ina migrated from the east, in the direction of Copper River.[37] On the northern Kenai Peninsula, they inhabited the coastal area at the mouths of rivers in the west during the summer, where they pursued salmon and marine resources, but during the winter they moved inland in search of caribou and small land mammals.

The Dena'ina are sub-divided into seven geographical

groups across their territory, which extends from Seldovia on southwestern Kenai Peninsula north and westward around the drainages of Cook Inlet and includes Lake Clark and the western half of the Lake Iliamna area. Of interest here is the Kenaitze subdivision, which inhabited the western portion of the Kenai Peninsula north of Kachemak Bay as far as Turnagain Arm, including the interior country of Tustumena, Skilak and Kenai Lakes and the Kenai and Russian Rivers. Mountain passes provided passage from the Kenaitze area to the country of the Chugach Eskimo in the Seward area, betweem whom there was considerable trade. There was also extensive visiting and some intermarriage between the Kachemak subdivision and the Alutiiq of the southern Kenai Peninsula and western Prince William Sound. The Dena'ina were frequently at war with the Koniag Alutiiq.

The Dena'ina regional groups were comprised of several villages, with at least one recognized as the principal village. In 1805, when Lisiansky visited Cook Inlet, he noted there were 14 settlements and about 3,000 inhabitants in the area.[38] The principal Kenaitze Dena'ina settlement was at Kenai; other villages were located at Anchor Point, Ninilchik, Kasilof, Skittok (near Kenai), Chinila (also near Kenai), Skilak (south side of Skilak Lake), Titukilsk (near Nikishka), Nikishka, and Kultuk (near Nikishka). Townsend identifies 17 former Dena'ina communities in the Kenai region.[39] Their settlements were located both inland and along the shores of Cook Inlet on or near the outlets of rivers.

During the winter, the Kenaitze Dena'ina collected themselves into villages located in the forest away from the coast. Villages ranged in size from one to 10 or more communal houses, each comprised of about four or five families. They were semi-subterranean structures with walls of whole or split spruce logs and roofs of split logs covered with moss, sod and dirt. Sleeping compartments were built adjoining and a bath house was attached to the main room. In the spring, summer and fall, when the Kenaitze relocated to fish camps along the shores and rivers of the western Kenai Peninsula, the Dena'ina inhabited their smoke houses. Temporary shelters used in hunting expeditions are made from lashing together of alders covered with bark or skins. The Indians constructed small birch bark canoes, and also adopted the kayak and umiak from the Eskimo. Dugouts were used for transporting dried food from fish camps and log rafts for crossing rivers.

The Kenaitze are adapted to the land environment. Salmon was the most important component of their economy, and land mammals were also fundamental especially during the winter season. They harvested all five species of salmon, as well as trout, herring, catfish, eulachon and tomcod. Land mammals were also significant, including caribou, moose, mountain sheep, black and brown bear, beaver, porcupine, rabbit, marmot, lynx, fox, ermine, marten, mink, tree squirrel, land otter and wolverine. Birds included species of duck, goose, swan, loon, ptarmigan, grouse, eagle and owl, as well as bird eggs. Clams and crabs were taken from the beach; the only sea mammals were hair (harbor) seals and beluga whales, which were hunted in the rivers. Berries, inner bark and other plant and vegetable foods were also part of the diet.

The Dena'ina are divided into exogamous, matrilineal moieties that are unnamed. These are further divided into about 15 named matrilineal clans.[40] Each village had one or more rich men who were also the most prestigious persons in their lineage and considered to be the headman of their respective kin group. Apparently the most prominent headman was considered village chief. The headman functioned as the center of a redistributive system, providing support to the aged and orphaned, care for the welfare of the group, significant ability in subsistence and war expeditions, and general counsel and advice, and receiving in exchange assistance in hunting, fishing, trapping and manufacture of trade goods. The society consisted of two strata: wealthy families and those of little wealth and prestige who were attached to their more wealthy relatives. Slaves were obtained by rich men in trade or acquired in battles. Dena' ina potlatches are essentially moiety ceremonies given to honor recently deceased individuals. These are characterized by feasting, the distribution of gifts, and the repayment of mortuary workers. Smaller feasts were given to honor living persons. There is conflicting evidence with regard to the non-exclusivity of individual, clan or moiety hunting territories and fishing sites.

Tongass Region

The Tongass National Forest extends the full length of the southeast region, 500 miles from Yakutat Bay in the north to Dixon Entrance in the south. This region lies at the northern end of the traditional Northwest Coast culture area, one of the most developed maritime cultures of the American coast. Heavily forested with hemlock, spruce and cedar, the coastal fringe and islands of this archipelago is truly a rain forest: the average annual rainfall in most communities is over 120 inches per year (Ketchikan, the highest, has 162). There are nearly 11,000 miles of shoreline among the coast and islands, and in most areas majestic mountains rise from the tidewater. On the mainland, in

addition to steep slopes, three large rivers, numerous glaciers, and icefields dominate the landscape. Rich and varied wildlife and fish resources are found throughout the region, and they are accessible only by boat or plane except in localized areas. Tourism, recreation, logging, sport and commercial fishing and hunting, and subsistence hunting, fishing and gathering are among the uses of the forest.

Prehistory of the Tlingit People

There are two major maritime cultural traditions associated with the Tongass region. The earliest culture, which Stanley D. Davis (*Handbook of North American Indians*) calls the Paleomarine tradition, existed from 11000 to 6500 years ago, while the second, which is related to the traditional Northwest Coast cultural pattern, was present from about 5000 years ago to contact with Europeans and the historic period. Davis identifies a transitional stage between the two, dating from 6500-5000 years ago, whereas Arndt et al. argue that the archeological data is insufficient to conclude that the transition was a gradual development or a more sudden cultural shift from the early to the late culture period.[41]

Although the oldest documented sites are from 10,000 years ago, it is possible that the first peopling of the coast occurred 12-13,000 years ago when the environment was free of ice; the evidence of earliest human occupation is believed to be destroyed by fluctuating sea levels. The Paleomarine culture was a well-developed microblade and core tradition that also included cobble tools and cores, and an economic strategy focused on coastal and marine resources. The principal sites for this distinctive microblade industry are the Ground Hog Bay 2 site on the mainland shore of Icy Strait, the Hidden Falls site on Baranof Island, Chuck Lake and Rice Creek on Heceta Island, and the Irish Creek site on the west side of Kupreanof Island. This tradition corresponds with a similar lithic assemblage documented for the northern coastal region of British Columbia. Evidence of marine mammal, fish, shellfish, waterfowl and land mammal resources are associated at some of the sites, indicating a coastal-marine adaptation.

Between 6500 and 5000 years ago, the region underwent climatic change, and the new culture that emerged by the latter date reflects an adaptation to new and more stable environmental conditions, particularly stabilization of shorelines and river drainages, that were conducive to an increase in the productivity of salmon runs associated with the classic traditional Northwest Coast way of life. The emergence of larger, winter villages resulted in massive midden accumulations which clearly distinguish sites of the later period from earlier stages. A corresponding change in technology to ground stone (slate) and bone, complex human burials, specialized subsistence camps and fortifications also characterize this period. Davis, who calls this the Developmental Northwest Coast Stage, identifies early, middle and late phases of this period. The late phase, from A.D. 1000 to European contact, is characterized by a move to larger structures associated with winter villages, sites used for defensive purposes, and use of native copper and other materials for items of technology as well as personal adornment (such as bracelets, necklaces, pendants, pins and beads). This sequence seems to correspond with de Laguna's impression, based on extensive prehistoric and historic excavations in Angoon and Yakutat, "that a good deal of Northwest Coast culture is of relatively recent growth and elaboration."[42]

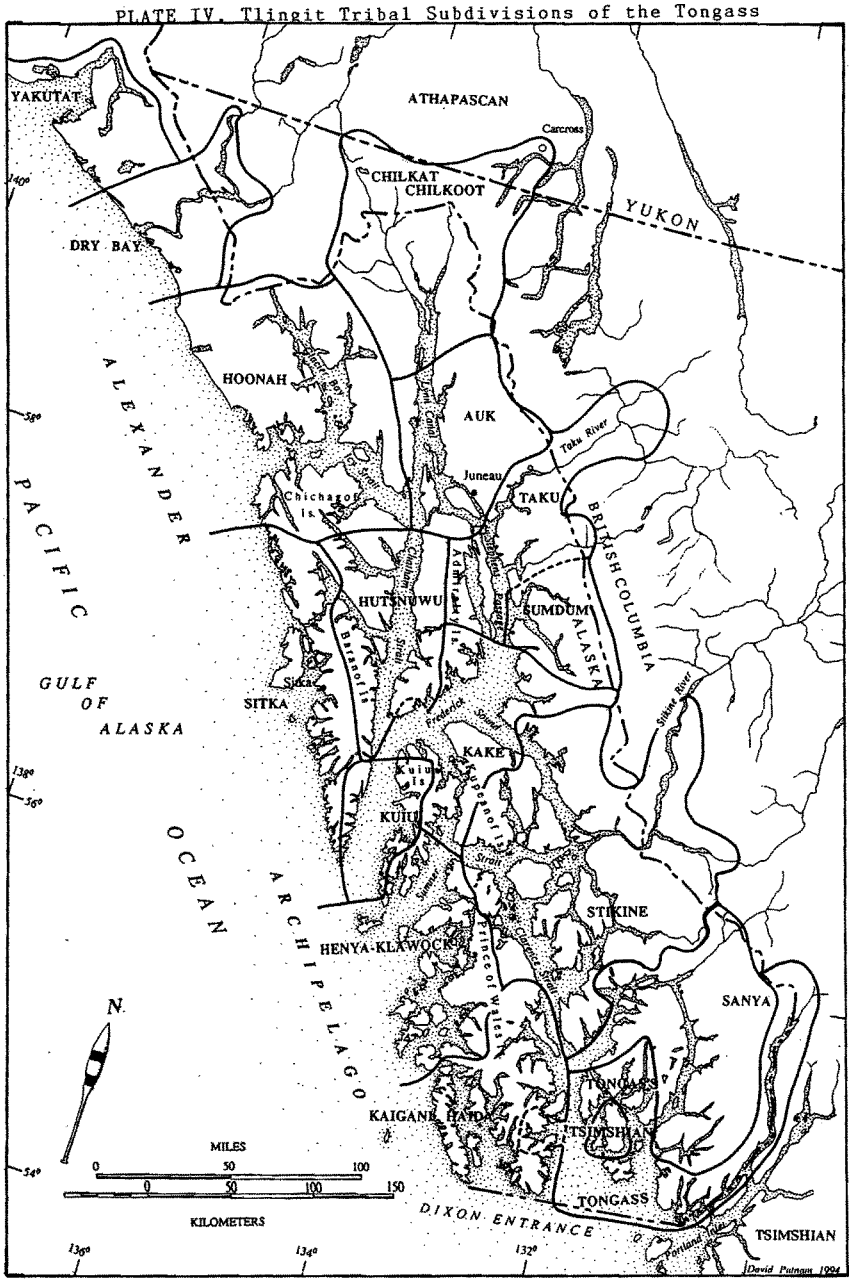
The Aboriginal Cultures of the Tongass Region

Tlingit Indians

At the time of the arrival of white settlers, the Tlingit Indians were divided into fourteen tribal subdivisions, or kwan. From the north, these divisions are the Yakutat, Chilkat/Chilkoot, Hoonah, Auk, Taku, Sumdum, Hutsnuwu, Sitka, Kake, Kuiu, Stikine, Henya, Sanya and Tongass (see map). There were 10-15,000 Tlingit at the time of contact. Together with the Kaigani Haida, who pushed their way into the southern Tlingit area in the eighteenth century, these kwan used and occupied all of the southeastern region, with the exception of the steeper mountain slopes and tops, at the time of first contacts with whites.[43] The aboriginal possession of the lands and waters of southeast Alaska, including trade routes into the interior across the Canadian border, were recognized by the U.S. Court of Claims in 1959 (discussed below).[44]

The Tlingit kwan are geographical groupings of smaller political divisions, or clans, which lived together in a common area, intermarried, and cooperated for defensive purposes. De Laguna identifies 74 clans of the Tlingit kwan.[45] In the nineteenth century, members of the kwan would congregate in larger communities for the winter season. Each kwan is associated with one or more principal villages that contained large clan houses constructed of hand-hewn spruce planks. These traditional villages were often located on a shoreline with houses arranged in a line facing a landing area for canoes. During the spring, summer and

PLATE IV. Tlingit Tribal Subdivisions of the Tongass



fall, community members would usually disperse to smaller villages, hunting and fish camps depending upon the availability of resources and clan relationships.

Annual runs of salmon were the primary determinant of the pattern of transhumance; all five species of salmon were harvested, as well as eulachon, herring, halibut, cod, trout and several types of shellfish. The most important sea mammals in the diet were seals (harbor and fur), but sea lion, sea otter, and porpoise were also taken. Bear, the most important land mammal, were hunted along with deer, mountain goat and sheep; small animals and fur-bearers such as rabbits, porcupine, marmots, mink, muskrat, and marten were also acquired, along with birds (including species of duck, geese, and grouse). Berries, roots and bark and other vegetable foods were gathered.

The Tlingit are divided into two exogamous moieties, Raven and Eagle (called Wolf in the south), that functioned as reciprocal social and ceremonial groupings. The fundamental unit was the matrilineal clan, which was the political, land-owning and property-holding group of the tribe. Each village was comprised of two or more clans representing opposite moieties; each clan was usually subdivided into clan segments (lineages) or house-groups. Tlingit society was comprised of nobles (wealthy and influential families), commoners and slaves; and social rank was very important. The named house groups or lineages and clans in each village differed by wealth and status, and within the village the leader of the leading house of each clan was considered the head of the clan. The heads of the houses and clans were stewards of their group's property, which included crests, ceremonial regalia, songs, names, stories, trade routes, and hunting and fishing sites. These individuals often decided when to hunt and fish, embark on trading expeditions or raids, exact payment or retribution for a wrong, or host an elaborate and expensive ceremony in honor of deceased maternal ancestors.

The coastal Tlingit engaged in voluminous trade with neighboring tribes including the Eyak, Athapaskan, Tsimshian and Haida. The northern Chilkat and Chilkoot built and maintained trails to the interior Athapaskans and the Yakutat Bay Tlingit, and similar networks with the interior were developed by the Taku and Stikine subdivisions. Large canoes constructed or acquired in trade were used for extensive marine travel and interchange among coastal groups from the Chilkat to the north to the southern Tlingit, Haida, and Tsimshian groups; Tsimshian carvings and slaves were among the most prized goods acquired in trade or captured in war. European trade stimulated the development of Tlingit culture and art after the introduction of iron and steel carving tools and copper sheeting. Several Tlingit Kwan, particularly the Chilkat and the Stikine, became large, powerful and wealthy in the nineteenth century through their monopolistic control of lucrative trade with the interior Athapaskan groups.

The Tlingit are known for their elaborate ceremonies or feasts which are given at funerals and memorials to the dead. Structured by moiety and clan affiliations among related persons, the potlatch could go on for four to eight days; it involved feasts, songs and dances, the recitation of clan names and stories, the distribution of food and gifts to members of the opposite moiety (in payment for funeral services and contributions), and the use of clan heirlooms including crest hats, blankets, vests and ceremonial items such as speakers' staffs, drums and dancing poles. Such ceremonies also increased the prestige of the living, and might be associated with the construction and dedication of a new house. The display of crests and other clan property, including the recitation of names and clan histories, entailed payments to members of the opposite moiety who served as witnesses validating the right to hold and use the property.

The clan owned the most important property including hunting territory, fishing grounds, salmon streams, clan crests, ceremonial clothing and artifacts, shamanistic practices, names, songs, stories, and trading routes. A well-developed system of property rights and inheritance identified which family groups owned specific sites and tracts of land and who had access to clan land and property. This property was adminstered by the chief on behalf of the clan; he was the steward and responsible for its protection, use and upkeep. The clan chief, in consultation with the council, would decide when salmon streams could be used or when to hold the complex, competitive memorial feasts at which the clan's crests and other ceremonial property would be displayed. They would organize war parties to defend against incursions into clan territory, and launch attacks against other groups. Often the chief would trade on behalf of the clan.[46]

Kaigani Haida

In the early eighteenth century a group of Haida apparently emigrated from the Dedans area of Graham Island (northernmost island of the Queen Charlotte Islands) to southern Prince of Wales Island, displacing the Tlingit residing there. This branch of the Haida is known as the Kaigani Haida, or simply Kaigani, to the early traders in the area. To the casual observer there

was little outward difference between the Tlingit and the Kaigani Haida, for the latter adapted to the different mix and availability of salmon and other fish, sea and land mammals, and forest resources characteristic of the southern Alexander Archipelago. The Kaigani Haida were also heavily influenced by Tlingit culture after the invasion, articularly in aspects of the social system. In one aspect the Haida appear to be unique on the Northwest Coast—their language has no demonstrable genetic relationships to any other language.[46]

The Wetalth (Tsetsaut)
The Wetalth were a band of Athapascan Indians occupying the Unuk River drainage and the landmass between Portland Canal and Behm Canal in southern Southeast Alaska. Numbering some 500 in the early nineteenth century, their population was seriously reduced in the later 1800s by feuds with the neighboring Tlingit, with whom they had previously been on good terms. Quite possibly they were the victims of Tlingit population shifts ultimately caused by the Haida occupation of southern Prince of Wales Island. By the early twentieth century the Wetalth merged with the Tsimshian and effectively ceased to exist as a separate cultural entity.[48]

Wetalth economy differed sharply from that of the neighboring Tlingit: while eulachon and salmon were taken in season, the mainstay of the food economy was land mammals, particularly bear, mountain goat, porcupine, and marmot. Most articles of clothing were fashioned from marmot or mountain goat hide.[49]

Dwellings were temporary in nature, consisting of an A-frame of poles propped near the base of a large tree; the poles were covered with bark. Entrance was through a side door, or through the smoke hole when the winter snows became too deep. Chief modes of transportation were snowshoes and cedar bark canoes.[50]

The Arrival of White Settlers (Explorers, Traders, Miners and Fishermen) and Development of New Towns in the Chugach and Tongass Regions

The Russian Period: 1741-1867
The first landfall by Europeans in Alaska occurred in July 1741. Crewmen from Vitus Bering's Russian ship, the St. Peter, went ashore on Kayak and Wingham Islands east of Prince William Sound, and others from Chirikov's Saint Paul landed on Chichagof Island north of present Sitka, Alaska. Evidence of human use and occupation, including homes, storehouses, and the remains of a meal and warm cooking stones, were discovered indicating that the inhabitants fled at their approach. These were Chugach Eskimo.[51] Russian claims to the discovery and ownership of Alaska are based principally on the results of this expedition.

The sea otter skins brought back by the survivors of the voyages (Bering himself perished on the journey) lured the fur-hungry Russians into American waters beginning as early as 1743. The taking of hostages, enforcement of tribute, and outrages against the Aleuts became customary in the expansion of the *promyshleniki* and traders into the northwestern Pacific country. By 1760, the Russians reached Unalaska, and by 1763, the first Russian expedition landed at Kodiak.

Other European exploration and trading expeditions to Alaska commenced in 1775 in response to the expanding Russian activity in the northern Pacific. In that year, the Spaniards in Mexico organized the first European expedition to southeast Alaska during which Mt. Edgecumbe was first given a Spanish name. This expedition brought the first of western diseases — smallpox —to the Tlingit; this factor (epidemics of infectious diseases introduced by Europeans) was the primary cause of the decimation of Native populations through the next 150 years, as high as 50 percent in many areas, and probably caused more disruption to traditional Native social systems than any other influence.

In 1778, the English Capt. James Cook journeyed through southeast Alaska, giving Mt. Edgecumbe its current English name. He entered Prince William Sound which he also named. Cook remained there eight days and encountered Chugach Eskimo in Port Etches (Hinchinbrook Island) and Snug Corner Cove (Port Fidalgo).[52] He sailed on to Cook Inlet where he met both Alutiiq and Kenaitze people.[53] A second Spanish expedition to Alaska in 1779 resulted in further exploration in Prince William Sound, during which Bodega Y Quadra also visited Port Etches (Nuchek) and surmised the existence of a large river in the eastern region of the sound.

The mouth of this large river was discovered in 1783 by a Russian trading expedition under Zaikov, which explored Prince William Sound and the waters near Kayak Island after Zaikov learned of Cook's discovery of the Sound.[54] On Kayak Island, Zaikov met a Chugach hunting party from Nuchek, and his men communicated with another group of Nuchek residents at the mouth of the Copper River who informed them of

other tribes in the larger area including the Koniag, Kenaitze, Ahtna Athapaskan, Eyak and the Tlingit. While Zaikov was spared, the Chugach retaliated against the leader of a sister Russian ship for robbing them of furs and debauching their women, by killing him and some of his men. The Russians found that the Chugach were more warlike and prone to defend their property rights than the western Natives (Koniag and Aleut).[55]

Meanwhile in 1783, another Russian company under Shelikov forcibly established the first permanent settlement in Alaska on Kodiak Island at Three Saints Bay. Two years later, Shelikov sent a party of *promyshleniki* together with Aleut and Koniag hunters to Cook Inlet and Prince William Sound to prospect for sea otter and attempt to establish good relationships with the inhabitants; and they returned with 20 hostages from Cook Inlet as insurance. In the following year, Shelikov established a fortified trading settlement at English Bay, named Alexandrovsk. In 1788, another group of *promyshleniki* and Native hunters from Three Saints Bay under Ismailov visited Kayak Island and the vicinity, before proceeding on to Yakutat Bay, in search of sea otter. This party reported the Eyak living near the mouth of the Copper River. By this time, the Russians were feeling the effects of new competition with British ships in Prince William Sound and Cook Inlet.

The successful transport and trade of Alaskan furs (particularly sea otter) to China (Macao) in 1779 by Cook's surviving officers opened the door to the lucrative Oriental fur market for British and American trading ships, where previously an overland route through Siberia controlled exclusively by the Russians was the exclusive channel. Soon, English ships from India and Great Britain, and American ships from the United States, launched fur trading expeditions to the Pacific northwest coast. In 1786, four British ships sailed to Prince William Sound from India; one of these was forced to overwinter in the Sound near the village of Tatitlek. In the same year, Capts. Dixon and Portlock sailed from England to the Sound, where in the following year Dixon gave much needed supplies to one of the overwintering ships from India under the condition that it leave the area promptly.

By this time, the fur trade was in decline in the Cook Inlet area and the Tanaina were acting as middlemen in the European trade, obtaining furs of land animals from the interior.[56] Dixon proceeded southeast to Yakutat Bay and then to Sitka Sound for more trade, this time with Tlingit Indians, while Portlock (who named Port Etches while he stayed at Nuchek) traded in Prince William Sound and Cook Inlet for the month of July before following, sailing to the west coast of Chichagof Island to barter with the Tlingit in what became known as Portlock Harbor. In 1788, William Douglas of the Hudson's Bay Company also sailed to Cook Inlet and Prince William Sound, and then on to Cross Sound, on a trading expedition.

Other nationalities were also beginning to enter the area. A French vessel under LaPerouse anchored in Lituya Bay for the month of July in 1786 where he traded and bartered with the Tlingit, whom he observed to be shrewd traders and the crafters of very fine art. Another French ship landed in Sitka Sound in 1791. French accounts describe the rapidity with which European trade goods had become dispersed among the tribes, resulting in a higher and more specialized demand for trade goods. The scarcity of furs was by this time affecting the profitability of trade as the Indians were demanding (and receiving) higher prices than previously.

The United States of America, having just won recognition in the Treaty of Paris in 1783, will very soon become a factor in North Pacific trade. The first Americans began to appear in the northwest in 1789, when two ships journeyed to coastal regions untouched by the Europeans. American presence in the region would not become significant until the next century. The Spanish government sent three more expeditions in quick succession into the northern area (Prince William Sound and Kodiak) in 1788, '90 and '91 to press its territorial claims, but they were politely rebuffed by the Russians.

In 1792, after ordering the relocation of the principal Shelikov company settlement to the present site of Kodiak City, Baranof made his first venture east to Prince William Sound and to Nuchek Island, where he came under attack by a raiding party of Eyak and Yakutat Tlingit. Two years later, Baranof sent another party to the Copper River, where they discovered a large Eyak village (perhaps Alaganik, according to de Laguna).[57] Baranof also established a shipyard in 1792 at Voskressenski, or Sunday Harbor, in Resurrection Bay for building, repairing and launching vessels. He hired an English ship-builder and a total of three ships were built in this yard with Alaskan timber.

During this period, the rival Lebedev Company was also operating in Cook Inlet and Prince William Sound. The company established three posts in Cook Inlet: in 1786 at Kasilof, called St. George; in 1891 on the Kenai River, named St. Nicholas; and the third higher up in

the inlet on the western shore. In 1793, the company opened a station in Prince William Sound on Nuchek Island at Port Etches, named Fort Constantine.

Authority over the Cook Inlet posts was assumed by Baranof in 1794, when he was able to smooth over a planned uprising against the Russians organized by the Kenaitze from Skilak Lake in response to offenses against their people by employees of the Lebedev company. The effrontery and crimes of the rival company had so incensed the Kenaitze Dena'ina that the Skilak Lake group was reportedly forming a union with the western Cook Inlet Tanaina bands and the Chugach to drive the Russians from the Kenai. 1794 was also the year that Vancouver visited Prince William Sound, determined that Cook Inlet was not a river, and documented the portage from Turnagain Arm to Resurrection Bay (Seward). Visiting Nuchek in 1796, on his return from Yakutat, Baranof succeeded in persuading the majority of the Lebedev Company's employees to work for the Shelikov Company.[58]

The elimination of Baranof's competition was sanctioned by the Russian government in 1799, when the Russian-American Company (formerly the Shelikov Company) was granted a complete monopoly over all Russian enterprises in Alaska for 20 years. The decree authorized the company to conscript Aleut for three years of service to the company, and the Natives of Cook Inlet and Prince William Sound were required to submit a yearly tribute in animal skins. Nuchek became the principal Chugach community in the sound, when it was the sea otter hunting and trading center for the region until after the Alaskan purchase in 1867. The Russians maintained the post at Nuchek until it was taken over by an American trader following the American purchase of the territory. However, the focus of their subsequent mercantile activity was in southeast Alaska, where there was greater opportunity.[59]

Under orders from Baranof, the Russians first took their Aleut and Koniag hunters, nearly 1500 strong, to Yakutat Bay in 1794 and '95 and where, in 1796, Baranof established a convict colony called "New Russia." The Russianized hunters took three thousand sea otter pelts from the Yakutat and Lituya Bays in these three years. Leading another party of Aleut hunters in 1799 on an expedition of further expansion into southeast Alaska, Baranof was attacked by the Tlingit in Controller Bay as he was making his way to Yakutat, when bad weather forced him to the beach. He travelled on to Sitka Sound, where he bartered successfully for the right to establish a fortified trading post among the Sitka Tlingit. The Tlingit soon grew dissatisfied with the arrangement, particularly with the efficiency with which the Aleut hunters killed the sea otter, seal and other fur-bearing animals in Tlingit territory. In 1801, the Sitka kwan were joined by allies from Yakutat, Chilkat, Angoon and Sitka and they attacked the Russian post, Fort St. Michael, killing 150 and burning the fort and a ship. Encouraged by the success of their countrymen at Sitka, the Yakutat Tlingit attacked an Aleut hunting party and the Russian manager of the colony, and Indians from Kake and Kuiu villages ambushed an Aleut hunting expedition of 90 baidarkas in Keku Straits and killed all but the Russian leader (Urbanof) and 20 Aleuts.[60]

With the company's recently granted monopoly at stake, the decline of fur-bearing animals in the northern Alutiiq region, and the need to establish a settlement in southeast Alaska to justify Russian possessory claims against competition from European and American traders, Baranof moved in retaliation against the Tlingit. In 1804, he set out for Sitka in several ships and, along the way, razed and burned villages of the Kake and Kuiu people as punishment for their attack on Urbanof's party. Baranof was wounded in the ensuing fight at Sitka, and he prevailed only with the assistance of the Russian ship *Neva* which bombarded the newly constructed Tlingit fort and caused the warriors to flee across the island by night.[61]

According to a Native account of the battle, the Tlingit decided to withdraw only after they discovered their supplies of gunpowder were exhausted, and a lucky cannon shot destroyed a war canoe filled with their ablest warriors, leaving no survivors. Baranof erected a new stockade, which he named New Archangel, and several years later in 1808 moved the company headquarters from Kodiak. The Tlingit built a new fort at Point Craven, where the residents numbered between 1,300 and 1,400. In 1806, 2,000 Tlingit gathered in 400 boats to re-take Sitka, including members of the Sitka, Chilkat, Auk, and Stikine kwan, but the battle was forestalled by a negotiated peace with the Chilkat chief, and others who followed his example.[62]

Sitka subsequently developed as the principal land-based trading center in Alaska. After the sea otter reached near extinction in the 1820s, the Russian colony grew dependent upon the Tlingit as a source of land mammal furs that replaced the sea otter trade, as well as a source of supplies.[63] A market grew up in Sitka through which the Tlingit supplied many of the needs of the fort and provided them with trade goods. The ready access to trade goods through this market freed the local Tlingit to trade furs with the European

and American ships that regularly plied the waters of conscripts, on the one hand, and the Tlingit kwan was never guaranteed, and the Russians remained in need of protection of their stockade for nearly their entire tenure. In 1852, for example, after the Stikine were attacked by the Sitka kwan during a peace ceremony, the Stikines destroyed the Russian hospital at the hot springs south of town in retaliation, since the Russians had made no effort to warn them or prevent the attack. There was an outbreak of armed conflict between the Russians and Tlingit in 1855, and the Sitka kwan took possession of a church erected for their use outside the stockade from which they fired on the Russian fort. The Tlingit lost 60 men before they laid down their arms. Outside of Sitka, the Russians rarely ventured beyond the safety of their ships. They operated a post at Wrangell from 1834-1839, after which it was turned over to the Hudson's Bay Company until 1849, at which time the British withdrew in part due to continuing hostility from the Stikine.[65] The Chilkat likewise forcibly protected their trade monopoly, destroying a newly established Hudson's Bay Company post along their interior trade route in Canada on the Pelly River (Fort Selkirk) in 1852. Another post was briefly established on Tongass Island, which the Russians hoped would serve to demarcate the southward extension of the Russian-American territory, and the Hudson's Bay Company also had a post on the Taku Harbor, for a time.

Although the first Russian priests appeared in the colony as early as 1794, there was little activity east of the Alaska Peninsula until the early 1830s, when Baron von Wrangell brought Father Veniaminov from Unalaska to Sitka. The smallpox epidemic which swept through Alaska between 1835 and '39, and claimed about half of the Tlingit population in Sitka, left the inoculated Russians untouched. This occurrence greatly increased the stature of the Russian Orthodox priest in Sitka and aided the missionization process, which proceeded more slowly in outlying areas. The first ing villages; in 1860 the Russian Orthodox Church estimated there were 456 Christians among the Chugach, which may have been their entire population in the sound (as compared with only 447 Tlingit in southeast).[68] Under this influence, the Chugach became more peaceful, and the Eyak and their more Tlingitized relatives moved into what was formerly Chugach territory along the mainland from Controller Bay into eastern Prince William Sound, as described previously. Petroff reported in 1880 Nuchek continued to serve as an important trading center that was visited by Tlingit and Ahtna Athapaskan Indians, and the Russian chapel there was supported by donations from surrounding villages. He also observed the Russian church and missionary that was active in Kenai at this time.[69]

The American Period: 1867-1910

At the time of the transfer of Alaska to the United States, there were at least 35-40 Tlingit and Haida villages and towns in southeast Alaska. In 1838, Veniaminov listed a population of about 6,000 for the Tlingit, which he enumerated after the smallpox epidemic of 1833, and reported that the figure was 10,000 prior to that event. U.S. census figures from 1880-1910 indicate a decrease from 6,431 to 4,458 in the Indian population in southeast during this period; there was also a decline in the number of traditional Tlingit villages and towns, and the beginning of a significant migration trend from Indian villages to newly established white towns.[70]

In the Chugach region, Veniaminov reported 471 Chugach, 150 Eyak and 1628 Tanaina Athapaskan. In 1880, the federal census reported there were 500 Chugach in four villages in the sound: Chenega, Kaniklik, Tatitlek and Nuchek. The Eyak had two main villages, Eyak (near Cordova) and Alaganik (about 20 miles east on the Copper River delta), which in the

1880s had a total population of about 200. The mixed Eyak and Tlingit village of Chilkat in Controller Bay had about 100 inhabitants. Petroff also reported 12 Kenaitze villages.[71]

Following the purchase of Russian-America by the United States, there was no provision for civil government. As in one of the western territories in the contiguous states, the U.S. Army was sent to maintain law and order and protect American citizens from the Indian and Eskimo, whom military authorities believed might rise up in opposition to the new settlers expected to come into the territory. To this end, Army forts were established at Sitka, Wrangell, and Tongass in southeast, and at Kenai and Kodiak in southcentral Alaska, within a year or two of acquisition. These garrisons, with the exception of Sitka, were withdrawn by 1870 to fight Indian wars in the west.

Headquartered in Sitka, the Army was not shy about teaching the Natives a lesson. In demonstrations of military might and determination to enforce American law, two Native villages —Wrangell and Kake — were bombarded in 1869.[72] These instances impressed upon the Tlingit people the power of the military to impose civil authority in specific cases. However, aside from these occurrences, the period of military administration (1867-84) has been characterized as an 'era of neglect' during which, at least in the first ten years after the purchase, there was negligible impact on the Tlingit and Haida Indians' use and possession of southeastern Alaska.[73]

Beginning in Wrangell in the mid-1870s, the influx of white settlers into Alaska substantially altered the political landscape and settlement patterns by which the Indian and Eskimo had lived for centuries. The principal cause of this migration of settlers was economic: the availability of gold and other minerals, rich salmon stocks and extensive timber stands brought thousands of whites into southeastern Alaska and other regions. They established new towns, canneries, mines and industrial sites at many locations. In the 1870s, the rush for gold in Canada up the Stikine River brought more than a thousand miners, traders, merchants and laborers through Wrangell, and their effects on the local Indian community also attracted the first American missionaries to the state (1877). The first gold camp in Alaska was established in Alaska at Sumdum in 1878, and in the same year, the first salmon canneries were built at Klawock and Sitka. Two years later, the discovery of gold at Juneau resulted in the founding of the town of that name, and another discovery in 1887 across the channel led to the establishment of the city of Douglas. The small community at Deishu (later renamed Haines), which began as a trading post and mission to the Chilkat and Chilkoot Indians in 1881, shifted among several canneries which operated in the area after 1884, became stabilized as a trade and support center for the Klondike stampede in 1897. Skagway also traces its beginning to this gold rush. The white town of Ketchikan places its start with fish saltery and cannery operations at the mouth of Ketchikan Creek starting in 1886-7. The incipient town of Petersburg was constructed as a fish cannery and sawmill which opened for operation in 1900. The town of Craig was similarly initiated as the site of a commercial saltery and cannery in about 1910-11.[74]

Thousands of white miners were working the hard-rock gold deposits in Juneau and Douglas (Treadwell) in the 1880s and '90s. The mines became an employment opportunity that attracted Tlingit from the northern region. In Wrangell, the first sawmill began production in about 1890, and the Alaska Packers Association opened a cannery in 1893 using mainly imported labor. These industries were the economic mainstay of the white business community for many years. A large cannery and sawmill was erected in Ketchikan before the turn of the century, and by 1910-11, a rival cannery located at Loring (also operated by the Alaska Packers Association) had exhausted the massive run of pink salmon returning to Ketchikan Creek, the original impetus for white settlement at the town, with a fish trap anchored off the mouth of the creek. By the 1920s and '30s, Ketchikan became the hub of regional economic activity that centered on fishing and timber extraction. Petersburg also became the center of a localized commercial fishing industry during this period, and it was supported by the available timber supply. The fishery in the Haines area had declined in significance by the 1920s due to overfishing, but this community persisted as a supply and support center for the regional Native population as well as the Army post that had been established in the town.

The initial movements of Indians into the new communities took place as group movements. They occurred principally for economic reasons, although in some cases they were the result of the force of missionary and school personalities, and the desire to escape the constraints of tradition. Rogers has described these new communities as "non-indigenous" towns which, since their formation between 1804 (Sitka) and 1910, have become the principal towns and cities of the southeast region associated with the massive growth of the non-Native population in the region.[75] He uses census data to show the reorientation of Tlingit kwan to

these communities from traditional villages and seasonal settlements: the Sitka Indians becoming citizens of the white town of Sitka, the Stikine moving to Wrangell, the residents of Auk settlements moving to Juneau, Taku people to Douglas, the Tongass and Cape Fox people to Ketchikan and the Chilkat dividing themselves between Klukwan and Haines.

Although located in or near the site of Indian settlements, the towns that grew up at these locations were essentially white towns. The first legislation providing for a civil government in the territory, the Acts of 1884 and 1890, provided for the protection of areas used, occupied or claimed by Native Alaskans, but did not entail the legal rights of ownership to the aboriginal residents because they were not recognized as citizens.[76] Non-Natives were able to file for town and industrial sites without restriction and thereby acquire legal ownership of lands used for exploiting the mineral, fish and timber resources, or settled as villages and towns in service to these industries. Indians lost control of their land and resources and, as the settler population and industry grew, often found themselves excluded from their customary settlement, fishing and hunting areas. The new competition for valued resources severely restricted their traditional economy at these towns. The new towns were later organized formally with townsites and municipal governments, which occurred with little or no political participation by the local Indian residents. Alaska Natives did not gain citizenship until the mid-1920s, and their aboriginal title was not freely acknowledged until the Alaska Native Claims Settlement Act was passed in 1971, as described in the following chapters.

A few new Indian communities were also formed during this time at the urging of missionaries and school authorities. In 1887, the Tsimshians moved under the direction of the missionary William Duncan in a large group (800 strong) to Annette Island from Old Metlakatla in British Columbia, and in 1891 this land was set aside by Congress as a reservation. Saxman was a new community formed through the encouragement of the Presbyterian church and territorial school authorities in 1897; it was settled initially by the Cape Fox (Sanya) kwan. The first missionary was a Tsimshian minister and discontented former adherent of William Duncan. There was a consolidation of Haida communities into the new communities at Craig, Hydaburg and Ketchikan, and a movement from Old to New Kasaan. Hydaburg was a new settlement organized specifically for the Prince of Wales Island communities of Howkan and Klinquan by educational authorities; it was established by the Bureau of Education by 1911.[77]

During this period, there was a significant Indian population which chose to remain in traditional villages at or near their original locations, including the communities of Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock and Kasaan. A cannery was started in Klawock in 1878, which attracted a Tlingit Indian population from traditional villages, principally Tuxekan, in the neaby area. A whaling station, which was soon converted to a factory manufacturing herring oil and fish guano, operated at Killisnoo, near the village of Angoon. When it ceased operation, the inhabitants returned to the village of Angoon.[77]

There was a similar pattern of change in Prince William Sound and the Kenai Peninsula, except that it was delayed by a decade or two. After the transfer, the Russian post at Nuchek was taken over by an American trader, a small trading post was established at Katalla in Controller Bay, and Norwegians at Kayak Island and Chenega continued to offer local trading opportunities.[79] In 1889, four American salmon canneries were established, marking the first intensive contact of the Eyak with western culture: two were on Eyak Lake where Old Town (Cordova) would be founded (one of which was moved to Orca in 1895), and two were on Wingham Island in Controller Bay (one of these was moved to the Copper River delta in 1891). By 1900, the two principal Eyak villages were abandoned, the inhabitants destroyed by epidemics and degraded by the cannery experience, and the few remaining Eyak (about 60) lived at Old Town.[80]

The four Chugach communities had a population of 317 Chugach, 54 creoles (of mixed European and Native ancestry), and nine whites in 1890.[81] The hunting and trapping of fur-bearing animals, and the sale of fish (in Tatitlek and Chenega) provided the only source of revenue for these communities. In comparison, the 1890 cannery population totalled 423, which were mainly white and Chinese seasonal employees; the largest groups were at Odiak (Cordova) (273) and Wingham Island (150). By the end of the century, Kaniklik was abandoned and Chenega had become "the most important native settlement on the sound."[82] Nuchek was left behind in the winter of 1929-30, after the old chief died and his survivors moved to Cordova.[83]

Several white mining, fishing and railroad towns developed in the Chugach region shortly before and after the turn of the century. The Pacific Steam Whaling Company operated a cannery at Orca Inlet, near Cordova, in the 1890s, and others were located on Wingham Island

and in Controller Bay. Use of dynamite and other methods soon had a disastrous effect on the returning fish stocks near Cape Suckling.

Valdez had its start in 1897 as the terminus of a route to the interior gold fields in the Yukon (Klondike) and later the Fairbanks area, and the U.S. Army erected a post (Fort Liscum) before the turn of the century to serve in the construction of the overland telegraph to Nome and a trail, and later road, to Fairbanks that followed an Indian trail. Valdez was a participant in the early railroad speculations that occurred in the first decade of this century. By 1910, Valdez had a population of 810 while the surrounding district held nearly 5,000 inhabitants, mostly connected with the proposed railroad. The copper mining town of Ellamar, located near Tatitlek, was built on the site of a Native village in 1900.

In 1906, Cordova was chosen as the terminus and construction headquarters of a railroad from the Kennecott copper mine, and two years later the white town of Cordova was founded which grew to a population of more than a thousand in 1910.[84] Katalla, the site of coal mining claims and a competing railroad terminus to the Copper River (which lasted until a storm washed away an expensive breakwater), had first developed as a commercial salmon fishing site: there were 188 residents reported in the village, and 623 in the Kayak Island district as a whole, in 1910. This can be compared with 210 in the Prince William Sound district.

To the west, at the future town of Seward, another group of capitalists began construction of the Alaska Central Railroad in 1903, on a route to the Matanuska coal fields. This project was not successful until after the federal government authorized funding for its construction in the second "organic act" for Alaska passed in 1912. In 1910, there were 534 people reported living in Seward village.

Alutiiq villages of the Unegkurmiut group were formerly located in Day Harbor, Resurrection Bay (including one at or near the present town of Seward), Ayalik Bay, Two Arm Bay, Nuka Bay, Yalik Bay, Port Dick, and Rocky Bay.[85] According to Johnson, people from this region, as well as Prince William Sound communities at Tatitlek and Nuchek, had been migrating to English Bay since the early 1800s under the influence of Russian priests and fur traders.[86] Yalik, which had 32 Alutiiq residents in the 1880 census, was abandoned by 1890 at the encouragement of the Russian Orthodox missionary at Kenai, and the inhabitants migrated to Alexandrovsk (English Bay) on Cook Inlet.[87] In 1890, the only inhabitants of this region were a whiteman and his Native wife, living in Resurrection Bay.

In Cook Inlet, a small Army garrison was stationed at Kenai from 1868-70. The Alaska Commercial Company took over the Russian post at Kenai after the Alaskan purchase, and in the 1870s and '80s began supplying miners and prospectors coming to the area. In 1880, the eight Kenai Dena'ina communities had a total population of 218 (Laida, Kassilof, Chkituk, Cherila, Skilak, Titukilsk, Nikishka, and Kultuk), while two creole communities (Ninilchik and Kenai) had 105 residents.[88] The upper Kenai River area was the traditional winter residence of the Kenaitze. They occupied the area in 1880 and continued there for the next 10-20 years, after which they maintained seasonal use of the area until about 1920. In the 1880s, one of the early prospectors set up a post on the Kenai River later known as Cooper Landing, where he traded with the Tanaina living in the area. In 1893, the first gold claims were filed on creeks flowing into Turnagain Arm near Hope, and in 1896 2000-2500 people came to work placer claims. After a drop off the following year, a secondary rush occurred in 1898 that brought 7-10,000 people to the Turnagain area.[89]

Salmon canneries were established on the peninsula in the 1880s; the Tanaina sold fish to the canneries, but cannery work was not available to them until about 1915.[90] Kenai was the site of a large cannery employing about 50 whites and 80 Chinese; about 100 Tanaina (including residents of the former villages of Chkituk and Nikishka) and 50 creoles lived in Kenai and two small villages nearby in 1890. The Dena'ina hunted and trapped for revenue, but in 1890 they were severely hampered by the demise of the fur-bearing animal populations.[91] The influx of white sport hunters and the hiring of Kenaitze as trophy hunters in support of this new activity provided some alternative opportunity to the decline in trapping after turn of the century, but this activity had an impact on the caribou, moose and bear populations and was another factor in the movement of the Dena'ina off the land and into the settlement at Kenai. The Kenaitze apparently established permanent residence at Kenai by 1900, although use of the upper Kenai area as a hunting and trapping area probably continued into the first or second decade of this century.[92]

By the time the Tongass National Forest was created by executive order of the president, the Tlingit and Haida Indians were becoming a marginalized people forced into a second-class socioeconomic status by the new white settlers and the legal and governmental institutions they brought with them. As white settlers and commercial interests moved into the territory, they

utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, mining and prospecting activities. The loss of control over their land and resources to the new settlers left the Indians with little to fall back upon. The Act of 1884 , which created civil government in the territory, also extended the first land laws to the region, and in combination with subsequent legislation in 1903, new settlers were given the ability to demarcate and claim exclusively areas for canneries, mining claims, townsites, and homesteads, and obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.

Reference Notes

[1] See Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, pp. 8-9. It is possible that this investigator, Livingston Stone, had come in contact with one of the formulators of the conservation ethic that was forming in America at this time —John Muir, who on his Alaska trips in 1879-80 experienced first hand the wildness that was found no longer in the lower 48 states, and observed that just as the coming of the white man spelled the dissolution of that wildness, so it led to the demise of what is best in Indian culture (see *Letters from Alaska*, John Muir, ed. by Robert Engberg and Bruce Merrell, Madison: University of Wisconsin Press, 1993).

[2] *Ibid.*, pp. 8-10.

[3] *Ibid.*, pp. 15-24. Another other major land reservation in the region was made subsequently for Glacier Bay National Park, which was originally withdrawn as a monument.

[4] Emmons, who served in the U.S. Navy at the head of Lynn Canal in the 1880s and '90s, after the Chilkat were persuaded to open their country to miners and prospectors, had become an authority on Alaska and, in particular, the Tlingit people and culture. During his tour of duty, he was frequently called upon to serve as mediator between the Chilkat and Chilkoot people and the white settlers and transients who brought rapid changes to Tlingit territorial rights, economy and social organization.

[5] *Ibid.*, pp. 15-17

[6] *Ibid.*, p. 17

[7] *Ibid.*, p. 17. Corser also thought that the reserve would injure the small timber operators in Alaska, and would only benefit the monopolistic lumber interests in Puget Sound.

[8] *Ibid.*, p. 22

[9] *Ibid.*, p. 163; K. A. Soderberg and Jackie DuRette, *Alaska Forestry Under Attack* (Bellevue: The Free Enterprise Press, 1988), p. 101.

[10] *Ibid.*, p. 43, 49

[11] *Ibid.*, pp. 29-30

[12] *Ibid.*, p. 44

[13] *Ibid.*, p. 44-45

[14] *Ibid.*, p. 47

[15] *Ibid.*, p. 45

[16] *Ibid.*, p. 51-54.

[17] *Ibid.*, p. 38

[18] *Ibid.*, p. 38

[19] *Ibid.*, p. 37

[20] *Ibid.*, p. 40

[21] It has been generally believed that earlier sites in Prince William Sound were destroyed by the rise in sea level following glacial retreat, but significant inventories of newly discovered sites will likely provide important information on Chugach cultural precedents and prehistoric relationships. Numerous sites have been reported following extensive historical site and cultural resource surveys of the Prince William Sound region carried out by BIA, NPS, and Chugach Alaska Corporation seeking to identify and protect historical sites under ANCSA provisions, as well as by organizations and groups involved in the cleanup, damage assessment, and restoration efforts following the *Exxon Valdez* oil spill in March of 1989. For example, the Forest Service sponsored a major excavation of Uqciuvit in 1988, the first in the region since de Laguna's pioneering work at Palugvik in 1933, in order to fulfill site protection responsibilities required by the National Historic Preservation Act of 1966. John F.C. Johnson, of Chugach Alaska Corporation, documented numerous sites in the region during the 1980s. Exxon's cultural resource program staff identified 271 new sites, and augmented data for 238 previously-known sites, in 1989 and 62 new sites were recorded in 1990, in the Prince William Sound, outer Kenai Peninsula, Kodiak Archipelago, and Alaska Peninsula areas. See Michael R. and Linda F. Yarborough, *Uqciuvit: A Multicomponent Site in Northwestern Prince William Sound, Alaska* (Final Report for USDA Forest Service Contract Number 53-0114-7-00132, 1994); James C. Haggarty, Christopher B. Wooley, Jon M. Erlandson and Aron Crowell, *The 1990 Exxon Cultural Resource Program: Site Protection and Maritime Cultural Ecology in Prince William Sound and the Gulf of Alaska* (Anchorage: Exxon Shipping Company and Exxon Company, USA, 1991), pp. 4-13.

[22] Donald W. Clark, "Prehistory of the Pacific Eskimo Region" (*Handbook of North American Indians*, Vol. 5: Arctic, Washington, D.C.: Smithsonian Institution, 1984), p. 137. This earlier culture, called the Paleoarctic tradition, has been identified by some archaeologists as including elements of a coastal-marine tradition. It is associated with the subsidence of Beringea and the rise in sea-levels following the last major glaciation; and it is found in southwestern Alaska and across the north pacific rim. The cultural pattern is related to a similar microblade tradition from the same time period in southeast Alaska, which has been called the Paleomarine tradition, as discussed below. See also Haggarty et al. 1991, op.cit., pp. 115-119.

[23] Michael R. Yarborough and Linda Finn Yarborough, "Regional Overview of Prince William Sound and the Pacific Coast of the Kenai Peninsula, Paper prepared for the International Seminar on the Origins, Development, and Spread of Prehistoric North Pacific-Bering Sea Maritime Cultures, Honolulu, June 1993, p.6

[24] *Ibid.*

[25] During the first millennium B.C., for example, the Kachemak people began to practice more complex burial customs that were characteristic of their descendants. Later assemblages of Kachemak culture included better-finished tools and hunting implements, a large variety of adornment artifacts (such as beads, pendants, figurines, labrets and ornamental pins), heavy stone lamps carved with human and animal figures, as well as evidence of very elaborate funeral practices. Clark op.cit., p.140

[26] Yarborough and Yarborough op.cit., p. 6

[27] *Ibid.*

[28] *Ibid.*, pp.7-8

[29] Clark, op.cit. (1984), pp.145-46

[30] See Yarborough and Yarborough, p.9. Since de Laguna's Yakutat archeology is largely that of the Eyak, this statement indicates the degree of similarity with the Eyak culture as well as the Tlingit.

[31] The Alutiiq are the southernmost of Alaska's Eskimo cultural groups. They are also referred to as the Pacific Eskimo or Pacific Yupik, and are distinguished from the Yupik, Siberian Yupik and the Inupiaq-speaking peoples in western and northern Alaska. These are the four major language and cultural divisions of the Arctic Eskimo people represented in Alaska. This discussion of the Chugach is derived principally from the following sources: Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953; Donald W. Clark, "Pacific Eskimo: Historical Ethnography," *Handbook of North American Indians*, Vol. 5: Arctic, Washington, D.C.: Smithsonian Institution, 1984; and Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, and "Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990.

[32] de Laguna suggests that the easternmost Chugach band may not have permanently occupied the mainland east of the Copper River and specifically the village named "Chilkat" on the Bering River at the head of Controller Bay, after which the band was named. She argues that there was probably earlier (prehistoric) Eyak occupation because of the tradition that an Eyak clan obtained their beaver crest in the vicinity, and that the name of the village is itself Tlingit in origin.

[33] See Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953.

[34] The principal sources on the Eyak are Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938; and Frederica de Laguna, "Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990.

[35] Frederica de Laguna, "Eyak," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, p.189

[36] However, there were two groups that each formed somewhat separate social groups within their respective moieties, and who referred to themselves as 'the Wolf People' and 'the Bark House People.' According to de Laguna, these groups were originally Tlingit groups who migrated from Katalla, the nearest Tlingit village, and were adopted into the respective Eyak moieties.

[37] The principal sources for this discussion are Cornelius Osgood, *The Ethnography of the Tanaina*, Yale University Publications in Anthropology Number 16, New Haven: The Human Relations Area Files, 1976 (1937) and Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981.

[38] Cornelius Osgood, *The Ethnography of the Tanaina*, Yale University Publications in Anthropology Number 16, New Haven: The Human Relations Area Files, 1976 (1937), p. 19

[39] Osgood considers the Kachemak Bay Tanaina (Seldovia area) to be a separate subregional group from the Kenai Tanaina, while Townsend includes all of Kenai Peninsula Tanaina within the Kenai Society, with the exception of the coast of Turnagain Arm (and the village at Point Possession) which is put in with the Susitna Society. Townsend divides the Kenai Peninsula Tanaina into the following subregional variants: East Foreland Tanaina, Kenai River Tanaina, Kenai Mountain Tanaina, and Seldovia Tanaina. See Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p.625.

[40] Osgood listed 10 clans in one moiety and five in the other, while Townsend (p.631) states there were between 11 and 18 clans.

[41] The principal sources for this discussion are Stanley D. Davis, "Prehistory of Southeastern Alaska," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, and Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987, pp. 54-84

[42] Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987, p. 84

[43] The Tsimshian Indians of the Ketchikan area

originated in British Columbia and moved to Annette Island in 1887 under the influence of the missionary William Duncan; in the twentieth century this group formed the largest component of the Native community in Ketchikan.

[44] Walter R. Goldschmidt and Theodore H. Haas, *Possessory Rights of the Natives of Southeastern Alaska*, A Report to the Commissioner of Indian Affairs, Chicago: Office of Indian Affairs, 1946. The primary sources for this section are Frederica de Laguna, "Tlingit," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, George Thorton Emmons, *The Tlingit Indians*, edited and additions by Frederica de Laguna, Seattle: University of Washington Press, 1991, and Kalvero Oberg, *The Social Economy of the Tlingit Indians*, Seattle: University of Washington Press, 1973.

[45] Frederica de Laguna, "Tlingit," *Handbook of North American Indians*, Vol. 7: Northwest Coast, Washington, D.C.: Smithsonian Institution, 1990, p. 227

[46] This complex system of property rights was acknowledged and described in the judgement of the Tlingit and Haida claims (*Tlingit and Haida Indians of Alaska v. United States*, Ct. Cls. 1959, Opinion pp. 4-5, 49-52.)

[47] Margaret B. Blackman, "Haida: Traditional Culture," in *Handbook of North American Indians*, v. 7, Northwest Coast (Washington, D.C.: Smithsonian Institution, 1999), pp.240-260.

[48] See George T. Emmons, *The Tahltan Indians*, Anthropological Publications, Vol. IV, No. 1, University of Pennsylvania Museum, 1911; Franz Boas, Fifth Report on the Indians of Canada: the Northwestern Tribes of Canada, in Report of the British Association for the Advancement of Science, Vol. 34, London, 1895, pp. 552-569; and W.H. Collison, In the Wake of the War Canoe (New York: E.P. Dutton and Company, 1915).

[49] *Ibid.*

[50] *Ibid.*

[51] Later, another Russian party obtained a Chugach account of this encounter, which confirmed that the people fled when the Europeans came to land; see Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp.80-81; Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, pp.345-49. This section is drawn from many sources, including Katherine L. Arndt, Russell H. Sackett and James A. Ketz, *A Cultural Resource Overview of the Tongass National Forest, Alaska*, Part 1: Overview, Juneau: Tongass National Forest Region 10, 1987; Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884; Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953; Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938; Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956); Charles W. Smythe, *A Study of Five Communities*, Appendix A: History of Occupation and Use, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

[51] He noted their umiat (skin boats) and two-holed kayaks, and also blue glass trade beads and iron in their possession which indicated to him that contact with European traders had already taken place; see Kaj Birket-Smith, *The Chugach Eskimo*, Nationalmuseets Skrifter, Ethnografisk Raekke VI, Copenhagen, 1953, p.9

[52] Cook noted the use of the Aleut-style double-bladed kayak paddle, which suggests that the Eskimo were sent by the Russians to this area in search of sea otter. Cook explored the inlet believing it was the outlet of a large river; and it was first named Cook's River on his charts. After sending boats to explore Knik River and Turnagain Arm, from which the latter derives its name, the disappointed Cook was forced to turn back. He then proceeded past Kodiak Island down the Alaska Peninsula into country in Russian possession, and sailed through Unimak Pass into the Bering Sea where he continued his search along the coast for the northwest passage. Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 206-208

[53] By 1783, the fur-bearing populations of the Aleutians and the Alaska Peninsula were disappearing due to over-hunting. Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, p. 187

[54] See Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 186-191 and Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.356. In addition, the loss of half of Zaikof's men (to scurvy) while overwintering at Montague Island discouraged further Russian expansion into the region for several years. The focus of this Russian company's activity soon shifted to the Pribilof Islands, which were discovered in 1786, and the harvesting of pelts from the fur seal colony found there.

[55] Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, p. 240, 251. It

was probably during this period, under the influence of European trade, that residents of the formerly more numerous settlements in Cook Inlet converged at fewer locations, and the headmen of Tanaina bands accumulated unprecedented wealth.

[56] Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.358

[57] Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 227-30, 320-21, 334-45. The effrontery and crimes of the rival company had so incensed the Kenai Tanaina that the Skilak Lake group was reportedly forming a union with the western Cook Inlet Tanaina bands and the Chugach to drive the Russians from the Kenai.

[58] The Russians made several attempts at exploration of the Copper River between 1796 and 1847, some of which were massacred by Ahtna, and no further expeditions were made until the Americans resumed exploration in 1884 and '85 when it was proven that the Copper River did not provide a practical route to the interior. Kaj Birket-Smith and Frederica de Laguna, *The Eyak Indians of the Copper River Delta, Alaska*, Copenhagen: Levin and Munksgaard, 1938, p.360

[59] Hubert Howe Bancroft, *History of Alaska*, San Francisco: A.L. Bancroft and Co., 1884, pp. 401-413

[60] *Ibid.*

[61] *Ibid.*

[62] Russian profits were affected both by the decline of the sea otter population and by the success of the British and American ships that travelled in southeast Alaska. After 1800, the decline in sea otter in Alaska began to seriously reduce the profits of the Company; and sea otter were nearly extinct in southeast Alaska by about 1825. The Russians were also hampered in their competition with British and American traders because their prices were fixed below adequate levels by headquarters in St. Petersburg.

[63] The Tlingit supplied halibut, porpoise, whale blubber, bark (to cover sheds and barracks), bird eggs, birds, roots and grasses, berries, deer, mountain sheep, crabs, shellfish, and handicrafts (hats, blankets, masks, pipes, etc.), and received tobacco, iron pots, axes, glassware, linen, potatoes, flour, and from the company woolen blankets & copper pots.

[64] In 1834, the Russians established a small station on Wrangell Island to forestall the establishment of a British post up the Stikine River, and they backed up the Stikine Tlingit who stated they would resort to warfare to defend their control of the Stikine River trade route against the Hudson's Bay Company. After a diplomatic resolution of these differences, the Russians agreed to lease the littoral area of southeast Alaska to the Hudson's Bay Company, and in 1839 the British replaced the Russians at Wrangell. However, the Britons returned to trading by ship after five years, and another settlement was not established at Wrangell until the first gold rush of the 1860s.

[65] Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p.636; Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956), p.13

[66] Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p. 26-29; see Kaj Birket-Smith, The Chugach Eskimo, Nationalmuseets Srifter, Ethnografisk Raekke VI, Copenhagen, 1953, p. 11.

[67] Census figures from the annual report of the holy synod of the Russian Orthodox Church, "as furnished by the priests and missionaries stationed in the colonies," and, according to Petroff, "including nearly all the Natives under immediate control of the company." Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p. 38

[68] Petroff, *Report*, pp. 26-29.

[69] The U.S. Court of Claims identified 32 villages as of 1867, while Swanton, based on fieldwork conducted in 1904, enumerated 40 Tlingit towns, "ancient and modern," which he said was an incomplete listing. A map prepared by Lt. Emmons for the Alaska Boundary Tribunal shortly after the turn of the century provides a similar figure.

[70] *Ibid.*

[71] Angoon was likewise bombarded by the Navy in 1882. In these cases, the Tlingit had killed, or demanded payment from, a white person as compensation for the wrongful death of one of their own tribe; and in doing so they had acted according to Tlingit laws which sanctioned and required retaliation in kind or payment in lieu of human sacrifice.

[72] U.S. Court of Claims, The Tlingit and Haida Indians of Alaska *v.* The United States, Opinion and Findings of Facts, Case No. 47900, Decided October 7, 1959; George Thornton Emmons, A Report on the Condition and Needs of the Natives of Alaska, 58th Congress, 3rd Session, Senate Document No. 106, January 19, 1905; Ernest Gruening, *The State of Alaska*, New York: Random House, 1954

[73] These settlement trends are discussed in George W. Rogers, *Alaska in Transition: The Southeast Region*, Baltimore: Johns Hopkins University Press, 1960, pp. 198-214

[74] *Ibid.*

[75] The Act of 1884 included the first provisions for a

civil government for the Territory of Alaska, including a judicial branch for the administration of American law, which ended the period of military administration.

[76] See Rogers, *Alaska in Transition*, pp. 198-214.

[77] *Ibid.*

[78] Another American established the first and only trading post at the Eyak village of Alaganik, probably in 1899. B-S & de Laguna p. 360-61, Porter 1890:66-67

[79] Aurel Krause, *The Tlingit Indians*, Seattle: University of Washington Press, 1979 (1956), pp. 13-14

[80] In 1890, Nuchek had a population of 120 Chugach Eskimo, 18 creoles (mixed with Russian ancestry) and seven whites; the village of Tatitlek had 53 Chugach and about 36 creoles; Kaniklik was inhabited by 73 Chugach; and there were 71 Chugach resident at Chenega, which was also the location of a fishing station for one of the Cordova canneries. Porter

[81] Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 28

[82] Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 12

[83] The railroad was the Copper River and Northwestern Railroad. The first shipment of copper ore from the Kennecott-Bonanza Mine took place in 1911; and for the period from 1915-24 the production generally exceeded 50 million pounds per year. After 1924, the output of copper declined rapidly, and the Kennecott mines closed down for the first time in 1932. David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, p. 27

[84] Frederica de Laguna, *Chugach Prehistory: The Archaeology of Prince William Sound, Alaska*, Seattle: University of Washington Press, 1956, p. 35-6

[85] John F.C. Johnson, *Chugach Legends: Stories and Photographs of the Chugach Region*, Anchorage: Chugach Alaska Corporation, 1984, p. vii

[86] Robert P. Porter, *Report on Population and Resources of Alaska at the Eleventh Census: 1890*, Department of the Interior Census Office, Washington, D.C.: Government Printing Office, 1890, p.68

[87] Ivan Petroff, *Report on the Population, Industries, and Resources of Alaska*, Department of the Interior Census Office, Washington: Government Printing Office, 1884, p.29

[88] Craig Mischler, "Tanaina Ethnohistory on the Northern Kenai Peninsula," *Progress Report Project F-021-2(15)/(A09812) Sterling Highway Archaeological Mitigation: Phase I Excavations at Four Sites on the Kenai Peninsula*, ed. by Charles E. Holmes, Report Prepared by Division of Geological and Geophysical Surveys for Alaska Department of Transportation and Public Facilities, 1985, pp. 55-56

[89] Joan B. Townsend, "Tanaina," *Handbook of North American Indians*, Vol. 6: Subarctic, Washington, D.C.: Smithsonian Institution, 1981, p. 637

[90] Robert P. Porter, *Report on Population and Resources of Alaska at the Eleventh Census: 1890*, Department of the Interior Census Office, Washington, D.C.: Government Printing Office, 1890, pp. 69-70

[91] Craig Mischler, "Tanaina Ethnohistory on the Northern Kenai Peninsula," *Progress Report Project F-021-2(15)/(A09812) Sterling Highway Archaeological Mitigation: Phase I Excavations at Four Sites on the Kenai Peninsula*, ed. by Charles E. Holmes, Report Prepared by Division of Geological and Geophysical Surveys for Alaska Department of Transportation and Public Facilities, 1985, pp.45-47, 52-53

Chapter II

Prelude to ANCSA: Acknowledgement of Native Property Rights

The southeast Indians first expressed their objections to the sale of Alaska and what they viewed as a usurpation of their territorial and political sovereignty as early as 1867, when they first met with representatives of the American government that had purchased Alaska without their consent. But the subsequent actions of the new settlers, the authority of the new government (which was backed up by the force of military weaponry), and the ideology of missionaries and teachers all worked against them. In 1898, for example, the leaders of several Indian groups from Wrangell, Juneau, Douglas and Hoonah were rebuffed by the Governor of Alaska, when they expressed their hope of recovering their land, or being paid for it, and retaining their rights and access to the resources that were being devastated by the onslaught of new settlers and commercial enterprises:

> ... By and by they began to build canneries and take the creeks away from us, where they make salmon and when we told them these creeks belong to us, they would not pay attention to us and said all this country belonged to President, the big chief at Washington. We have places where we used to trap furs; now the white man get up on these grounds. They tell us that they are hunting for gold ... There are animals and fish at places where they make homes. ... We make this complaint because we are very poor now. The time will come when we will not have anything left. The money and everything else in this country will be the property of the white man, and our people will have nothing. We meet here tonight for the purpose for you to write to the chief at Washington and to let him know our complaint. We also ask him to return our creeks and the hunting grounds that white people have taken away from us.[1]

These meetings were cited in the 1959 decision recognizing Tlingit and Haida land claims to southeast Alaska, which held that the Indians had not voluntarily given up their aboriginal property rights during the period of American occupation.

The Tlingit and Haida Land Claims Settlement in Southeast Alaska, 1935-1968

The history of the Tlingit and Haida land claims begins with the Alaska Native Brotherhood (ANB) and Sisterhood (ANS). The ANB is a civic organization of the Indians of southeast Alaska started with encouragement from the Bureau of Education (the forerunner of the Bureau of Indian Affairs) and missionaries of the Sheldon Jackson School and Russian Orthodox Church in Sitka; its first meeting was in Juneau in 1912. Its purpose was the improvement of the socioeconomic status of Indians, and initially the organization espoused cultural assimilation and abandonment of traditional practices as the methods to acheive their goal. But by 1920, under the influence of Louis and William Paul, a more activist approach was adopted which became the hallmark of the organization: the pursuit of specific issues through the court system by bringing test cases to trial, funded through contributions from members. The organization became more focused on ending discrimination and achieving basic civil rights (such as the right to vote, freedom of education, non-discrimination in employment opportunities, etc.). In the 1920s, all the southeastern communities formed local chapters of both the ANB and the ANS, and went to court challenging the denial of the Indian vote and attendance at publicly funded, all-white schools.

The idea to pursue Indian claims for the loss of lands and property rights in Alaska is attributed to one of the founders of ANB, a Tsimshian named Peter Simpson, who first posed the question, "Whose land is this?" and urged the Native leaders to take action. The noted Tlingit attorney, William L. Paul, Sr., initiated the process in Haines at the 1929 annual ANB convention. Paul invited Judge James Wickersham to address the convention, and Wickersham called upon the ANB to pursue Congressional action to redress the loss of land and the timber on it. He read a list of Indian communities that should participate in this action together: Angoon, Douglas, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Klukwan, Petersburg, Sitka and Wrangell.[2] The impetus for the lawsuit was not confined to land rights. William Paul has said that he brought the land claims idea to the convention because he felt that the Natives were not winning the fight against industry-supported fish traps.[3]

So in 1929, the ANB made an historic decision to pursue federal standing to bring a claims action against the United States government for the loss of tribal property, and of its use and possession, in Alaska.[4] Working with the Territorial Congressional delegate, members of the ANB helped draft and introduce legislation, and in 1935 Anthony Dimond succeeded in achieving passage of the special jurisdictional act granting authority to the Tlingit and Haida Indians of Alaska to pursue these claims. Later that year, the first organizational meeting of the Tlingit and Haida Indians of Alaska took place in Wrangell, concurrently with the ANB annual convention. After a series of delays, a BIA-approved contract was signed with attorneys selected

by the Tlingit and Haida Indians and the case was filed on October 1, 1947. There were 18 communities represented in the case. In 1954, descendants of traditional Tlingit and Haida tribes, who were recognized as chiefs or active leaders of Tlingit and Haida clans, intervened as parties plaintiff in the suit; and the following tribes were represented: Chilkat, Auk, Taku, Hoonah, Yakutat, Lituya, Sitka, Angoon, Kake, Kuiu, Henya, Stikine, Tongass, Sanya, and Kaigani (Haida). A comparable lawsuit was also filed before the Indian Claims Commission with corresponding plaintiffs in the 1950s.

On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida Indians had established their claims of aboriginal Indian title to the land in Southeast Alaska and were entitled to recover compensation for the uncompensated taking of their lands by the United States, and for the failure or refusal of the United States to protect the interest of the Indians in their lands or their hunting and fishing rights. The court held that the Tlingit and Haida Indians exclusively used and occupied a large area of Southeast Alaska at the time of purchase of Alaska in 1867, and that the land had not been abandoned by the Indians prior to the dates of taking.

The court found that some of the land and water used and occupied by the Indians in 1867 were subsequently taken outright by the Government, including the various areas set aside for the Tongass National Forest and Glacier Bay National Monument, and the Annette Islands reserve. The court also held that part of the land and water rights was subsequently lost through the failure of the United States to exempt such property from the operation of the general land laws in Alaska and from the failure of the Government to enforce such minimum protection as was authorized in the laws (particularly section 8 of the Organic Act of Alaska). This included areas lost to homesteads, mineral leases, mining and industrial sites, and townsites established by white settlers.[5]

A second trial followed this one which established the value of the possessory rights lost and for which compensation was made by the federal government. On January 19, 1968, the U.S. Court of Claims decided that the Tlingit and Haida Indians were entitled to recover $7,546,053.80 for the loss of their land. In this case, the Court established standards of valuation for Indian title lands and determined the acreage to which such values applied, including townsites, mineral lands and timber lands in areas of Indian title land taken or patented by the United States. This included the recognition of Indian title in the townsites that were established by white settlers (Douglas, Haines, Juneau, Ketchikan, Petersburg, Sitka, Skagway and Wrangell), as well as the town of Metlakatla on the Annette Island Reserve. The Court also determined the value of the lost Indian fishing rights ($8,388,315); however, the Court disallowed compensation for the Indians' lost fishing rights. These rights were subsequently pursued through the pending property claims action before the Indian Claims Commission, originally filed in 1954, but there was no decision on the merits by the time of the passage of the Alaska Native Claims Settlement Act (ANCSA) in December of 1971. The Commission subsequently ruled that ANCSA extinguished all such claims and the proceeding became a moot issue.

The Tlingit and Haida settlement established aboriginal Indian title to nearly all of Southeast Alaska, and determined that the land had not been abandoned at the time of taking by the federal government. Although the southeast Indians received compensation for the national forest, national park, townsite, and other lands that were taken from them, this did not constitute all of the Indian owned land in the southeast region. There were 2,628,207 acres of land in southeast Alaska that remained in aboriginal Indian title and belonged to the Tlingit and Haida Indians, as identified in the 1959 court decision. These other lands became the basis for the participation of the southeast Indians in the subsequent statewide Alaska Native land claims settlement in 1971. In the 1960s, the Central Council of the Tlingit and Haida Indians was reconstituted with expanded authority granted by Congress as a regional tribal organization overseeing the distribution and use of the claims compensation. With the transfer of contracting authority by the Bureau of Indian Affairs, the Central Council assumed its current role as the major tribal governmental services organization in southeast Alaska.[6]

Aboriginal Claims, and the Development of the Pulpwood Industry in Southeast Alaska

The Forest Service first offered acreage in the Tongass for a pulpwood sale in 1913, recognizing that the pulp industry would be the best use of the forest (hemlock comprised about 55 percent of the potential timber resources in the forest).[7] The sale was not completed because the applicant could not obtain financing, and a subsequent offering in 1917 had similar results. Forest Service officials pursued efforts to establish a pulp industry in the Tongass and, by the early 1920s, had identified 14 areas of potential timber sales with mill sites. Forest Service Chief Greeley had a deep personal interest in the development of a pulp program in

Alaska, and industrialists were taken around to view potential sites on the Forest Service boat.[8] But pulp sales in the 1920s and '30s were unproductive, although one pulp mill operated at Speel River about 30 miles south of Juneau in 1922-23. Forest Service efforts succeeded under the leadership of B. Frank Heintzleman who first came to Alaska with the service in 1918 and served as Regional Forester from 1937-53, after which he replaced Ernest Gruening as Governor of the Territory of Alaska. Heintzleman's major interest was to recruit and promote a pulp industry in Alaska, which would help Alaska develop and advance the welfare of the region.[9] His efforts were consistent with established Forest Service policy to support and encourage the settlement and development of Alaska. The early Forest Service policy towards development of the Tongass was to encourage the industrial use of forest resources as an aid to community settlement and economic stability. In 1926, the following "Statement of Priorities" was prepared for the Tongass:

> All policies and practices should be developed in such a manner as will contribute in the largest possible way to the welfare and prosperity of the individuals and communities which will eventually constitute a State of the Union, so far as this can be done without defeating the fundamental purposes for which National Forests are established...
>
> Encourage in every possible manner compatible with the best interests of the Forest Service and the public in general, the development of a timber and paper manufacturing industry in Alaska which will utilize timber growth up to the full sustained yield basis in coordination with possible ater powers naturally available.[10]

Tongass Timber Act of 1947

In the mid-1940s, Heintzleman revived a Ketchikan area pulpwood timber sale which first failed in 1927, while Senator Magnuson of Washington and Delegate Bartlett of Alaska played a major part in the development of the Tongass Timber Act of 1947. This act allowed for long-term timber sales and enabled the Forest Service to enter into long-term contracts with pulp mill developers. A single bid was accepted in 1948 for the Ketchikan sale, and following negotiation of a 50-year timber purchase agreement, the Forest Service awarded a contract to the Ketchikan Pulp Company in 1951. In the agreement, the Forest Service stated objectives that were unchanged since the 1920s: the Forest Service was "deeply interested in encouraging and bringing about the industrial development of Alaska."[11] At this time, new national security goals that arose after World War II were to be served by the settlement and development in Alaska.

The Ketchikan Pulp Company agreed to establish a pulp mill and develop water supplies and other facilities for the enterprise and, in return for the unusual risks and long-term investment associated with the "pioneering undertaking," the Forest Service agreed to afford the opportunity to purchase supplies of timber for permanent operation of the enterprise through sustained yield management of the Tongass National Forest.[12] A second 50-year contract within the Tongass was awarded in 1957 to the Japanese-owned Alaska Pulp Company in Sitka. This agreement served as an element of the post-war redevelopment efforts of the Japanese economy on the part of the United States.

These commercial objectives of the Forest Service were also congruent with local sentiment supporting statehood, community settlement and development of Alaska's resources for the benefit of its permanent residents. The development of the pulp industry had strong support from Alaska's governor, who saw the significance of this enterprise in terms of creating stable employment on a year-round basis in a region that had been dominated by the canned salmon industry, which only provided seasonal opportunities filled largely by non-residents who left the state at the end of the fishing period. The salmon fishing industry was long the principal component in the regional economy of southeast Alaska, and the reckless exploitation of the salmon stocks engendered by the commercial use of fish traps threatened the very resource on which it was based.

Development of the pulp industry was also expected to benefit the Indians of southeast Alaska, whose principal economic activity — commercial seine fishing — was significantly affected by the decline in fish stocks in the 1940s and the subsequent crash in the 1950s. The future economic well-being of the Native population was associated with the expected employment opportunities in the new pulp timber industry that was developing in Ketchikan and Sitka.[13] While the development of the pulp industry in Ketchikan prompted a substantial migration of Tlingit and Haida Indians from Prince of Wales communities into that city, the principal economic benefits accruing to the Indians resulted from employment in construction and other positions associated with the development of the community, rather than direct employment in the pulp industry itself.[14]

The Tongass Timber Act also included a provision regarding unresolved Indian claims to the Tongass which potentially undermined the ability of the Forest

Service to enter into the long-term contracts necessary for the development of a pulpwood industry. The legislation stipulated that the receipts from the long-term timber sales would be placed in a special escrow fund until the outstanding claims of aboriginal Indian title to the forest were settled.[15] The law also clearly entailed no Congressional recognition of such rights: nothing in the act either affirmed or denied the validity of native claims, but in the event that such claims were found to be valid, it provided that the funds would be allocated to the payment of compensation.

The escrow provision was proposed as a compromise measure by the Department of Interior in response to the "unmitigated chaos in land titles and land claims" in southeast Alaska, which included Forest Service opposition to the recognition of traditional Indian use and aboriginal title.[16] If Rakestraw's treatment of the Indian possessory rights issue is revealing of the attitude within the Forest Service during the first half of this century, Indian land use and title were seen as a persistent problem of management on the Tongass that came to a head in the 1940s. At that juncture, he writes, Heintzleman's "ambition to establish a pulp industry in Alaska was badly complicated by the question of Native claims and possessory rights."[17] DOI efforts supporting such claims, such as backing passage of the 1935 jurisdictional act on behalf of the Tlingit and Haida Indians and moving to create large land and fisheries reserves in southeast, seriously conflicted with Forest Service plans for a pulpwood industry in Alaska.

Proposed Reservations in the Tongass

The New Deal policy of the Roosevelt administration, with Harold Ickes as Interior Secretary, was to recognize aboriginal rights to land and fisheries in Alaska and, founded on an acknowledgement of these rights, to support efforts to provide a land and resource base to Native communities for their economic benefit. The institutional and economic development of Indian reservations was the cornerstone of a new national Indian policy that empowered tribal groups to form governments and corporations to manage their communities and utilize the resources on their reservations, and that was codified in the Wheeler-Howard Act, or Indian Reorganization Act (IRA), of 1934 with support from the Department of the Interior. As discussed above, the Department of the Interior also supported the special jurisdictional act of 1935 under which the Tlingit and Haida Indian Tribes of Alaska were authorized to bring their land and fishery claims in court against the United States. William Paul was instrumental in this effort, with the full backing of the Alaska Native Brotherhood.

Because there was only one reservation in Alaska, many of the provisions did not apply in the territory. With key support from William Paul and the Secretary of the Interior, the Alaskan delegate succeeded in acquiring passage of IRA amendments in 1936 extending provisions of the act to Alaska. These amendments included granting authority to the Interior Secretary to create reservations in Alaska, a power he did not have in the lower 48 states. The efforts by the Interior Department to establish reservations in southeast Alaska over the next 15 years greatly alarmed the Forest Service, which opposed the principle of aboriginal rights.[18]

Following passage of the 1936 legislation extending the IRA to Alaska, the Department of the Interior conducted an investigation of the conditions and needs of Indian communities in southeast Alaska, which recommended the creation of reservations in the Tongass National Forest.[19] In 1937, an Interior solicitor gave the opinion that the Secretarial authority to establish reservations in Alaska extended to fisheries reserves over submerged lands under navigable waters adjacent to lands occupied by Alaska Natives, and in 1938 Interior proposed Alaska's first IRA corporation at Hydaburg including a reservation that extended over nearby waters. In 1942, Interior issued a second opinion, known as the Margate opinion, which stated that Indian fishing rights were violated by the operation of traps by and allocation of trap sites to non-Indians within reservations. The Margate opinion affirmed "that original occupancy establishes possessory rights in Alaskan waters and submerged lands, and that such rights have not been extinguished by any treaty, statute or administrative action."[20] The issue was over three non-Native fish traps that were located within the proposed Hydaburg reservation. The conclusion that aboriginal fishing rights are violated by the operation of fish traps by non-Natives in waters reserved for Indians prompted strong opposition on the part of the salmon packing industry, which objected strenuously to proposals for the establishment of fisheries reserves. As a result public hearings on aboriginal fishing rights scheduled for that year were delayed.

In 1944, hearings were held on the aboriginal claims related to the protection of fisheries in the communities of Hydaburg, Klawock and Kake. The hearing officer concluded that exclusive aboriginal possession of the waters (aboriginal fishing rights) had been abandoned, but he upheld rights to land based on occupancy and recommended the DOI investigate aboriginal claims throughout southeast so that Congress could compensate for losses, or so DOI could set aside reservations if

Congress did not compensate for them. Upon appeal to the Secretary, Ickes affirmed the loss of fishing rights but sustained rights to land, and he established an amount of land to be set aside for the three village reservations:

Hydaburg - 101,000 acres
Klawock - 95,000 acres
Kake - 77,000 acres

Prior to this time, the Department of the Interior had identified three options to protect fishing rights: 1) a legislative remedy offering financial compensation for deprivation of fishing rights; 2) an administrative action protecting rights through regulations such as gear and harvest limits; or 3) a secretarial order establishing reservations. But as a result of these fishery decisions, by 1945 the DOI was moving towards the third option for the resolution of aboriginal possessory claims. In 1946, the DOI sponsored an investigation of claims in the remaining villages in southeast, which was published in a report entitled *Possessory Rights of the Indians of Southeast Alaska.*[20] Subsequent investigations were expected for the remainder of the state. However, there was a change in administration in 1946 when Truman was elected President, Ickes was replaced by John A. Krug, and the Interior policy on aboriginal rights softened substantially after Ickes resigned.

The concept of Indian rights was challenged on several fronts during 1947, the year that the Tongass Timber Act became law. A decision in a case involving the federal condemnation of Indian-owned tidelands in Juneau (*Miller* v. *United States*, 159 F. 2d 997) held that aboriginal rights were extinguished by the Alaskan purchase, but they were compensable as individual interests because such were explicitly recognized in the 1884 Organic Act. There was substantial opposition to reservations expressed to Congressmen by representatives of the salmon packing industry, as well as by Governor Gruening and Delegate Bartlett. In chapter 25 of his history of the State of Alaska, Gruening describes the reservation policy as another instance of "federal overlords" mismanaging Alaska, and particularly singles out "the confusion created by Secretary Ickes's arbitrary and disingenuous efforts of impose his reactionary concepts upon the people of Alaska."[22] But Gruening and Bartlett both advocated for speedy resolution of aboriginal claims by the federal government either through granting land in fee simple or monetary compensation. Ironically, their position on reservations put them on the same side of the issue as the salmon canning industry, which they normally attacked fiercely for its economic and political domination of Alaskan affairs. It should also be noted that reservations were not unanimously supported within the Native community in southeast Alaska; several villages and the ANB had expressed their concerns over reservations which were viewed as a return to the past when they did not have citizenship rights to own property in fee simple, and were forced into a segregated school system. Finally in 1947, the Senate passed a resolution (Senate Joint Resolution No. 162) repealing the Secretary of Interior's authority to establish reservations in Alaska, but no corresponding action was taken in the House.

Secretarial authority to create reservations in Alaska was upheld in a 1949 supreme court decision over the validity of the Karluk reservation ordered in 1943.[23] In 1949, over the opposition of Gruening and Bartlett, Secretary Krug signed a secretarial order establishing a Hydaburg reservation of 100,000 acres, which was approved by referendum of Hydaburg residents in 1950.[24] This order included nearby waters, and the DOI sought the transfer of commercial fish traps within the reserve to the Indians of Hydaburg. When the operator, Libby, McNeil, and Libby, refused to turn over their traps, the federal government brought suit to enjoin the company from operating the traps inside the reservation. In a 1952 decision, the court held that the order creating the Hydaburg reservation was invalid and ruled in favor of the operator. The judge in this case, Mr. Folta, was the same person who ruled in 1947 that the Treaty of Cession extinguished aboriginal title in Alaska (*Miller* v. *United States*) and concluded that aboriginal fishing rights had been abandoned in the waters of southeast Alaska after the 1944 Interior hearings. The government chose not to appeal this decision, and after this ruling it abandoned efforts to establish reservations in Alaska. According to Naske, this was the outcome of a compromise over the Senate's resolution to repeal the Secretary of Interior's authority to establish reservations in Alaska: no further reservations would be created in Alaska until after statehood was achieved.[25]

Forest Service Opposition to Traditional Land Use and Aboriginal Rights

The Forest Service was deeply opposed to the recognition of aboriginal title to large areas of southeast Alaska and did not give credence to claims based on traditional land use and Indian occupancy for hunting, fishing and gathering activities. The Service preferred to delimit prior occupancy and aboriginal title based on physical evidence of actual use, such as garden sites, graves, fish houses, and smoke houses. The denial of Native land claims based on traditional use and occupancy, that is, using areas for hunting, fishing and gathering

activities, was also a common practice among other federal agencies in Alaska. For example, the Bureau of Land Management, the federal agency having custody of unreserved lands in Alaska, rejected hunting and fishing activities as proof of use and occupancy in applications for Native allotments under the 1906 Alaska Native Allotment Act. "Partly for this reason, only 101 allotments had been made in Alaska in the 56 years since the act had been adopted in Congress."[26]

According to Rakestraw, this policy applied in the way that the Forest Service carried out the provisions of the Forest Homestead Act of 1906, which was the first land law that enabled Indians to take up land in the Tongass, and it also characterized their response to the 1906 Alaska Native Allotment Act, which authorized the Secretary of Interior to allocate up to 160 acres of land to Indian family heads. However, the available evidence indicates that this policy developed first in practice, as it was not until the late 1940s and early 1950s that it begins to appear in written form in internal memos, correspondence and Congressional testimony. It continued in practice in the 1960s.

Although Rakestraw reports only one dispute between the Forest Service and Indians seeking to use the Tongass in a customary and traditional manner, conflicts were common since Forest Service personnel sought to protect the forest for specified public and private uses, while Tlingit Indians sought to continue their use of the coastal region for hunting, fishing and gathering.[27] Tlingit residents reported that during first half of this century, it was a common practice for Forest Service personnel to burn Indian cabins, trolling poles, and smokehouses to discourage Indians from entering upon and using land within the Tongass National Forest. According to statements by K.J. Metcalf, this continued in the 1960s, when "it was unofficial policy to remove as many smokehouses and what they would call abandoned structures as possible to eliminate land-use problems" by burning them down:

> The Forest Service had an unwritten policy that they did not want land to be transferred out of public ownership. And the way to ensure this was that whenever they could they would remove any cabins or smokehouses that appeared to be abandoned. ... It was a very common practice. People talked about it all the time. People would come in from the field and say they found an old smokehouse and burned it down or a cabin and burned it down. In fact, there was a concerted effort by people who were going into the field to remove these structures.[28]

John Sandor, however, who served his first tour in the Region from 1953 to 1962, and as Kasaan District Ranger from 1957-58 recalls no written or unwritten policy to burn Indian Allotment smokehouses or other structures. Abandoned structures that were unsafe to use and a potential nuisance were cleared and sometimes burned, which he thought contributed to the incorrect perception that there was a "policy" to clear Indian allotments.

This practice probably had a significant impact on the progress of approval of Indian allotments under the 1906 legislation, which remained in effect until the passage of ANCSA in 1971. Congressional review of the program in 1956 showed that a total of only 79 allotments had been made in Alaska in the 50 years since the law was enacted, leading to a judicial conclusion that there has been "minimal implementation" of the program.[29] Rakestraw does not describe the effects on Indian use of the numerous leases of forest lands granted to non-Natives for fox farms, one of the approved uses of the Tongass.

The Forest Service policy on Indian occupancy mirrors the findings of the court in the Miller decision from 1947, discussed above, which stated that for aboriginal use and occupancy to be compensable, it "must be notorious, exclusive and continuous and of such a nature as to leave visible evidence thereof, so as to put strangers upon notice that the land is in the use or occupancy of another, and the extent thereof must be readily apparent."[30] It also coincides with the position of Senator Butler who in 1948, with the support of the Department of Agriculture, proposed a Senate Resolution rescinding all orders of the Secretary of Interior establishing reservations in Alaska, and the authority under which they were issued, replacing it with authority for the Secretary to issue patents to Native "tribes and villages or individuals for town sites, villages, smokehouses, gardens, burial grounds, or missionary stations."[31]

There was an inevitable contradiction between western concepts of land use, measured in terms of a built environment and according to the agricultural origins of the homestead and allotment legislation, and the customary and traditional Indian practice of land occupancy characterized by flexibility and seasonal use of large expanses of territory with minimal physical impact on the environment. But underlying the Service's practices was a basic conflict of interest between its institutional mission and the traditional Indian occupancy and use, including subsistence, of land and water.

In the 1940s, Heintzleman was on the side of the salmon cannery industry which was equally threatened by the IRA reservation proposals and had mounted a major lobbying and public information program in opposition to DOI administrative policy and actions to recognize aboriginal claims and establish reservations. The Congressional lobbyist for the salmon canning interests continually used the aboriginal rights issue in arguments against statehood, in warnings about the confusion which would result from the land claims and criticizing the DOI for its erratic policies. In July of 1944, at about the time DOI announced it would hold hearings on the fishing rights issue in Hydaburg, Klawock and Kake, Heintzleman arranged a meeting between a Juneau attorney representing the salmon cannery interests and the Chief of the Forest Service, Mr. Watts, and his assistant, Mr. Grainger. The parties exchanged confidences and spent about two hours discussing the matter of Indian reservations and ancestral rights, which was reported in a letter by the attorney to the Alaska Packers Association:

> They [Watts, Grainger and Heintzleman] are very much concerned, and Mr. Watts says that it is the most serious thing facing Alaska. They are particularly concerned because of their efforts to get capital in here to develop the paper making industry. ...
> I am giving Mr. Grainger a copy of my Brief which I used here last summer in the argument on the Demurer as this goes into all phases of the question of ancestral rights ...
> I think these gentlemen will put up considerable opposition to any claims of the Indians which are backed by [Felix] Cohen's theories.
> P.S. Please treat as confidential what I have said about the Forest Service officials as I know they do not want to be quoted now.[32]

Unfortunately for the Forest Service, their views were not kept confidential. A letter from Heintzleman expounding this position was published in the *Yale Forest School News* in January of 1945, causing embarrassment to the Forest Service. As reported by Rakestraw,

> The judgements of the Department of Interior were alarming to the Forest Service. If Ickes's views were realized, the whole timber industry in southeast Alaska would be jeopardized. Pulp companies would be discouraged from making investments, since the right of the Forest Service to make timber sales would be in doubt. Heintzleman expounded his views in a letter to Harold Lutz. The effort to give Indians title to southeast Alaska, he wrote, was "under the theory that they are the owners of all the lands and resources through their heredity of aboriginal rights and that these rights have never been extinguished by the federal government." Heintzleman blamed the Department of Interior for the matter, particularly Secretary Ickes. "With the assistance of the Interior Department, and on the basis of some legal opinion given by the Secretary of Interior by the Solicitor's office of that department," he wrote, "each village, as S.E. Alaska has never had a tribal organization, has made application for hundreds of thousands of acres of land and tidewater fishing areas that blanket all the fishing sites and large areas of trolling grounds." He went on to summarize the existing laws under which the Indians could acquire land. He concluded, "The thought is often expressed by private citizens that the move to set up vast Indian reservations in S.E. Alaska is based, in large part, on a desire to eliminate the National Forests in Alaska."[33]

The establishment of reservations may have been seen by Forest Service officials as part of a DOI strategy to takeover the Forest Service: elsewhere Rakestraw reports that the Secretary of the Interior "was at this time deeply committed to transferring the Forest Service to the Interior Department."[34] However, the passage of the Tongass Timber Act in 1947 preserved the National Forests, established the framework for the development of the pulpwood industry, and deferred the question of aboriginal possessory rights to timber and land in southeast Alaska.

During this period, the Forest Service consistently advocated for the needs of the pulp and paper industry over the uses of Natives. In testifying on behalf of timber sales within the Tongass National Forest in 1947, a Forest Service official declared that the industry's needs required cutting areas important to Indians. After a representative of the DOI explained that berry-picking, hunting, trapping, and "a little log cutting for their own use" might support Native claims to about 10-15 percent of the forest, a Forest Service official asserted that "we cannot possibly stay out of the 10 percent."[35] In 1948, the Department of Agriculture expressed its agreement with the Senate's efforts to repeal the Interior Secretary's authority to establish reservations in Alaska, proposing instead a much more limited authority "to establish small Indian reservations covering areas in actual use for such purposes as villages, burial grounds, smoke houses, gardens, and missionary stations."[36] Similarly, in 1954 the Forest Service recommended that all Indian claims to the forest be

extinguished because of continuing uncertainty affecting the pulpwood industry: the agency explained to a Congressional committee that Indian claims "based largely on hunting, trapping, berry picking, fishing, firewood cutting, or other highly transitory and nomadic use by the Indians or their forebears inject a large amount of uncertainty into the prospective development of the pulp and paper industry in southeastern Alaska based on national forest timber."[37]

The commitment of the Forest Service to timber harvest objectives during this period later brought its actions into conflict the wider purposes of multiple use management. In a review of past Forest Service practices in the Tongass, Senators Metzenbaum and Tsongas provided this commentary in the following statement:

> Since the early 1950s ... the management of the Tongass National Forest has stressed logging to the virtual exclusion of all other values with resultant adverse impacts on fisheries, wildlife habitat, and wilderness. The primary goal of the Forest Service in the late '40s and '50s was to eventually cut most of the Tongass timber for pulp. At that time, the old growth forest was thought to be good for pulp production only.[38]

The Tee-Hit-Ton Case

In 1951, the Forest Service contracted for the sale of timber in the Wrangell area under the Tongass Timber Act. The sale area included 350,000 acres of land and 150 square miles of water which was the traditional territory belonging to the Tee-Hit-Ton Indians, a Tlingit clan from the community of Wrangell. The Tee-Hit-Ton, with their chief William Paul as the single witness, brought suit in the Court of Claims for compensation for the taking of timber by the United States from these lands. The Court of Claims ruled that the Indians did indeed hold the land according to original Indian title and right of occupancy prior to 1867, but it found that aboriginal title was an insufficient basis to grant compensation because there had been no government recognition of Indian occupancy after 1867.

The Tee-Hit-Ton appealed this decision to the Supreme Court, which upheld the finding in 1955 (348 U.S. 272). The Supreme Court did not deny the Tee-Hit-Ton claims of possession based on occupancy, thus repudiating the finding in the Miller case that the purchase of Alaska extinguished aboriginal title, but it awarded no compensation for the taking of timber since their occupancy had not been specifically recognized by congressional action or authority. The court stated that Indian occupancy was not a property right protected under the Fifth Amendment, but it is a right of occupancy granted by permission of the United States after conquest. In order for compensation to be awarded to Indian claimants, there must be a clear intent by Congress to recognize their *permanent* possessory rights in the lands occupied by them, not merely 'permissive occupation.' Such recognition was explicit in the decision of the 1959 Tlingit and Haida land claims lawsuit, authorized by the 1935 jurisdictional act, and in 1971 with the passage of ANCSA legislation.

The Tee-Hit-Ton asserted that the early land laws in Alaska sufficiently recognized the clan's possessory rights to the land in question, and referred to provisions in the Organic Act of 1884 and the Act of June 6, 1890, which command that Indians and certain other persons "shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them." The court examined these statutes and legislative history and did not find support for the contention, and decided that what was intended was to retain the *status quo* until further Congressional or judicial action was taken.

But three justices, including the chief justice, dissented, finding otherwise both in the language and legislative history of the 1884 Organic Act. Writing for the minority, Douglas reported that the act's intent was clearly stated in the record of the debates, to protect to the fullest extent of the law the rights of the Indians and the residents who had settled there and not to diminish the rights of the Indians in any way. This intent was acknowledged in statements on the record by Senator Plumb of Kansas, who introduced the words, "or now claimed by them," even though he also facetiously suggested that the language "actually in their use or occupation" might be construed as no larger than two by six feet [that is, the body space for each Native person]. In the words of Justice Douglas, "Senator Harrison replied that it was the intention of the committee "to save from all possible invasion the rights of the Indian residents of Alaska." Harrison gave emphasis to the point by adding:

> It was the object of the committee absolutely to save the rights of all occupying Indians in that Territory until the report which is provided for in another section of the bill could be made, when the Secretary of the Interior could ascertain what their claims were and could definitely define any reservations that were necessary to be set apart for their use. We did not intend to allow any invasion of the territory by which private rights could be acquired by any person except in so far as it was necessary

> in order to establish title to mining claims in the Territory. Believing that that would occupy but the smallest portion of the territory here and there, isolated and detached and small quantities of ground, we thought the reservation of lands occupied by the Indians or by anybody else was a sufficient guard against any serious invasion of their rights.[38]

Of these words, Douglas wrote, "The conclusion seems clear that Congress in the 1884 Act recognized the claims of these Indians to their Alaskan lands." It is interesting to note that Secretary of the Interior Ickes also referred to this provision in departmental testimony in favor of the 1936 IRA amendments conferring secretarial authority to establish reservations in Alaska, which he argued would enable the United States to fulfill its obligation to Indians under the 1884 act.

The Tongass Timber Act of 1947, Tlingit and Haida land settlements, and Alaskan Statehood achieved in 1959, are all integral parts of the Alaska Native Claims Settlement Act of 1971 (ANCSA), and its sequel, the Alaska National Interest Lands Conservation Act in 1980 (ANILCA). The Alaska Native land claims settlements, statehood, and multiple-use, environmental, and wilderness legislation approved by Congress in the 1960s markedly changed the policies, practices, and procedures for National Forest Management in the nineteen seventies and beyond.

Reference Notes

[1] Statement by Chief Kadishan of Wrangell to Governor John G. Brady, December 14, 1898, in "The Canoe Rocks — We Do Not Know What Will Become of Us," The Complete Transcript of a Meeting Between Governor John Green Brady of Alaska and a Group of Tlingit Chiefs, Juneau, December 14, 1898, ed. by Ted C. Hinckley, The Western Historical Quarterly, July 1970, pp. 270-71

[2] Judson Brown, 1993, personal communication; Paul, William L., Sr., Letter to Conrad Mather, 1946

[3] Peter M. Metcalfe, *The Central Council 50 Years: A Historical Profile of the Central Council and the Tlingit and Haida People*, Juneau: The Central Council of the Tlingit and Haida Tribes, 1985, pp. 14-15

[4] A Native group or tribe cannot sue the federal government without its permission, and so before a court action can be brought the group must first be granted recognition and the right to bring a claim before the federal court.

[5] U.S. Court of Claims, The Tlingit and Haida Indians of Alaska *v.* The United States. Opinion and Findings of Facts, Case No. 47900, decided October 7, 1959

[6] Charles W. Smythe, "Tlingit and Haida Tribal Status," A Report of the Central Council of the Tlingit and Haida Indians Tribes of Alaska, Juneau: Central Council, 1989; Charles W. Smythe, *A Study of Five Communities*, Chapter 3: The Tlingit and Haida Settlement, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

[7] The proposed sale was on the Stikine River. K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, pp. 214-15

[8] Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, pp. 109-110

[9] *Ibid.*, p.119; K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, p. 33

[10] K.A. Soderberg and Jackie DuRette, *People of the Tongass: Alaska Forestry under Attack*, Bellevue: The Free Enterprise Press, 1988, pp. 216-17

[11] *Ibid.*, p. 223

[12] *Ibid.*, p. 222-23

[13] George W. Rogers, *Alaska in Transition: The Southeast Region*, Baltimore: Johns Hopkins University Press, 1960, pp. 214-219

[14] Charles W. Smythe, *A Study of Five Communities*, Appendix A: History of Occupation and Use for Ketchikan, Anchorage: Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

[15] The Tlingit and Haida Indians of Alaska brought suit in 1947 against the United States in the Court of Claims over their pre-existing land and water property rights in southeast Alaska, and sought compensation for the unlawful taking of such lands by the United States and its citizens. This action was authorized by the special jurisdictional act of 1935, granting the Indians the right to bring suit against the United States, as described above.

[16] Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 372

[17] *Ibid.*, pp. 126-27

[18] For valuable discussions of the IRA as applied in Alaska, and the forces against the establishment of reservations, see Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, pp. 103-137, and Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, pp. 364-381

[19] Oscar H. Lipps, *The Indian Tribes of Southeast Alaska. A Report on their Location, Village Organization and their Social and Economic Conditions*, Chicago: Office of Indian Affairs, 1937.

[20] Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 368

[21] Walter R. Goldschmidt and Theodore H. Haas, *Possessory Rights of the Natives of Southeast Alaska*. A Report to the Commissioner of Indian Affairs. (Mimeographed.) Chicago: Office of Indian Affairs, 1946

[22] Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 381

[23] The case was *Hynes* v. *Grimes Packing Company* (337 U.S. 86).

[24] The Secretary also signed orders for reservations at Barrow and Shungnak in 1949, but they were not approved in local elections.

[25] The compromise prompted "howls of protest" from the National Civil Liberties Clearing House, the National Congress of the American Indians, the president of the Association of American Indians, the previous Secretary of Interior Harold Ickes, and the *Nation*, all of whom maintained that this action denied Native property rights. Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), p.143-44.

[26] Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Depart-

ment of Agriculture Forest Service, 1981, pp. 125; Robert D. Arnold, *Alaska Native Land Claims* (Anchorage: Alaska Native Foundation, 1978), p. 98.

[27] In 1921, a fur farmer sought protection from the Forest Service of his lease from use by Indians, and the Forest Service first suggested he post no trespassing signs. Upon investigation, the Service found that some 2,000 Indians used the area as a fishing site and had 20 buildings there, and the lease was subsequently cancelled by the Forest Service. He reports one other case, but in this one the claims of Indian possession were being used by a white man seeking a federal injunction in 1916 to prevent construction of a dam in an area of a pulpwood sale near Ketchikan, based on Indian use of the drainage for hunting and fishing the rights to which the white man had purportedly acquired from the Indians (the injunction was eventually denied in 1932). Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p. 110, 125

[28] *United States of America* v. *George Jim, Senior*, U.S. Department of the Interior Office of Hearings and Appeals, Transcript of Proceedings, Docket No. AA-6561, June 8, 1993, pp. 158-59

[29] *Shields* v. *United States*, 698 F.2d 987, 1983, p. 990

[30] Ernest Gruening, *The State of Alaska*, New York: Random House, 1954, p. 374

[31] Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 143

[32] Letter from H.L. Faulkner to Alaska Packers Association dated July 31, 1944 (available in the Alaska Packers Association records in the Alaska Historical Library, Microfilm MS Reel 8, Data Concerning Activities Which the Alaska Packers Association Considered Detrimental to their Fishery Operation), quoted in Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, p. 112

[33] Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p. 127

[34] Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska*, Anchorage: Alaska Historical Society and Region 10, United States Department of Agriculture Forest Service, 1981, p.119

[35] *Hanlon* v. *United States*, quoting from *Hearings before the Committee on Agriculture, House of Representatives on H.J. Resolution 205, to Authorize the Secretary of Agriculture to Sell Timber Within the Tongass National Forest*, 80th Cong., 1st Sess. (1947), p. 9

[36] Repeal Act authorizing Secretary of Interior to Create Indian Reservations in Alaska, Hearings on S. 2037 and S. J. Res. 162 Before the Subcommittee of the Committee on Interior and Insular Affairs, 80th Cong., 2nd Sess. (1948), cited in Robert E. Price, *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery*, Douglas: The First Street Press, 1990, p. 123

[37] Arguments in *Hanlon* v. *United States*, quoting from Letter from E.T. Benson, Secretary of Agriculture, to A.L. Miller, Chairman, House Interior and Insular Affairs Committee, January 11, 1954, reprinted in *Staff of House Interior and Insular Affairs Committee, 83rd Cong., 2nd Sess., Reports of the Departments of Interior, Agriculture, and Justice on H.R. 1921, A Bill to Settle Possessory Claims in Alaska*, pp. 6-7

[38] Senate Report No. 96-413, 96th Cong., 1st Sess., 1979, p. 393. Cited in *Hanlon* v. *United States*, p. 5-6

[39] Justice Douglas, Dissenting, *Tee-Hit-Ton Indians* v. *United States*, Opinion of the Court, 348 U.S. 272, p. 293-94

Chapter III

Statehood To ANILCA: State, National and Native Interests

Prior to statehood, the federal government owned about 99 percent of Alaska's land. The Statehood Act of 1958 gave the new state authority to select 103.5 million acres from "vacant, unappropriated and unreserved" lands of Alaska. The statehood act also reserved the right of the Congress to recognize prior aboriginal title to lands that the state might select. Alaska Natives protested to the government when the state started to select lands that conflicted with their traditional areas of use and occupancy, and the Secretary of Interior imposed a freeze on further state selections until Congress passed legislation clearing title to Alaska's lands. Following the discovery of oil on the North Slope, the Natives gained an important ally in their quest for recognition of land rights—the petroleum industry—which needed prompt resolution of aboriginal title before the oil could be brought to market.

The passage of the Alaska Native Claims Settlement Act in 1971 recognized aboriginal claims to Alaska and authorized the transfer of 44 million acres and nearly one billion dollars to Alaska Native corporations in a land settlement and compensation package. Another provision of the act authorized the Secretary of Interior to withdraw up to 80 million acres of federal land for inclusion in existing and new units of federal land management systems (national parks, forests, wildlife refuges and wild and scenic rivers). As these systems entailed restrictions on the development of natural resources, this provision was intended to preserve a portion of Alaska's land from development by the state and Native corporations. Thus, ANCSA had two major parts to it: besides transferring a large amount of Alaska's land to private ownership by Native corporations, ANCSA also protected national interests in Alaska's lands for purposes of conservation and protection of the environment. The Alaska National Interest Lands Conservation Act of 1980 carried out the imperatives of the second part of ANCSA. It created new units of federal land management systems, and modified existing ones. It also addressed outstanding subsistence issues that were not resolved as intended by the drafters of ANCSA.

In a sense, ANCSA is an extension of the Statehood Act, which transferred a large portion of federal lands in Alaska to the new state but reserved federal authority to resolve aboriginal claims on the lands. The principal aim of ANCSA was to clear up unresolved issues of aboriginal title, which was accomplished by extending the benefits of land ownership and development opportunities to the Natives of the state. ANILCA is the outcome of another part of ANCSA, which asserted federal authority over additional public land areas designed to serve the national interest in conservation. But the federal authority to accomplish this end was likewise originally reserved in the Statehood Act.

Alaska Statehood (1959)

Although Territorial Delegate James Wickersham introduced the first Alaska statehood bill to Congress in 1916, momentum for the initiative was weak until after World War II when the growth in Alaska's population and economy, and more concerted action by Alaska's territorial governor (Greuning) and Congressional delegate (Bartlett), led to a new drive for statehood. Until 1940, the regional economy of Alaska was colonial in nature: non-resident commercial interests—chiefly canned salmon, mining, and marine transportation—controlled the means of production. The labor force, seasonal in nature, was non-resident as well.[1] The land and resources were controlled by the federal government while Alaska's representation in Congress was limited to one non-voting territorial delegate in the House of Representatives. The severity of federal mismanagement, particularly of the fishery (salmon) resources, was one of the principal causes of statehood proponents. Another issue was that practically no federal revenues derived from the local resource industries were paid back to the territory to develop and maintain the territorial government and provide services for the local population.

In good measure, statehood was motivated by a desire among the citizens of Alaska to gain local control over Alaska's land and resources in a region that had seen a significant growth in population and infrastructure development associated with military activities during World War II. But economic and political control was maintained by "outside" interests.[2] In 1945, the Territorial Legislature enacted a pro-statehood resolution, and a group of citizens formed the Alaska Statehood Association which commissioned a study of the pros and cons of statehood. The report predicted that with statehood federal land would become available for settlement and the extraction of resources, and recommended that Alaskans ask the federal government for lands in the Chugach and Tongass national forests for settlement and economic development.[3] These land provisions eventually became law. Later, in 1946, Alaska held a statehood referendum with 9,630 voting for statehood and 6,822 against. This was considered a good showing, since there was strong opposition by the absentee interests. Congressional hearings on statehood bills began in 1947, and the House Committee on Public Lands unanimously approved a revised statehood statute early in the next year.[4]

In 1949, the territorial legislature enacted a comprehensive revenue system (including a property and income tax) in part to demonstrate that the people of Alaska could support themselves with statehood. The legislature also appropriated $80,000 in that year to create the Alaska Statehood Committee to work on behalf of statehood. In 1955-56, 55 elected delegates met and developed a state constitution to provide self-govemment and end "American colonialism" in Alaska. The constitution was approved by better than a 2-to-1 majority in a referendum held in April of 1956, when voters also approved the election of shadow representatives (two senators and a representative) to go to Congress and work for statehood, following the "Tennessee plan" for achieving statehood. Seven Alaska statehood bills were introduced during the 85th Congress in 1957; and on May 28, 1958 the House passed one of these (H.R. 7999) introduced by Congressman O'Brien of New York. The Senate passed the House bill without amendments on June 30, and President Dwight D. Eisenhower signed the Statehood Act (P.L. 85-508) on July 1, 1958. Alaskans ratified the Act by 83 percent of the vote in a referendum held on August 26, 1958, and Alaska officially became a state of the Union on January 3, 1959, with the signing of a presidential proclamation.[5]

Governors at a Glance

Here is a list of Alaska's governors since statehood, along with their political affiliations and years served:
- William A. Egan, Democrat, 1959 - 1966
- Walter J. Hickel, Republican, 1966 - 1969
- Keith H. Miller, Republican, 1969 - 1970
- William A. Egan, Democrat, 1970 - 1974
- Jay S. Hammond, Republican, 1974 - 1982
- Bill Sheffield, Democrat, 1982 - 1986
- Steve Cowqper, Democrat, 1986 - 1990
- Walter J. Hickel, AIP then Republican, 1990 - 1994
- Tony Knowles, Democrat, 1994 - ?

Source: *Juneau Empire*, December 6, 1994

The Constitutional Mandate

The Alaska state constitution provided a broad mandate for the settlement of Alaska's lands and the development of its resources for the use and benefit of its citizens. In anticipation of 100 million acres from the federal domain, and cognizant of the dangers of overexploitation and control by outside interests, the drafters wrote a natural resources article which established the state's goals of resource development and use:

> to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest ...[and] ... to provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

In addition to surface land, Alaska received title to submerged land in contiguous waters and under navigable waters, all mineral resources on or under its land, and control over fish and wildlife resources. The constitution stipulated that land and resources will be used for community and economic development, but this will be done responsibly, in the public interest and according to conservation principles "for the maximum benefit" of Alaska's people. The constitution included these special stipulations regarding the management of resources:

> Wherever occurring in the natural state, fish, wildlife and waters are reserved to the people for common use ... Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on a sustained yield principle, subject to preferences among beneficial uses.[6]

This "common use" provision became significant after the passage of ANILCA, which included a provision recognizing a rural preference on all federal lands for hunting, fishing, gathering and barter of wild resources that was in conflict with this constitutional stipulation. In the late 1980s the federal government took over management of fish and game on public lands to ensure that subsistence uses were protected after the state was unable to come up with a resolution of this conflict.

The constitution also granted specific authorities to the legislature to provide for the selection of lands granted to the state by the federal government, for the sale or grant of these lands to citizens, and for the acquisition of areas of natural beauty or with recreational, historic, cultural or scientific value for the use and enjoyment of the people. It guaranteed free access to navigable waters of the state to any citizen of the United States or Alaska. In response to the past domination by the commercial fishing industry and the consequences of unregulated use of fish traps, the constitution expressly stated that "No exclusive right or special privilege of fishery shall be created or authorized in the natural

waters of the State." These provisions cleared away "the ambivalence of past federal management policy, which fluctuated between controlled sustained yield harvesting and loose exploitation, and between resident and nonresident orientation in its basic objectives."[7]

The Alaska Statehood Act - 1958

Alaska officially became a state in 1959 when the President signed a proclamation of statehood, which followed an election in Alaska ratifying the 1958 Alaska Statehood Act. The beneficial objectives of Alaska statehood, as reported by the House Committee on Interior and Insular Affairs, were to reverse the pre-existing federal domination of Alaska affairs, to "open up many of the resources of Alaska" and to provide continuous representation in Congress to sustain efforts to revise federal policy "necessary to further the economic growth of Alaska."[8] Entitlement to Alaska's lands and natural resources was the key to the future development and settlement of Alaska, goals which were enshrined in the constitution and conveyed in the statehood act. Special provisions regarding access to and control over these lands and resources were included in the statehood act in recognition that, during territorial days, the federal government owned over 99 percent of Alaska's land and withdrew:

> from public use many of the more valuable resources of the Territory through creation of tremendous Federal reservations for the furtherance of the programs of the various Federal agencies. Thus, approximately 95 million acres — more than one-fourth of the total area of Alaska — is today enclosed within various types of Federal withdrawals or reservations. Much of the remaining area of Alaska is covered by glacier, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.[9]

In contrast with other states, the historical federal control and management of Alaska's land and resource base was a special condition, one which established the foundation for the singular and distinctive land provisions in the Alaska statehood act.

The principal land provisions in the statehood act were federal land grants to the new state including 800,000 acres for community development and expansion and 102.55 million acres for general selection by the state. This left about 60 percent of Alaska's lands in federal hands. The purpose of the land grants was to provide for a viable economy in the new state.[10]

To ensure that lands of value were granted to the state, the statehood act gave the state the right to select lands of known mineral character, specifically including areas under federal lease for coal, oil or gas development, including the first rights to reserved coal lands that may be restored to the public domain in the future. Other provisions ensured the state would receive significant portions of the revenues from federal mineral leases, including 90 percent of profits from the operation of government coal mines and 52.5 percent of net proceeds realized from coal, phosphates, oil, oil shale and sodium on the public domain. Finally, the House committee offered the opinion that the state and federal government should conduct a "vigorous program of restudying of the needs of the various federal agencies for land in Alaska."[11]

State Selections from National Forests

Of the 800,000 acres of federal land made available to the state for community expansion under the statehood act, 400,000 were designated to come from the Chugach and Tongass National Forests.[12] This land was made available for the purposes of furthering the expansion of existing communities, the development of prospective communities, and community recreation needs, in the regions that were withdrawn and reserved as national forests in the beginning of the century. The national forest selections are commonly referred to as National Forest Community Grant (NFCG) lands. The statehood act granted 25 years to the state to complete selections, but with the passage of ANCSA, which gave Native regional and village corporations rights to selections within the forests and authorized substantial additional federal withdrawals in the national interest, the time limit was extended 10 years in ANILCA to allow additional time for resolution of disputes over multiple and overlapping selections.[13] The state's final land selections were due by January 2, 1994.

The state's selection activity proceeded very slowly until 1977, when 250,000 acres were selected. Based on their interpretation of the purposes for such land selections as specified in the statehood act, the Forest Service disapproved of over 50,000 acres of the state's selections which resulted in litigation with the state. The litigation was finally settled in early 1988. The state selected another 57,000 acres in 1982 and completed the remaining selections in 1989. These efforts "represent the state's last major opportunity to influence land ownership patterns within the national forests."[14]

To gain Forest Service approval, state selections had to be 1) adjacent to established communities; 2) suitable for community centers; or 3) suitable for prospective community recreation areas. These criteria were upheld by the courts, and selections were not approved for other purposes, such as timber harvest, mineral extraction, or as the site of a fish hatchery or log transfer facility. Selections were intended "to satisfy the long-range needs and goals of Alaskans residing within or adjacent to national forests and to encourage a rational pattern of recreation, settlement and growth."[15]

State selections were held in check by the freeze on all withdrawals imposed by the Secretary of Interior in 1966, after Alaska Natives began to file extensive protests against the state's selections that covered areas of traditional use for subsistence and trapping activities. The freeze remained in effect until the passage of the Alaska Native Claims Settlement Act in 1971. However, state selections were also affected by another provision of ANCSA, Section 17(d)(2), which authorized the Secretary to withdraw 83 million acres of public domain land for future selection in the national interest. These "d-2" lands were later added to existing federal land management systems in the Alaska National Interest Lands and Conservation Act of 1980.

Statehood and Aboriginal Title

The Alaska Statehood Act included a disclaimer to property rights, held either by the United States or by Indians, Eskimos or Aleuts, which were to remain under federal jurisdiction until disposed of by the government or by Congress. This provision was included in the Compact with United States (Section 4 of the Act, as amended):

> As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation....

The section also specified that the clause in no way affects any existing claim against the United States (such as the Tlingit and Haida land claims suit proceeding at this time) and exempted from taxation any lands or property that may belong to Natives or is held in trust for them.

The intent of this clause was to leave unimpaired the rights of Alaska Natives to compensation from the United States for their land and possessory claims, which may be decided at some time in the future. The legislative history of the statehood act does not identify a Congressional intent underlying its treatment of Native use and occupancy, which suggests that Congress chose to bypass the question in this legislation because Congress was principally concerned with achieving statehood rather than resolving Native land claims. But the statehood act is important insofar as it is a significant part of the background of ANCSA and contributes to an understanding of legislative intent in the settlement act.[16]

The disclaimer clause regarding Native claims was first proposed in 1947 by the Acting Secretary for the Interior Warner W. Gardner, who objected that Native rights were not protected in draft statehood legislation. He proposed that the state and its people forever disclaim both the right and the title to all land ... owned or held by Natives or Native "tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty...." Until the United States either disposed of or extinguished title to such land, it would remain within the exclusive jurisdiction of the federal government and not be taxable by the state.[17] This guarantee of Native rights was also sought by James Curry, the lawyer for the Alaska Native Brotherhood and who also represented the Tlingit and Haida Indian Tribes of Alaska in their land claims against the United States. These land provisions were opposed by various federal agencies and national conservation groups, but statehood proponents did not object.

In 1950, the Senate expanded the language defining property rights to include "any lands or other property (including fishing rights)" but deleted reference to rights or titles which had been acquired from "any prior sovereignty." This change probably shows the influence of the Miller decision, discussed in the previous chapter, which held that the Treaty of Cession had transferred

title to Alaska lands from the Russian to the United States government, with the exception of individual holdings.[18] Thus, as the language was eventually adopted in the statehood act, Congress reserved for itself the right to recognize Native claims to lands they used and occupied at the time of the transfer, and placed this condition within the terms of the statehood act.

The issue of Native land rights was brought to the Alaska constitutional convention by M.R. Marston, wartime organizer of the original Eskimo National Guard. He believed that the new state should, based on moral values, recognize aboriginal rights to areas Natives were using and occupying for fishing, hunting and trapping. He proposed a constitutional amendment to instruct the future state legislature to "translate" into 160-acre homesteads or land grants the traditional land rights of Alaska Natives. Although a disclaimer regarding Native lands was adopted, Marston's amendment was rejected.

Marston had firm supporters who agreed that the convention must do justice to the Alaska Natives. Others, however, expressed concern about interfering with the federal responsibility for safeguarding and compensating aboriginal rights and raised doubts about the state's ability to implement the intent of the Marston amendment. Various delegates also objected to language, to the amount of land involved, and to the special treatment proposed for one class of Alaskans. It was also noted that since 1906, Alaska Natives had by federal statute been entitled to 160-acre allotments, and that their occupancy could be taken care of under existing law.[19]

The measure was rejected after undergoing successive revisions from the floor, which put it into an unrecognizable form. Writing about this debate, Fischer concluded, "Thus, the proposal for granting land rights to Alaska Natives went down to defeat without ever coming to a direct vote on the basic issues involved."[20] As in this instance, subsequent state proposals to protect Native land rights were frequently impeded by the realization that the ultimate authority for settling the issue was reserved by Congress. On the other hand, early efforts by the newly established state to select lands without regard for the traditional use and occupancy of Alaska Natives prompted events that led the federal government to step in and protect Native interests in lands until Congress enacted a Native claims land settlement in 1971.

The Alaska Native Claims Settlement Act of 1971

> *Congress finds and declares that (a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property... (ANCSA, Section 2(b))*

ANCSA was the largest and most innovative aboriginal land claims settlement in American history. The incentive behind ANCSA had most to do with petroleum development on Alaska's North Slope. As a result of this settlement Alaska Natives received title to 44 million acres of land — more than all other American Indian reservations combined — and $962.5 million in compensation — nearly four times the total amount awarded by the Indian Claims Commission over its 25-year lifetime — for their claims to the remaining area. Congress devised a new vehicle for the granting of title to land in the form of corporations: land and monetary distributions were to be managed as corporate assets. Alaska Natives were enrolled as stockholders in these corporations.

As Justice Berger has written, "By its terms, Alaska Natives would have land, capital, corporations and opportunities to enter the business world."[21] The corporate mechanism for the settlement was both a rejection of past models — reservations and tribal governments — and an attempt to improve the social and economic conditions of Alaskan villages by providing a means for Native people to go into business and participate actively in the economic development of Alaska. While Congress recognized the necessity of land as a base for the Native subsistence economy, it regarded as paramount the use of the land as a resource base for economic development:

> In determining the amount of land to be granted to the Natives, the Committee took into consideration the land needed for ordinary village sites and village expansion, the land needed for a subsistence hunting and fishing economy by many of the Natives, and the land needed by the Natives as a form of capital for economic development. The acreage occupied by villages and needed for normal village expansion is less than 1,000,000

acres. While some of the remaining 39,000,000 acres may be selected by the Natives because of its subsistence use, most of it will be selected for its economic potential.[22]

There are inherent contradictions between the land requirements of the subsistence economy in Alaska Native villages and the capital, resource-development needs of profit-making Native corporations.[23] Also, since the Native subsistence economy was dependent upon a larger land base than that transferred under ANCSA, the act did not adequately protect Native hunting, fishing and gathering rights from encroachment. This subsistence question, which was a major concern of the regional Native associations seeking recognition of land claims, was deferred to subsequent legislation, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

In addition to the settlement of aboriginal land claims, ANCSA also revived the issue of federal entitlement to Alaska lands. Section 17 created a joint Federal-State planning commission to determine the use of 80 million acres of land withdrawn from the public domain for consideration as national parks, wildlife refuges, national forests, or wild and scenic rivers. These proposed areas became known as D(2) lands. The identification of these lands, and their allocation among different purposes under the management of different federal agencies, occurred in legislation passed in 1980, the ANILCA, and are discussed in later chapters. The impact of statehood, ANCSA, and ANILCA on national forest management is a continually unfolding story.

Events Leading Up to ANCSA

Shortly after statehood, encroachments upon traditional areas used by Alaska Natives for their hunting, fishing and gathering economy stimulated protests and the development of regional Native associations to pursue protection of their land and subsistence rights and the improvement of social and economic conditions in their villages. In the mid-1960s, a statewide Native organization was formed that carried these objectives forward at a state and national level. At about the same time, the Department of Interior imposed a land freeze on state land selections until the issues of aboriginal claims could be settled. Following the discovery of vast oil deposits in Prudhoe Bay on Alaska's North Slope in 1968, the interests of the oil industry coincided with those of Alaska Natives seeking a timely solution to their claims. The Nixon Republican administration was receptive to these interests and assisted in pursuing a legislative remedy, which ultimately resulted in the passage of the ANCSA in December of 1971.

In 1960, Inupiat Eskimos in Barrow protested the arrest of a fellow Inupiaq state representative for taking a duck out of season, a season established by an international migratory bird treaty that included no acknowledgement of customary and traditional practices of Alaska's Native peoples. Known as the Barrow "Duck-In," 138 other men presented themselves for arrest to federal game wardens. All charges were subsequently dropped with warnings against future violations. Not far away near the Inupiaq village of Point Hope, the U.S. Atomic Energy Commission once planned to detonate a nuclear device to create a harbor for the shipment of minerals and other resources from the area, in an experiment named Project Chariot. Residents of nearby villages expressed concern for their health and that of the animals and plants upon which they depended for their livelihood.[24] These events led to the formation of the first regional Native association in Alaska (the Inupiat Paitot, the People's Heritage) since the establishment in 1912 of the Alaska Native Brotherhood in southeast Alaska. Membership in Inupiat Paitot was comprised of village representatives from northern and northwestern Alaska.

In central Alaska, another protest developed in 1961 over one of the state's land selections under the statehood act. The state wanted to develop the area near the Athapaskan village of Minto as a recreation area, to put in a road for Fairbanks residents and visiting sports hunters, and ultimately to develop the area for its oil and gas potential. The village of Minto filed a protest over this selection with the Department of Interior, since it conflicted with their hunting, fishing and trapping activities. By 1963, 24 villages in the Yukon River delta, Bristol Bay, Aleutian Islands, and Alaska Peninsula regions voiced similar concerns, and sent a petition to the Interior Secretary requesting a land freeze on selections near their villages until Native land rights could be confirmed. At this same time, proposed federal land withdrawals also provoked protests. Most notable was the Rampart Dam project on the Yukon River, which would have created electric power and a recreation area but would have flooded numerous Athapaskan villages and a large area used for hunting, fishing and traplines.

A Department of Interior (DOI) report, completed by the three-member Alaska Task Force on Native Affairs, recognized aboriginal land rights and concluded that Congress should remedy the failure of successive Congresses to carry out the expectations of the Organic Act of 1884, which left to future legislation the establish-

ment of the means by which Natives could obtain title to land. In another arena, national figures and groups urged President Kennedy to propose legislation to settle aboriginal land claims and halt transfers of land until such action was completed. The legislative solution had the support of Native groups in Alaska, who regarded existing mechanisms —reserves, allotments and homesites — as wholly inadequate to protect their land rights. This position was also supported by conclusions drawn from the experience of the Tlingit and Haida settlement, which showed that a court settlement took too long and resulted in insufficient compensation (in this case, based on land values in 1907, the time the Tongass National Forest was established). Furthermore, the fact that courts were not able to grant title to land was also a fundamental concern.

Besides the need to protect the subsistence economy, Native leaders also expressed concerns over the poor social and economic conditions in Native villages including inferior health care, substandard housing, lack of water and sewer systems, inadequate educational programs, incidents of discrimination, and lack of employment opportunities for Natives. They reasoned that a land settlement would assist them to improve these socioeconomic conditions. Regional Alaska Native organizations continued to form throughout the early 1960s, and there were incipient discussions of a statewide Native association. During this period, organizational work in villages was furthered through funding from President Johnson's Office of Economic Opportunity to the state's community action program, which sent representatives to the villages.

In early 1966, the Arctic Slope Native Organization made a claim to all land on Alaska's North Slope, 58 million acres, based on aboriginal use and occupancy. By 1967, 39 protests had been filed with DOI for a total of 380 million acres, more than the total area of the state due to overlapping claims.[25] In October of 1966, seventeen Native organizations met and agreed to establish a statewide organization that later adopted the name of the Alaska Federation of Natives (AFN). The organization's land claims committee recommended that a land freeze be established on all federal lands until Native claims were resolved, that Congress enact legislation to settle claims, and that hearings and consultations be established with Natives immediately.

Before the end of 1966, Interior Secretary Udall imposed a freeze on the transfer to the state of lands claimed by Natives until Congress could act on the issue. In response to Governor Hickel's objection that the stoppage denied the state its rights to select lands under the statehood act, the Secretary pointed out that both the statehood compact and the Organic Act of 1884 recognized the existence of Native land rights, and that state selections could not continue until Congress enacted a settlement. He felt that to do otherwise would allow title to pass into non-Native possession, which would violate the 1884 federal guarantee that Alaska Natives shall not be disturbed in their use and occupation of lands.[26] The state then filed a lawsuit to require the Secretary to transfer lands to the state. This suit was put to rest in 1970 when the Supreme Court refused to review a lower court's adverse ruling against the state.

In the following year, the state convened a Land Claims Task Force, comprised of state and AFN representatives, which in 1968 recommended the basic form which was eventually adopted in the ensuing settlement: the Natives would receive land and money, and the settlement would be carried out by village and regional business corporations.[27] Alaska's Senator Gruening introduced this proposed bill into Congress and held hearings in Anchorage. Before leaving office after the 1968 election of Nixon's republican administration, Secretary Udall issued an order making the land freeze permanent. However, Governor Hickel, having been nominated as the new Secretary of Interior, pledged to undo this order. After intensive Congressional lobbying by AFN which threatened Hickel's confirmation hearings, the organization was able to extract a promise from the nominee to maintain the land freeze until the end of 1970, in exchange for their endorsement.

In 1968, Congress initiated its own study of Native land claims and protests, entitled *Alaska Natives and the Land*. The validity of land claims was supported by the conclusions of this study. Moreover, the researchers reported that Alaska Natives used all of the biological resources of Alaska's land and contiguous waters, confirming the aboriginal use and occupancy of nearly the entire state. They also wrote that the specific land legislation passed for Alaska Natives — the Alaska Native Allotment Act of 1906 and the Townsite Act of 1926 — failed to meet their land needs.[28] But the report emphasized that economic development was a central issue in the resolution of Native protests, since the form of the settlement would be crucial to the future development of the state as a whole. In proposing a solution, it considered the probable effects on the economic status of Alaska Natives and on Alaska's general economic development.

For elements of the settlement, the Congressional report emphasized the necessity of land for present

Native use and occupancy, including subsistence use, as well as compensation in the form of money, land and interests in land (including participation in future revenues from land or resources). It acknowledged two approaches in protecting Native assets and the public interest — reservations and Native development corporations — that had been presented in bills before Congress. The study recommendations became the basis of a bill introduced in 1969 by Senator Henry Jackson of Washington state, with provisions for land and monetary compensation without reservations. The land allocation (10 million acres) was meager; however, the proposed cash settlement approached one billion dollars. Later in the year, further impetus for a substantial financial settlement was received from the state's oil lease sale for the Prudhoe Bay region, which reaped the state over $900 million.

The draft legislation did not move forward in 1970, but three bills were introduced in the 1971 session which proposed differing amounts of land and money. Fearing an unsuitable version might pass, the AFN approached the White House directly for support of a more favorable measure. Their efforts held the interest of the oil industry, which was facing delays in gaining DOI permits to proceed with the construction of an oil pipeline from Prudhoe Bay to a shipping terminus in Valdez in Prince William Sound. With the assistance of these oil interests, associated businesses and Alaska's Republican Senator Stevens, AFN representatives succeeded in convincing the administration to introduce another settlement proposal to Congress. This proposal became the basis of a final bill which was approved by Congress in December. Following a referendum approved by 511 of 567 AFN delegates, with North Slope representatives in dissent, President Nixon signed ANCSA into law on December 18, 1971.

The ANCSA Settlement

ANCSA provided for the transfer of 44 million acres, or about ten percent, of Alaska's land and payment of $962.5 million to Alaska Native corporations in the settlement of claims of aboriginal title to Alaska's land and water areas. The law called for the creation of regional and village corporations to manage the settlement lands and money as corporate assets. To receive benefits of the act, Alaska Natives were enrolled as stockholders in these corporations. As of 1985, 80,000 Natives were enrolled under the act, as amended. Twelve regional and over 200 village Native corporations were established in Alaska, and provision was made for a 13th regional corporation comprised of out-of-state residents.

The act declared that aboriginal title to prior conveyances of federal land and water areas, including tentative approvals under the statehood act, was extinguished. All claims of aboriginal title in Alaska based on use and occupancy of land and water areas, including aboriginal hunting and fishing rights, were also extinguished. ANCSA also extinguished all aboriginal claims against federal and state governments, and individuals, including those pending before the courts or the Indian Claims Commission (such was the case with Tlingit and Haida claims to fishing rights in southeast Alaskan waters). Finally, the act terminated Native allotment legislation and revoked all reservations in Alaska with the exception of the Metlakatla Reserve on Annette Island in southeast Alaska.

The act authorized the Secretary of Interior to withdraw public lands surrounding the listed villages, and lands of similar character from the nearest available area if such contiguous lands were insufficient to meet the corporate entitlements, and to make these lands available for selection by Native corporations. This provision applied to lands available for selection under the statehood act; only lands already in the National Park System or reserved for national defense purposes were excepted. The Secretary was entitled to withdraw up to three times the "deficiency," the difference between a village corporation's entitlement and what was available in contiguous townships, from other available tracts of public land. The complexities that arose over corporation selections, combined with subsequent provisions such as that allowing both corporations and the state to "overselect" lands, are partly the reason that corporations have not, more that 20 years after passage of the act, received their full land entitlement.

The Corporation Vehicle

All eligible Natives became stockholders in one or two Native corporations, which received and managed nearly all of the settlement land and money. Persons of at least one-quarter Alaska Eskimo, Indian or Aleut blood quantum who were alive on December 18, 1971, were qualified to enroll and receive 100 shares of stock in the Native corporations. Enrollment was also according to geographical location, which was based on residency defined as where persons were living at the time of the federal census in 1970, or where their ancestral family home was, or where they intended to have their principal residence if they were temporarily away from home.

Alaska Natives were enrolled both to their local village corporation and to the regional corporation established

for the region in which the village was located. Individuals who were living outside the region, or outside the state, were entitled to enroll back to their region. Natives who elected not to be enrolled in a village, or who were enrolled to a place that was not eligible for land and monetary benefits as a village, were enrolled as "at-large" shareholders in the regional corporation. These individuals received their proportionate share of the monetary distributions (from the cash settlement and from regional corporation stock dividends) in the form of direct payments, but they did not receive benefits of village corporation shareholders (such as stock, dividends, land grants, or other distributions). About one-third of ANCSA enrollees are at-large. Members of the 13th region were entitled to cash benefits, but did not receive land.

Title to 22 million acres was received by more than 200 village corporations; the land was divided up proportionally among the corporations based on population. Another 16 million acres were distributed among six regional corporations according to a complex formula based on population and area; the Sealaska region was excepted from this distribution in recognition of the prior Tlingit and Haida land settlement in that region. Up to two million acres were set aside for specific purposes such as cemetery sites and historical places, conveyances to Native groups, four Native groups residing in Sitka, Juneau, Kodiak and Kenai (which later formed the third type of Native corporation known as "urban"), and Native allotments, with the remainder to be allocated among all 12 regional corporations. Finally, about four million acres were conveyed to six villages which elected to receive title to the lands of their former reserves in lieu of other ANCSA benefits (including cash distributions).

The cash settlement was derived from federal and state sources. $462 million was to be paid out over the 11 years from the federal treasury, while $500 million would be procured from a two percent annual royalty on mineral leases on state and federal lands. Payments of settlement funds were made to regional corporations, which were required to pass on to village corporations at least 45 percent (later raised to 50 percent) after allowing for payments to "at-large" shareholders. Regional corporations were to follow a similar procedure in distributing any payments received from regional corporation profit-sharing provisions (called "7(i)" distributions) to the village corporations in their region.

Several special provisions differentiate ANCSA corporations from other business corporations in the state. Natives were to be the only voting shareholders in these corporations for 20 years, a provision that was subsequently extended indefinitely (unless and until a majority of shareholders decide otherwise).[29] Village corporations received only the surface title to their lands. Regional corporations were granted the sub-surface estate to 40 million acres, including the lands of their village corporations, as well as the surface rights to their own land. The five former reserve villages received both surface and sub-surface rights in their lands, but no additional lands. The section 7(i) provision requires each regional corporation to share 70 percent of their profits generated by development of mineral and timber resources on their lands among all regional corporations, including itself, on a per capita basis. The regional corporations are, in turn, required to distribute at least 50 percent of these revenues to the village corporations and at-large shareholders in their region. The intent of this provision was to remedy inequities arising from the differential distribution of natural resources throughout the various regions of the state.

The ANCSA Settlement and the Alaska Forests

National forests currently are located in three regions that correspond with Native regional corporations. The Tongass National Forest spans the region of southeast Alaska, or Sealaska Corporation, identified with the Tlingit, Haida and Tsimshian Indians. The Chugach National Forest is associated with the region of the Chugach Eskimo, who organized Chugach Natives, Inc., later changed to Chugach Alaska Corporation, and with the Cook Inlet Region, Inc. (CIRI), on the Kenai Peninsula. These regional corporations, and the villages within their regions, were entitled to select lands from the public domain, subject to prior rights such as lands patented to others, certain federal holdings, mining claims and lands under navigable waters. Villages were authorized to select areas on the basis of population, starting with a minimum amount of 69,120 acres for villages with a population between 25 and 99, and up to 161,280 acres with a population of 600 or more. National Forest lands were available for selection by Native corporations, although there were certain restrictions that applied in each region as described below.

In addition to specific provisions regarding land selections that applied in the Tongass and Chugach regions, there were other sections pertaining to National Forest System lands in Alaska. ANCSA provided authority for the modification of timber sale contracts affected by

conveyances to Native corporations (section 15). The act allowed the Secretary of Agriculture to accommodate such conveyances by substituting timber on other National Forest lands approximately equal in volume, species, grade and accessibility. Concerns over the continued availability of commercial timber lands, which arose with respect to Forest Service commitments under the long-term timber sale agreements, led to a provision in ANILCA that required the Forest Service to study and report on the feasibility of buying back harvested timberlands from the Native corporations.[30]

Section 22(k) required that for lands conveyed to Native corporations from within national forests, any sale of timber shall be under the same timber export restrictions as are applicable to national forests in Alaska for five years. The section also commanded that such lands shall be managed under sustained yield and environmental quality standards no less stringent than those practiced on national forests for a period of 12 years. According to Knapp, these provisions were never enforced, in practice, because ANCSA did not clearly assign implementation authority among federal agencies and because the authorized time periods had expired before the lands were developed.[31]

This latter provision was no doubt included with an understanding of the development process characteristic of private corporations. It is interesting to observe that the issue of commercial development of timberland at the expense of multiple use management objectives was described as one of the economic consequences of land grants to Native corporations prior to the passage of ANCSA, in the 1969 Congressional report on land claims. But the study also identifies corresponding benefits that would accrue to the corporations and their shareholders:

> On balance, ownership by Native corporations, like private ownership in general, would probably result in a more rapid rate of development and a greater concern for maximizing the economic returns from the land resources than would management by government agencies. For instance, Native corporations would probably not require primary processing of extractive products or "sustained-yield" timber management except where they were clearly justified in dollar terms. Native corporations in attempting to maximize their net incomes from the land would pursue a multiple-use policy, and in doing so would probably be able to resolve conflicts among competing *commercial* land uses more economically and more satisfactorily than would government. On the other hand, to the extent their policies reflected a single-minded concern with the commercial revenues of the land, they might be less concerned than would government with such nonmonetary and collective values as those of wilderness and scenery.
>
> ... Grants of commercially valuable land managed for its income by Native corporations could be expected to provide an income flow to individual families and to provide a source of capital which Native enterprise could invest in other lines of business and capital for community improvements. It would also provide openings for the development of Native managerial talent.[32]

Looking back with the benefit of hindsight some twenty years after the passage of ANCSA, the general supposition that ANCSA corporations would create a significant income flow to Native families has proven to be a hypothesis that was not born out by subsequent events. For example, for shareholders of regional corporations, cumulative real dividends (with the high and low amount removed to indicate the more general trend) have ranged from $60 to $2,500 each, depending on the region.[33]

The Tongass

Sealaska was the largest of the regional corporations in the number of shareholders: 15,782 were enrolled at the end of 1985, about 20 percent of total Alaska Native enrollment.[34] More than half of these live in southeastern Alaska. In addition to the regional corporation, twelve community Native corporations (10 village and 2 urban) were organized. At the first stockholders meeting of Sealaska, a prominent figure in the land claims struggle and the President of the Tlingit and Haida Central Council, John Borbridge, Jr., was elected president. The location of the corporate headquarters is Juneau, the state capital.

Sealaska Corporation received a small amount of land, relative to other regions, in recognition of the benefits received by Tlingit and Haida Indians under the Tlingit and Haida settlement. Sealaska was excluded from the principal distribution of 16 million acres of land among regional corporations (Section 12(b)), but it was entitled to select land for cemetery sites and historical places. It also received a proportionate allocation, based on population, of lands remaining from the 2 million acre set-aside that were to be conveyed to regional corporations under Section 14(h)(8).

ANCSA recognized ten southeastern villages that were eligible to form corporations and select lands in the

region (see Table 1). One of these, Klukwan, initially elected to receive transfer of its reservation lands in fee simple (surface and sub-surface) in lieu of selecting land for the village corporation as in the remaining nine villages. But later, when it was realized that non-resident shareholders were not entitled to royalties generated from the former reserve lands since they accrued only to members of the village IRA, the corporation was permitted by amendment to make selections as other villages in return for transferring the former reserve lands back to the village IRA. Members enrolled to the village of Metlakatla are not entitled to any ANCSA benefits because their reserve was expressly sustained by ANCSA. The Annette Island Reserve was exempted from the provision revoking reservations in Alaska, and in consequence it remains as the only Indian reservation in the state.

The ten southeast villages were recognized in a specific section of ANCSA distinct from the other Alaskan villages. Section 16 listed the southeastern villages and declared that they each were entitled to an allocation of 23,040 acres (one township), in contrast to other villages which were authorized to select larger areas on the basis of population. Section 16 acknowledged the favorable land claims judgement of the Tlingit and Haida Indians against the United States in the Court of Claims, and explained that the compensation already received was "in lieu" of a larger share of the lands in the region. To the extent possible, these selections were to be in areas within or contiguous to townships in which the villages were located. Because there were no such lands of any value available in the vicinity of Klukwan, the village corporation, Klukwan, Inc., was later exempted from the restriction, enabling the village to select lands elsewhere.

Two other southeast communities were able to form village corporations and select lands under a special provision, Section 14(h)(3), which authorized the conveyance of land in an equal amount (23,040 acres) to the Native residents of Sitka, Juneau, Kenai and Kodiak. The two corporations in Juneau and Sitka, known as "urban" corporations, increased to 13 the number of community Native corporations in southeast Alaska. The apparent intent of this stipulation was to recognize the special circumstances of some Native communities that were originally located on the site of an historical Native settlement, but had become circumscribed by the growth and development of a large "modern and urban" community in which Natives were in the minority.[35]

The thirteen Native corporations in southeast Alaska were entitled to select about 540,000 acres from the Tongass National Forest.[43]

Table III.1: Southeast Alaska

Community	Original Corporation Name	Shareholders[36]	ANCSA Land Entitlement[37]
Angoon	Kootznoowoo, Inc.	629	34,000[38] acres
Craig	Shaan-Seet, Inc.	317	23,040
Hoonah	Huna Totem, Inc.	876	23,040
Hydaburg	Haida Corporation	565	17,836[39]
Kake	Kake Tribal Corp.	558	23,040
Kasaan	Kavilco, Inc.	120	23,040
Klawock	Klawock Heenya Corp.	508	23,040
Klukwan	Klukwan, Inc.	253	23,040
Saxman Cape	Fox Corporation	196	23,040
Yakutat Yak-Tat	Kwaan, Inc.	342	23,040
Total Village Corps.:		4,364	236,156
Juneau	Goldbelt, Inc.	2,722	26,070[40]
Sitka	Shee Atika, Inc.	1,863	31,316[41]
Total Urban Corporations:		4,585	57,386
Region Sealaska Corporation		15,782[42]	310,692

In 1993, Congress directed the Secretary of the Interior to study the eligibility status of five other southeastern communities with Native residents—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—and to compile nformation about whether Congress had inadvertently denied village recognition under ANCSA.[44] These "modern and urban" villages located on or near historical Native settlements, were not listed in ANCSA as eligible to form corporations and select ands in the region. Depending on the outcome of the efforts by members of these communities to gain recognition under ANCSA, there may be additional villages in the southeast region with rights to select lands from within the Tongass National Forest.

The Chugach

More than half of the region of the Chugach Alaska Corp. lies within the Chugach National Forest. There are five recognized villages in the region, including three which are situated within the Chugach National Forest: Eyak (Cordova), Tatitlek and Chenega Bay (see Table Two). Chugach shareholders also live in Valdez, Seward, Anchorage and out-of-state. The four Native corporations (one regional and three village) will eventually receive about 650-700,000 acres from the Chugach National Forest.[45] There were 1,908 stockholders enrolled in Chugach Alaska Corporation in

1985. One of the region's leading proponents of aboriginal rights, Cecil Barnes, was elected as the corporation's first president. The corporate offices are located in Anchorage.

Table III.2: Chugach Region ANCSA Corporations

Community	Original Corporation Name	Shareholders[46]	ANCSA Land Entitlement[47] Sec. 12a	Sec. 12b
Inside the Chugach National Forest Boundaries:				
Chenega Bay	Chenega Corporation	69	69,120	6,973
Eyak	Eyak, Inc.	326	115,200	33,530
Tatitlek	Tatitlek Corporation	215	115,200	22,046
Outside the Chugach National Forest Boundaries:				
Nanwalek	Nanwalek Corporation	716	9,120	7,280
Port Graham	Port Graham Corporation	190	92,1601	9,482
Region	Chugach Alaska Corp.	1,908[48]	338,665	38,887

Note: as described above, there were limitations to the number of acres that village corporations located within the Chugach National Forest were able to select from the forest. ChugachAlaska Corp. entitlements were under Sec. 12c and 14(h)8.

One of the ANCSA selection limitations was that a village may not select more than 69,120 acres from within a national forest (Section 12 (a) (1)). While this did not affect villages in southeast Alaska, due to the provisions acknowledging the Tlingit and Haida settlement, it applied to Chugach villages. For example, Eyak Corporation was entitled to select five townships, or 115,200 acres.[49] Eyak selected all the land available to it within the core township, as it was required to do, as well as nearby townships. Because it lies within the boundaries of the Chugach National Forest, and its selections exceeded the allowable limits for selections within national forests, it had to choose two of its townships from so-called deficiency lands (federal lands set aside for Native conveyance outside the lands available near communities) outside the forest.

Limitations on land selections within the national forests ultimately led to a dispute between the Forest Service and the Chugach Alaska Natives, who felt that they were denied lands they used traditionally and were restricted to glaciers and mountain tops that were not suitable for development purposes as envisioned under the act. Working through Congressional channels, a provision was included in ANILCA which called for a study of this issue. A cooperative project involving the Forest Service, State of Alaska, USDOI, and Chugach Natives, Inc. was carried out, and in 1982 representatives of the groups signed the Chugach Natives' Settlement Agreement which addressed the problem.

Unresolved Problems: Subsistence

On the face of it, ANCSA declared that all aboriginal titles, including hunting and fishing rights, are extinguished.[50] But the legislative history reveals that the protection of subsistence rights was a component of earlier bills, and although the provision was dropped from the final version, the conference committee report referred specifically to the authority of the Secretary of Interior to ensure such protection. When neither the state nor the federal government acted on the promise, the Alaska Native leadership took advantage of the opportunity entailed in Section 17(d)(2) to remedy this shortcoming. Through a political compromise with the environmental lobby, they were able to garner enough support for the inclusion of a subsistence provision in ANILCA that further protects Native subsistence rights. The legislative history of ANCSA documents that the protection of subsistence was a key element in the land claims settlement throughout the legislative process. The first AFN draft bill emphasized subsistence protection, and the final Senate land claims bill (S. 35) included "elaborate" provisions protecting Native subsistence.[51]

Protection of the Native subsistence economy, of the resources used in "the indigenous economy" and of Native access to these stocks are all salient points discussed in the Congressional study of land claims, *Alaska Natives and the Land.* Indeed, the first of three proposed elements of the settlement is "the grant or protection of lands and land rights now used by Alaska Natives for townsites, hunting and fishing camps, and subsistence hunting, fishing and other food and fuel gathering areas," and lands for subsistence use were considered separately from lands occupied as villages and camp sites.[52]

The words of the conference committee report that accompanied the claims act disclose the intent of Congress to reserve the authority "to protect the subsistence needs of the Native." Case writes that the report "makes it clear that Congress viewed neither the purported extinguishment of hunting and fishing rights nor the absence of specific subsistence provisions as the end of Alaska Native subsistence interests."[53] The report states:

> The Conference Committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary through the exercise of his existing

> withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by nonresidents when subsistence resources for these lands are in short supply or otherwise threatened. *The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Native.*[54]

To some Natives knowledgeable of the land claims process, according to Langdon, these words carry the weight of "an implicit contract between Alaskan Natives and Congress to protect subsistence rights and deal with them more fully in future legislation. ... This is taken to mean that Congressional intent was *to reserve Alaskan Natives subsistence rights and transfer the responsibility for the protection of those rights to the State.*"[55]

State and federal governments did little to provide protection for subsistence after the passage of ANCSA, and in recognition of the need for further protection, the Alaska Native leadership sought additional measures in ANILCA and in state subsistence legislation.[56] They were encouraged by former Secretary of Interior Stewart Udall, who advised AFN in 1978 that adequate protection would only be achieved if "Congress uses its power under the U.S. Constitution and grants such rights to the Alaska Natives."[57] Although the state had developed a policy and, by 1978, enacted a law providing a preference for subsistence use on state lands, the Alaska governor also supported Congressional action to establish a priority for subsistence use on federal lands.

Title 8 of ANILCA — Subsistence Management and Use —provided that all rural Alaskans, Native and non-Native, would have a priority for the subsistence use of fish and wildlife and all other renewable resources on public lands. In its findings (Section 801), Congress recognized the significance of subsistence uses to both Natives and non-Natives, declaring that continued subsistence opportunities are "essential to Native physical, economic, traditional and cultural existence and to non-Native physical, economic, traditional and social existence." The distinction between Native and non-Native claims is explained further in subsection (4), which refers to the unfinished purposes of ANCSA and the fiduciary or trust responsibility of the United States to protect the subsistence rights of Alaska Natives:

> in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents.

ANILCA fulfills the intention of Congress in ANCSA that was expressed in the conference committee report with regard to the protection of subsistence rights. Earlier versions of the bill provided explicit management authority to the federal government including setting seasons and bag limits, but this provision was later removed at the insistence of Senator Stevens, who argued that the Statehood Act granted to the state control of fish and wildlife management (as was common with other states), and that to do otherwise at this point would reinstate federal management of the state's resources, a battle that had been won with statehood.[58]

Another area of continuity between ANCSA and ANILCA is the matter of the federal "trust" responsibility to Native Americans, the source of which is the commerce clause referred to in ANILCA (cited above). As Langdon points out, "Only Native Americans have such a relationship with the United States government therefore this section is interpreted as confirmation of the federal government's responsibility to protect rural Alaskan Natives' rights to subsistence."[59] He makes the point that the fiduciary or trust basis for Native rights in Alaska is also supported by Section 2(c) of ANCSA, which declares that:

> no provision of this Act shall replace or diminish any right, privilege or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or Alaska.

He concludes, "The fiduciary responsibility for Alaska Native welfare in general is supported by ANCSA and for rural subsistence in particular by ANILCA." The federal responsibility to ensure the adequate protection of rural Native subsistence uses is ongoing, notwithstanding the declaration of extinguishment in ANCSA.

The ANILCA subsistence provisions have had a substantial influence on the administrative procedures of federal agencies. For the Forest Service, this is particularly true with regard to the Section 810 requirement for the protection of habitat necessary for subsistence,

which mandates the evaluation of all agency activities for their effect on subsistence. These issues will be discussed more fully below in the context of Forest Service administrative policies and practices.

Unresolved Problems: Land Selections
Almost all of the land selected by the southeast Native corporations was from within the Tongass National Forest. While seven villages corporations selected lands in proximity to the villages pursuant to ANCSA provisions, five community corporations and Sealaska were involved in land exchanges that resulted from ANCSA amendments or special legislation. Kootznoowoo, Inc., and Goldbelt were allowed to select additional acreage above their standard allocation in other areas of the forest in exchange for relinquishing their selections on Admiralty Island after it was declared a National Monument by President Carter (Shee Atika stayed on Admiralty Island but moved from its original selection). Klukwan, Inc. exchanged their reservation land for other lands within the Tongass National Forest after a 1976 amendment to ANCSA. The Haida Land Exchange Act of 1986 permitted the Haida Corporation to exchange some of their lands, much of which had low potential for economic eturns, for more valuable lands with marketable timber and additional cash compensation. The latter action resulted in a reduction of their land entitlement by about 5,000 acres. Further exchanges are possible as new circumstances and proposals arise; and on the other hand the Forest Service may propose to buy back some of the Native corporation lands (Knapp study). ANCSA (and later ANILCA) permitted land exchanges with Native corporations when the public interest might be best served. ANCSA was amended in 1976 to eliminate some of the limitations placed on Regional Native Corporation entitlements on National Forests.

There were also exchanges and new selections made in the Chugach region. As previously discussed, the land available for selection in the vicinity of the Chugach villages was largely mountain top and glacier, and not comparable in economic value to lands generally available to Native villages. Consequently, the regional corporation asked Congress for authority to increase its selections from within the National Forest. In 1982, an agreement between the Chugach Natives, the State, the Department of Interior, and the Forest Service established new procedures which provided for additional selections within the forest. From the beginning, State and Native land selections affected long-term timber sales, boundary definitions, and overall management of the Alaska National Forests.

Unresolved Problems: Other Issues
There are numerous issues relating to the operation of the corporations, such as taxation, profit-sharing, mergers, boundary questions, and other concerns, that gave rise to amendments to the settlement act. As the year 1991 approached, there was apprehension in the Native community over the scheduled termination of a ban against the sale of stock in Native corporations to non-Natives. ANCSA provided such prohibition for 20 years, after which stock would be available for sale at the discretion of the shareholder. The Native community feared for the loss of their settlement land and assets through stock alienation, and asked Congress for amendments extending the ban. The so-called "1991 amendments," the ANCSA Amendments of 1987, extended such prohibitions indefinitely until a majority of shareholders voted in favor of permitting such sales.

Other issues addressed in the 1991 amendments included the concern for those Natives born after December 18, 1971, who were not eligible for enrollment to Native corporations or to receive benefits under the act. Provisions were made to allow corporations, at their discretion, to issue additional shares of stock to certain classes of people including younger Native persons, which included numerous optional rights and limitations on the stock. The 20-year exemption on taxation of undeveloped Native lands from property taxes was made permanent rather than ending in 1991. An ANILCA provision regarding settlement trusts was made automatic: timber lands placed in a settlement trust will remain free of taxation for as long as they are undeveloped, and they will be taxed only while they are actively being harvested, returning to undeveloped non-taxable status at the termination of harvest activity.

Section 17 of ANCSA: Comprehensive Planning and New Federal Withdrawals

In addition to authorizing Alaska Natives to select 44 million acres of land, ANCSA included a provision for the Secretary of the Interior to withdraw from appropriation up to 80 million acres for possible additions to the four federal land management systems: National Forests, National Parks, National Wildlife Refuges and Wild and Scenic Rivers. The Secretary had nine months in which to withdraw the lands, two years to make recommendations to Congress, and up to five years to maintain such withdrawals until Congress could act on the recommendation. Congressional inaction at the end of this termination period impelled the Secretary to maintain the withdrawals in the national interest until December 2, 1980, when the Alaska National Interest Lands Conservation Act (ANILCA)

was eventually passed by Congress. Prior to passage of ANILCA President Jimmy Carter used the authority of the Antiquities Act to designate portions of the Tongass as National Monuments, thus precluding state and Native selections from these lands.

As discussed in later chapters, these "d-2" withdrawals also reduced the land base from which timber harvests and mineral exploration might be allowed. The withdrawals also precipitated a major effort within land management agencies to study and make recommendations for additions and new units in their respective systems. This provision was of major significance to the State, since land selections under the Statehood Act were precluded from areas so withdrawn. Selections by regional Native corporations were also prohibited in these areas, although village selections were not affected. Under the federal systems, the development of natural resources on the withdrawals would be prohibited or restricted to some degree, which created conflicts in areas that would otherwise have been chosen by State or Native interests. The State unsuccessfully brought suit to protest the action. ANILCA was passed before its appeals were completed. However, the State's selection period was extended by ten years in ANILCA.

Joint Federal-State Land Use Planning Commission
ANCSA established a new and comprehensive planning regime to review and recommend Alaska land management proposals to the President and Governor. Section 17 created the Joint Federal-State Land Use Planning Commission and directed each agency to furnish the Commission with any information it needed to carry out its mandate.

The Commission was empowered to conduct a public process of land-use planning and making recommendations in a number of areas including land areas to be reserved for federal ownership in parks, refuges, etc., uses of lands to remain in federal and state ownership, lands to be selected by the State and Native corporations, existing federal withdrawals, and federal and state land management programs and budgets. Citizen participation was mandated through an advisory committee comprised of representatives of different land user groups. The Commission was to advise and assist in the development and review of land use plans for lands selected by Native corporations and the State, as well as to make recommendations to ensure that economic growth and development "is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska." It was also charged with recommending ways to avoid conflict between the State and Native people in the selection of public lands.

The Forest Service established the Alaska Planning Team to fulfill its responsibilities under this section and to develop its own review and recommendations for new National Forest proposals. In the 1970s Region 10 planned "New National Forests for Alaska," and much more. Timber sales, once negligible, became central to the work of the Forest Service in Alaska because of unique long-term timber contracts negotiated in the 1950s. Work on State and Native land selections and conveyances became more demanding as time passed. The Forest Service wrestled with a veritable deluge of new federal environmental and forest management legislation enacted in the decades of the Sixties and Seventies. And if these demands were not enough, the National Forests began to adjust to the economic growth and development of Alaska, and to the changing uses by the public of forest resources.

Reference Notes

[1] David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, pp. 22-35

[2] See Ernest S. Gruening, *The Battle for Alaska Statehood*, College: The University of Alaska Press, 1967, and *The State of Alaska*, New York: Random House, 1968

[3] Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 102-103

[4] Ernest S. Gruening, *The Battle for Alaska Statehood*, College: The University of Alaska Press, 1967, p. 2; Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), pp. 103-115

[5] *Ibid.*

[6] *The Constitution of the State of Alaska, as amended 1970*, p.25-26

[7] David T. Kresge, Thomas A. Morehouse and George W. Rogers, *Issues in Alaska Development*, University of Alaska-Anchorage, Institute of Social and Economic Development, Seattle: University of Washington Press, 1977, pp. 48

[8] "Providing for the Admission of the State of Alaska into the Union," Committee on Interior and Insular Affairs, House of Representatives, 85th, 1st, Report No. 624 (to accompany H.R. 7999), June 25, 1957, p.23

[9] Ibid., pp. 18-19

[10] Subsequent litigation has provided the following clarification of this issue: "The purpose of land grants under the Alaska Statehood Act is to serve Alaska's overall economic and social well-being. Some of the lands so selected will probably be used to protect mineral deposits. Others will safeguard wildlife. Still others will be used to protect domestic water supplies. Udall v. Kalerak, 396 F.2d 746 (9th Cir.1968) ... This section authorized the state to select 102,500 acres from public lands that were "vacant, unappropriated, and unreserved at the time of their selection." The intent of Congress was, of course, to provide the new state with a solid economic foundation. United States v. Atlantic Richfield Co., 435 F. Supp. 1009 (D. Alas. 1977). Alaska Statutes, Alaska Statehood Act, Notes to Decisions, Juneau: Department of Law, 1983, p. 87.

[11] *Ibid.*, p.21. The 52.5% figure was later raised to 90% of proceeds on minerals from public lands.

[12] Section 6(a) of the Alaska Statehood Act. The Act provided for up to 400,000 acres from the National Forests. In later practice this came to be viewed as an entitlement of 400,000 acres.

[13] ANILCA also allowed the state a 25 percent overselection of its remaining entitlement for the same reason, and to replace withdrawn lands that were filed on by the state (such as military bases or the Trans Alaska Pipeline Carridor) in the event the state is unable to obtain them.

[14] *State Land Selections from Tongass and Chugach National Forests*, Anchorage: Alaska Department of Natural Resources, June, 1989, p. 2

[15] *Ibid.*, p. 3

[16] Alaska Statehood Act, Notes to Decisions, in *Alaska Statutes*, p. 77

[17] Claus-M. Naske, *A History of Alaska Statehood*, Lanham: University Press of America, 1985 (1973), p.107

[18] *Ibid.*, p. 143

[19] Victor Fischer, *Alaska's Constitutional Convention*, National Municipal League State Constitutional Convention Studies Number Nine, Fairbanks: University of Alaska Press, 1975, pp. 137-39

[20] *Ibid.*

[21] Thomas R. Berger, *Village Journey*, New York: Hill and Wang, 1985, p. 20

[22] House report accompanying the final version of ANCSA, quoted in Berger, p. 21

[23] see Steve J. Langdon, "Contradictions in Alaskan Native Economy and Society" in *Contemporary Alaskan Native Economies*, ed. by Steve J. Langdon, Lanham: University Press of America, 1986

[24] The concerns of residents of the area are being investigated, as we write (1994), by the federal government: the burial of nuclear wastes in underground dumps, and the use of Inupiat in experiments to disclose the effects of exposure to nuclear radiation, have been recently acknowledged by the government and are the subject of ongoing investigations.

[25] Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 119. A report prepared for Congress, *Alaska Natives and the Land*, stated similar findings based on information provided by DOI as of June, 1968: "Alaska Native groups and associations have claimed and filed protests to the transfer of almost the entire state. The claims and protests are based on aboriginal use of the lands." See pp. 454-514 for a discussion by region of the status of land ownership and control, as well as the petitions, claims and protests made by Alaska Natives.

[26] Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p.118

[27] A statewide corporation was also suggested.

[28] Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 129

[29] For a critical review of ANCSA and its implementa-

tion, and of the failed expectations of its "promise" for social and economic equity, see Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission*, New York: Hill and Wang, 1984

[30] See Gunnar Knapp, *Native Timber Harvests in Southeast Alaska*, USDA Forest Service, Pacific Northwest Research Station, General Technical Report PNW-GTR-284, 1992, p.5.

[31] *Ibid.*, p. 5

[32] Esther C. Wunnicke, Robert D. Arnold, David M. Hickok, Douglas N. Jones and Arlon R. Tussing, *Alaska Natives and the Land*, a report on Alaska Native land claims by the Federal Field Committee for Development Planning in Alaska, Anchorage, Alaska, 1968, p. 530

[33] Cumulative real dividends per shareholder ranged from zero (Koniag) to nearly $10,500 (CIRI). Real net corporate income received per shareholder varied from $44,000 for CIRI to a negative $7,000 for Calista and Bering Straits. The other corporations had income received that ranged from negative $2,000 to $12,000 per shareholder. The regional corporations as a group suffered net losses in seven out of 17 years. Only four corporations produced positive cumulative net income on business ventures from 1974-90. See Steve Colt, "Financial Performance of Native Regional Corporations," *Review of Social and Economic Conditions*, Vol. XXVIII, No. 2, Anchorage: University of Alaska, Institute of Social and Economic Research, December, 1991. There has been very little research into this topic. For a general treatment, see Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission*, New York: Hill and Wang, 1984. For an examination of benefits received by shareholders in village corporations in southeast Alaska, see the chapter by Steve Colt in *A Study of Five Southeast Alaska Communities*, Appendix A: History of Occupation and Use, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, 1994

[34] Alaska Native Roll, Bureau of Indian Affairs, total as of 12/31/85.

[35] See in *A Study of Five Southeast Communities*, Institute for Social and Economic Research (Lee Gorsuch and Steve Colt), by Charles W. Smythe and Bart K. Garber, Chapter 2, pp. 17-19 (1994); and personal communcation, Bart K. Garber to Charles W. Smythe, 1993.

[36] Source: U.S.D.O.I Bureau of Indian Affairs, Alaska Native Roll, Dec. 31, 1985. The actual number of shareholders is larger today, as some stock has been transferred through inheritance and other means.

[37] *A Study of Five Southeast Alaska Communities*, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994, p.92, from statistics provided by the U.S.D.A. Forest Service, Region 10, as of July 19, 1991.

[38] ANILCA Section 506(a)(3-6) provided additional land to Kootznoowoo.

[39] The Haida Exchange Act (1986) authorized the Haida Corp. to relinquish village corporation land to the United States in return for money and alternative lands, which resulted in the conveyance of about 5,000 acres to the government (some of which was added to the Tongass National Forest).

[40] Goldbelt and Shee Atika were initially entitled to 23,040 acres, but subsequent negotiations and land trades resulted in additional lands in exchange for relinquishing claims to Admiralty Island.

[41] See Note 5.

[42] This figure includes shareholders enrolled to other villages and towns in southeast Alaska and at-large shareholders, in addition to village and urban corporation shareholders.

[43] Gunnar Knapp, *Native Timber Harvests in Southeast Alaska*, U.S.D.A. Forest Service, Pacific Northwest Research Station, General Technical Report PNW-GTR-284, 1992

[44] *A Study of Five Southeast Alaska Communities*, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994

[45] Leo Keeler, Chugach National Forest, Personal Communication, February 8, 1994

[46] Source: U.S.D.O.I Bureau of Indian Affairs, Alaska Native Roll, Dec. 31, 1985. The actual number of shareholders is larger today, as some stock has been transferred through inheritance and other means.

[47] *A Study of Five Southeast Alaska Communities*, Report prepared for the U.S.D.A. Forest Service and U.S.D.O.I. Bureaus of Land Management and Indian Affairs by Institute of Social and Economic Research University of Alaska (Lee Gorsuch and Steve Colt), Charles W. Smythe and Bart K. Garber, Anchorage: University of Alaska, 1994, p.92, from statistics provided by the U.S.D.A. Forest Service, Region 10, as of July 19, 1991.

[48] This figure includes shareholders enrolled to other villages and towns in the Chugach region and at-large shareholders, in addition to village corporation shareholders.

[49] Robert D. Arnold, *Alaska Native Land Claims*, Anchorage: The Alaska Native Foundation, 1978, p. 246
[50] ANCSA, Section 4(b)
[51] David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 294
[52] *Alaska Natives and the Land*, p. 539-40
[53] David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 295
[54] Senate Report 92-581, 92nd Cong.; 1st Sess., December 14, 1971, p. 37; cited in Ibid. p. 295: emphasis added
[55] Steve J. Langdon, "Alaska Native Subsistence: Current Regulatory Regimes and Issues, Paper prepared for the Alaska Native Review Commission Roundtable on Subsistence, Anchorage: Inuit Circumpolar Conference, 1984, pp. 11-12
[56] The state constitution, which prescribes the development and common use of all natural resources including fish and wildlife, did not ultimately afford an assurance of protection of Native or rural subsistence. In 1978 the State passed a subsistence law giving priority to subsistence users over all other fish and game uses. The State of Alaska's adherence to its constitution conflicts with ANILCA provisions, and this led to the Federal federal government asserting control over fish and wildlife resources on federal lands; this issue is currently under litigation.
[57] David S. Case, *Alaska Natives and American Laws*, Fairbanks: University of Alaska Press, 1984, p. 297
[58] *Katie John, Doris Charles, and Mentasta Village Council, and The State of Alaska* v. *The United States of America*, Case no. A90-484 Civ, State's Motion for Partial Summary Judgement
[59] Steve J. Langdon, "Alaska Native Subsistence: Current Regulatory Regimes and Issues, Paper prepared for the Alaska Native Review Commission Roundtable on Subsistence, Anchorage: Inuit Circumpolar Conference, 1984, p. 12

A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska

By Walter R. Echo-Hawk[1]

THE TLINGIT PEOPLE WERE MIGRATING downstream, searching for a better life. Following the banks of a mountain stream, they came upon a glacier! The vast field of ice blocked their trek. Seemingly impassable, it was too steep to climb and too far to go around. Yet, the river flowed beneath the deep crevasses, so the People decided to build a raft and sail underneath the glacier. Once the vessel was built, they asked, "Who will go?" Two elderly women volunteered. "We have lived a long life. We will go." The pair boldly floated into the mountain of ice and disappeared.

When they emerged on the other side, the elders discovered a wondrous land! It was an immense temperate rainforest beside the sea, a maritime paradise teeming with awesome creatures, edible plants of all kinds, and bountiful waterways in one of the most beautiful places in the world. This terra nullius *was a Garden of Eden, located right on the shores of Native North America. The People identified this spectacular place as* Haa Aaní *(Our Land), the Land of the Tlingits.*

—A Tlingit Migration Story told by Walter A. Soboleff in 2006.[2]

In 2009, Congress will conduct hearings on Native land entitlement and other pressing indigenous issues in southeast Alaska, a land called ***Haa Aaní*** by the Tlingit Indians. A useful background context for those hearings may help guide the formulation of meaningful Congressional action for the twenty-first century. Several overarching questions inform the hearings. After thirty-eight years, how well has the Alaska Native Claims Settlement Act of 1971 (ANCSA) worked in southeast Alaska?[3] What impacts has federal law and policy had upon the well-being, subsistence, and cultural integrity of the indigenous inhabitants of America's largest rainforest? The treatment of these rainforest tribes, as federal protectorates under the Indian trust doctrine, stands as a barometer in the post-colonial world. On a larger level, it marks how our modern industrialized nation comports itself with Mankind's last remaining hunting, fishing, and gathering cultures that still live in the natural world, as well as the last remaining vestiges of the natural world itself.

The fate and well-being of marginalized Indigenous Peoples are pressing domestic and international concerns in the world today. During the twentieth century, many tribes in other lands went extinct.[4] The goal is to protect those who remain, especially after witnessing the tragic, reoccurring outbreaks of genocide throughout the twentieth century. This shift in public opinion

is seen in the approval of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.[5] That historic measure breaks sharply from colonialism and its urge toward subjugation, dispossession, and exploitation. As an international guideline, the UNDRIP replaces oppressive policies from that era—which are still found in some former colonies—with minimum standards for each modern nation to protect the dignity, survival, and the cultural, economic, social, and political well-being of the world's Indigenous Peoples. Although the Bush Administration voted against the UNDRIP—along with three other dissenting nations—there are several reasons why the United States will not be the last to embrace the UN standards. Since 1970, federal Indian affairs have been guided by the cornerstone Indian self-determination policy. That is a precedent-setting and enlightened indigenous policy that sets a high standard for any nation and it is also the centerpiece of the UNDRIP. The Indian self-determination policy is strengthened in the United States by the law. First is the long-standing federal Indian trust doctrine, which was first articulated by Chief Justice John Marshall in *Cherokee Nation v. Georgia* (1831); and, second, for almost two hundred years, our law treats Indian tribes as "domestic dependant nations"—that is, sovereigns which are described in *Worcester v. Georgia* (1832) as "protectorates" of the United States.[6] Finally, in the international arena, our nation is often a human rights champion. Americans eschew oppression. This combination of factors provides the heritage, history, and values to fully safeguard the well-being of Indigenous Peoples in the United States. The Bush Administration's vote against the UNDRIP does not wash away that heritage, nor bar in any way our stride toward a more just society in the post-colonial world. Consequently, Native Americans can realistically look forward with optimism that their political, cultural, and property rights as Indigenous People will be justly safeguarded in the United States during the twenty-first century.

This paper is an educational tool. It provides an indigenous perspective for setting congressional policy in Native southeast Alaska. That context is sorely needed. Native American aspirations, needs, and concerns are not well known by most Americans, including policymakers. This is especially true for the Tlingit, Haida, and Tsimshian for several reasons. First, they live in remote southeast Alaska. Most Americans have never set foot in their maritime homeland. Second, these tribal hunters, fishers, and gatherers continue to live in their indigenous aboriginal habitats. Their cosmology in the natural world is vastly different from that of most Americans who are more familiar with the Westernized way of looking at the world. By contrast, the tribal cosmology in southeast Alaska arises from primal ties to the natural world. As such, those indigenous cultures are still imbued with the age-old values of hunters, fishers, and gatherers that were instilled into our species during our long evolution as humans spread across the planet. This is reflected in the remarkable art, dress, dance, songs, language, architecture, social organization, and customs of the Pacific Northwest tribes that comprise their subsistence way of life, which are absolutely unique in the world

today. That way of life is similar, however, to all hunting, fishing, and gathering cultures around the world; and it depends upon cooperation with the animals and plants to ensure their renewal, not the conquest of nature. Those primal cosmologies contain valuable teachings about human relations with the animal and plant world. Unfortunately, that indigenous knowledge and value system is long forgotten by most Westerners living in industrialized landscapes, dismissed as an inferior way of looking at the world, or worse yet, demonized and stamped out in many colonized lands.

It is important that policymakers grasp and incorporate the unique needs, aspirations, and concerns of the Tongass rainforest tribes when setting Indian policy in the post-colonial world. In those nations where policy is set in derogation of indigenous needs, human rights violations are often found. Tlingit, Haida, and Tsimshian congressional testimony will document the indigenous aspirations, needs, and concerns for Native southeast Alaska. It will also address the overarching questions posed above, and make recommendations to Congress. This paper provides a context for evaluating that record. It presents several points that help inform modern federal Indian policy in Southeast Alaska.

We shall examine the history of colonization in southeast Alaska and scrutinize the forces at work. Prior to the creation of the Tongass National Forest ("TNF") in 1908, the land was owned, occupied, and in use by the aboriginal Tlingit, Haida, and Tsimshian peoples according to the laws and customs of those indigenous nations. In 1908, President Theodore Roosevelt issued an executive order to create the national forest. This summary action was done unilaterally at the zenith of the Age of Imperialism, when the United States administered a large colonial empire comprised of American colonies around the world, including Cuba, the Philippines, Puerto Rico, Panama, the Virgin Islands, Micronesia, Guam, the Wake Islands, Midway Island, San Domingo, and the territories of Hawaii and Alaska. In addition, the legal climate of this period under *Lone Wolf v. Hitchcock* (1902), treated American Indian reservations like colonies subject to the plenary power of Congress, that is, absolute power over Indian tribes as wards of the government without a right of judicial review.[7] The edict simply established the vast TNF *in the middle of the Indians' aboriginal homeland* where the tribes lived, hunted, fished, and gathered since times immemorial—a time span long before the Forest Service arrived to assume hegemony over its new fiefdom. Nearly every inch of the new federal enclave was already owned by the Tlingit clans, and their Haida and Tsimshian neighbors. This action was undoubtedly unbeknownst to most of the Indian inhabitants. Protests did come from missionaries on behalf of the Tlingit and Haida Indians "as an immoral confiscation of their property."[8]

On paper, the TNF was established subject to existing property rights. The executive order stated that nothing shall be construed "to deprive any person of any valid right" secured by the Treaty with Russia or by any federal law pertaining to Alaska. However, this nicety was all but

ignored on the ground, when it came to tribal land rights. No effort at all was made for several decades to acknowledge and determine Native land rights. In the meantime, the agency occupied the land and ran roughshod over the Native peoples. For most of the twentieth century—until Congress began to curb the powers of the agency in the modern era of federal Indian law (*circa* 1970-present)—the U.S. Forest Service history presents a classic case of colonialism. As will be seen, the occupation, usurpation, and destruction of the land and its bounty, and the marginalization of the indigenous peoples and ways of life are a microcosm of Manifest Destiny. That history will be summarized here based upon U.S. Forest Service documents and the official U.S. Forest history written by Lawrence Rakestraw, entitled *A History of the United States Forest Service in Alaska* (Tongass Centennial Special Edition, 2002) (Reprinted by USDA Forest Service). It will include the Native protests against the creation of the TNF and efforts to protect their rainforest homeland in the face of dispossession and destruction by the Forest Service's relentless drive to turn the rainforest into a paper and pulp mill industry.

That battle led to the infamous Supreme Court decision in *Tee-Hit-Ton Indians v. United States* (1955).[9] In one of the worst decisions ever handed down, the court held that the aboriginal land of the Tongass tribes could be confiscated by the United States government without compensating the owners. This novel doctrine of confiscation was justified by Justice Stanley F. Reed by raw conquest. He tersely explained:

> *Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, its was not a sale but the conqueror's will that deprived them of their land.*[10]

The frightening decision dispensed with aboriginal land rights and allowed the government to freely seize an entire tribal homeland *despite the Bill of Rights* which guarantees to all other landowners that no person shall be deprived of property "without due process of law . . . nor shall private property be taken for public use without just compensation."[11]

This paper will examine the events leading to the *Tee-Hit-Ton* doctrine of confiscation and its grave impacts upon the Tongass tribes. It will highlight the dispossession of Native land rights as the indigenous way of life was brushed aside, and tribal efforts to protect "indigenous habitat" in their ancestral territory needed to support hunting, fishing, and gathering ways of life. As used here, the term "indigenous habitat" refers to the land, waters, animals, and plants in ancestral homelands traditionally occupied by indigenous tribes, and used by them to support their aboriginal cultures and ways of life—that is, vital habitat in the natural world without which aboriginal cultures and ways of life cannot survive.

The paper will also examine the impacts of the closely-related Supreme Court decision in *Organized Village of Kake v. Egan* (1962) on the indigenous way of life, Native subsistence, and the present-day economy of the villages. As will be seen, today villagers ironically live in an abundance of natural resources in a place that might as well be a desert, because so little is actually accessible under federal law and policy.[12] In *Kake*, the court placed aboriginal Tlingit fishing rights in TNF waters by tribal communities who were entirely dependent upon salmon under state regulation. State control of rights vital to the tribes' way of life was granted, even though Alaska's Statehood Act "disclaimed all right and title to and the United States retained 'absolute jurisdiction and control' over, inter alia, 'any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said natives."[13] In retrospect, it is not hard to imagine what became of the tribal subsistence economy and way of life, once aboriginal fishing rights were safely tucked under the control of the new settler state.

As will be seen, these potent factors jeopardized the survival and well-being of one of the world's last remaining hunting, fishing, and gathering cultures, and certainly one of the last primal cosmologies in the United States. Why is a twentieth century history of colonialism, confiscation, and subjugation relevant to modern policymakers in the twenty-first century? We cannot "unring the bell," but history does provide the context for charting the future as a nation. Many countries have a legacy of colonialism. That heritage must be soberly confronted as a starting place for reform. As used here, "colonialism" is defined by law professor Robert Clinton as "the involuntary exploitation of or annexation of lands and resources previously belonging to another people, often of a different race or ethnicity, or the involuntary expansion of political hegemony over them, often displacing, partially or completely, their prior political organization."[14]

During the Colonial Era (*circa* 1492-1960), the indigenous nations of Africa, the Western Hemisphere, Australia, the Circumpolar World, Oceania, India, and most of Asia were colonized by Westerners. "Indigenous peoples" are defined as non-European populations who resided in lands colonized by Westerners before the colonists arrived. For them, colonization was invariably a harsh, life-altering experience as the colonization process usually included the invasion and involuntary occupation of their land; the outright appropriation of their property and natural resources; political subjugation and marginalization; stamping out their traditional religions, languages, ways of life and subsistence; warfare; and sometimes genocide. These destructive processes were "legalized" in nearly every colony according to the laws of the colonizers.

Colonization of Native land is invariably accompanied by destroying the habitat that supports the tribal way of life. Colonies displace the Natives, extract natural resources from the land, and remake the natural world for agriculturists and manufacturers. Thus, conquest of nature often accompanies the settlement of Native territory. In *The Conquest of Paradise*, historian Kirkpatrick

Sale examined the astounding level of environmental degradation that accompanied European colonization of the New World.[15] In 1823, Chief Justice John Marshall described the ebb and flow of colonization in the United States:

> *As the white population advanced, that of the Indians necessarily receded. The country in the immediate neighborhood of agriculturalists became unfit for them. The game fled into thicker and more unbroken forests, and the Indians followed. The soil . . . being no longer occupied by its ancient inhabitants, was parceled out according to the will of the sovereign power.*[16]

In just a few short decades, for example, the Plains Indian habitat was virtually destroyed as countless millions buffalo and wolves were slaughtered and steel plows were pulled through native plant communities. When Native peoples resisted, the law invariably supported the destruction of their indigenous habitat, often with harsh, life-altering results. The depopulation of American Indians and destruction of their cultures following European contact has been attributed, in part, to the accompanying destruction of indigenous habitats.[17] Simply put, deforestation, dewatering, and destruction of the wild animal and plants that sustained Indian tribes, led to their collapse. Many went extinct following the conquest of nature in North and South America since 1492.

The age of colonialism ended after World War II, with the emerging independence of former colonies around the world. Although colonialism was ultimately rejected by the international community several decades ago, that system remains embedded in the laws and social policies of some former colonies as a cornerstone for dealing with Indigenous Peoples. Their paramount challenge in the twenty-first century is to identify and root out the "dark side" of those laws and policies and strike a more just balance for the rights, relationships, and responsibilities between Indigenous and non-indigenous peoples.

As will be shown, southeast Alaska is one place where this familiar history occurred. The region was colonized as a *de facto* Forest Service colony for most of the twentieth century; and the aboriginal nations that reside in the TNF live under that legacy today. The challenge for Native southeast Alaska is to repudiate, not prolong, that legacy and restore the well-being of the indigenous peoples to the fullest extent possible, at least until the minimum UN standards are achieved. The moral call to rebuild and restore colonized areas can be likened to the enormous American efforts normally undertaken to voluntarily restore the lands and infrastructure of nations defeated in war by the United States. This is almost always done in the national interest where our nation has, in effect, made a destructive mess and cannot in good conscience leave a devastated people without rebuilding and restoring their nation—that is, by putting them back on their feet. That same good moral conscience and national interest should obtain with even stronger force at home for America's indigenous nations living in colonized areas as protectorates of the United States. It is hoped that the congressional hearings will point the way toward that healing process in Native southeast Alaska.

7

1. Why *Tee-Hit-Ton* and *Kake* Deserve the Attention of Policymakers.

The ***Haa Aaní*** story deserves telling. It is a classic tale of colonization, the degradation of indigenous habitat, and cosmological conflict between different worldviews. It tells how ***Haa Aaní*** was colonized by the Forest Service (*circa* 1908-1955). The courts played a prominent role. They legitimized the outright confiscation of aboriginal property used for hunting, fishing, and gathering with the air of legitimacy in the *Tee-Hit-Ton* case; and the courts placed the indigenous subsistence way of life under the control of settlers in the *Kake* litigation.

By the 1950's and early 1960's when *Tee-Hit-Ton* and *Kake* were decided, Native America had slumped to its nadir. This was a time before the advent of the modern era of federal Indian law, when most Indians were living in abject poverty as marginalized persons upon the fringes of a nation bent on stamping out all vestiges of tribal culture during the Termination Policy era.[18] During this period, judges could dispense with niceties in Indian cases and simply "tell it like it is." A reading of the unvarnished *Tee-Hit-Ton* opinion does just that—in hard-edged, bone-chilling words; and it was easy to brush aside an ancient way of life in a colonized land by the *Kake* Court without realizing the enormous human and cultural costs at stake.

In that era, the legal climate recognized few Native American rights in the waning years before the advent of the modern era of federal Indian law (*circa* 1970-present). In 1954, the United States Supreme Court desegregated America in *Brown v. Board of Education* (1954) under the leadership of Chief Justice Earl Warren, but it was not ready to reverse doctrines of conquest and discovery in Indian cases.[19] Instead, the court was still bent on conquering America in 1955, if we take Justice Reed at his words in the *Tee-Hit-Ton* opinion, written just ten months after *Brown* was handed down. That opinion brings the Law of Colonialism into a harsh, modern-day context. It illustrates how easily the manifestly unjust confiscation of Native land can be justified by leading jurists as the law of the land.

The *Tee-Hit-Ton* case, with its misplaced notions of conquest, has never been reversed.[20] It raises several sobering questions that are critical to the cultural survival of Indian tribes and their aboriginal way of life in modern-day America.

The ruling holds that Indian tribes cannot rely upon the Fifth Amendment or aboriginal property rights to protect themselves against government seizure, and on another level leaves them helpless to protect "indigenous habitat" from destruction at the hands of the government. Today discussion of aboriginal title is largely a moot point, since most aboriginal property rights were extinguished long ago by voluntary treaty cessions, myriad government takings, or

outright confiscation as legalized in *Tee-Hit-Ton*. To be sure, some Indian owners were eventually compensated for takings by various congressional remedies in laws like the Alaska Native Claims Settlement Act ("ANCSA") or Indian Claims Commission Act ("ICCA").[21] However, monetary compensation for damages does not protect a way of life. That shortcoming raises the paramount question facing indigenous hunting, fishing, and gathering cultures in the world today: *How can Native Americans meaningfully protect "indigenous habitat" in ancestral homelands from destruction when that habitat remains vital to their hunting, fishing, and gathering existence?* Few Indian treaties in the lower 48 States reserved off-reservation hunting, fishing, and gathering rights in ceded land, and those that did often left those rights vulnerable to later invasions by "development." None of those treaties expressly reserved water needed to support hunting, fishing, and gathering in ceded habitat or other protection from environmental harm. Those treaty rights have recently been implied by the courts in a nascent, but important body of growing law. Unfortunately, the alarming rate of indigenous habitat degradation has quickly outpaced the development of this body of law, leaving many hunting, fishing, and gathering cultures in the Pacific Northwest vulnerable to extinction. In Alaska, no treaties were made at all.

In this cultural crisis, federal Indian law offers few realistic protections for the last remaining "indigenous habitat" in ancestral territory that is no longer owned or controlled by Indian tribes. The *Tee-Hit-Ton* decision and judicial mindset illustrates the practical difficulties encountered in the courts when tribes attempt to protect a vulnerable way of life that is dependent upon aboriginal habitats. Today, most remaining land owned by Native communities is held under treaties, executive orders, or statutes. Although some Indian land includes "indigenous habitat," most of that habitat is no longer tribally owned or controlled by Indian tribes or Alaska Natives after their aboriginal title was extinguished. Nevertheless, many Indian and Alaska Native tribes still struggle to maintain their traditional hunting, fishing, and gathering way of life, especially in the Pacific Northwest, which spans from the Yuroks in Northern California to the northern reaches of Tlingit country above Glacier National Park. Much of the critical habitat that produces fish, animal and plant populations necessary for that way of life is now federal land, or lies in navigable streams, riparian zones, and ocean waters beyond the outer continental shelf. Thus, the last remaining hunting, fishing, and gathering cultures have largely been divested of habitat critical to their survival. American law offers little protection for that habitat or way of life.

Why should we care? After all, the United States "mostly" paid the Indians for their ceded or confiscated territories. Huston Smith, the religion scholar, describes the ties to indigenous habitat in religious terms. One distinguishing feature of primal religion is "embeddedness" in nature. That occurs, according to Smith, to such a degree that we think "not of primal peoples as embedded in nature, but of nature . . . extending itself to enter deeply into them, infusing them in order to be

fathomed by them."[22] For them, the sanctity of nature is taken seriously. They venerate ancestral habitat through the world renewal ceremonies and belief systems found in Native America that transcend our lineal conception of time.[23] This "ensoulment" of nature, as described by Professor Gregory Cajete (Tewa), is the result of long human experience with the natural world by people who have interacted with a particular landscape so long that their identity is inseparable from the land.[24] This helps explain why Native People lament loss of ancestral land, removal, or destruction of tribal habitat, for this amounts to "a loss of part of themselves."[25]

> *Relationships between Native peoples and their environments became so deep that separation by forced relocation in the last century constituted, literally, the loss of part of an entire generation's soul. Indian people had been joined with their lands with such intensity that many of those who were forced to live on reservations suffered a form of "soul death." The major consequence was the loss of a sense of home and the expression of profound homesickness with all its accompanying psychological and physical maladies. They withered like mountain flowers pulled from their mother soil...*[26]

On another level, a larger, deeper cosmological battle took place in the struggle to colonize the Tongass. Government colonization of ***Haa Aaní*** pitted two conflicting cosmologies. Simply put, the way that indigenous tribes look at animals and plants in natural habitats—as the world's remaining hunting, fishing, and gathering cultures—is vastly different from the way settlers view colonized land. As will be explained, at one time, all humans were hunters, fishers, and gatherers who lived in the natural world and depended upon cooperation with nature to survive. Their cosmology universally respected life and revered the animals and plants found in human habitats. This worldview is still carried on by traditional Indigenous Peoples embedded in ancestral habitats. Some ten thousand years ago, an opposing cosmology began to emerge among those humans who began domesticating animals and plants in agrarian societies. Agriculturalists had to combat the natural world, control the plants, and dominate domesticated and wild animals to survive. They evolved a new cosmology that sanctifies domination of the land and the conquest of nature. The two ways of life would collide in ***Haa Aaní*** and compete for control of the rainforest. In *Kake,* the Supreme Court empowered the State of Alaska to determine the fate of Indians' hunting, fishing, and gathering existence by placing the exercise of their aboriginal fishing rights under state control.

As a result of *Tee-Hit-Ton* and *Kake,* the Tongass tribes would not only lose control of their lands, indigenous habitat, but also the exercise of rights vital to their way of life in this harsh colonial setting. Thus, as the Alaskan struggle spilled into the federal courts in those cases more than fifty years ago, it raised what has now become a crucial question facing the human family in the twenty-first century: *Can a hunting, fishing, and gathering way of life derived from tribal habitats survive in the colonized lands of modern nations?*

The way that we answer that question as a nation in the twenty-first century will tell much about our national character. Many dismiss the primal way of life as "inferior" or "primitive." Environmentalists doubt whether indigenous habitats in the natural world, or the natural world itself can survive in modern nations. Thus, a core question which confronts Congress is: *How modern society should comport itself toward the world's last remaining hunting, fishing, and gathering cultures.* Do these endangered human cultures have a right to exist? If so, what laws and policies need to be sharpened for that purpose? For governance, what is the best political model for federal control of minority cultures in the post-colonial world: abject domination, accommodation, cultural self-determination, or some other model that can assure their survival, well-being, and co-existence? Given the wide cosmological gulf that exists between agrarian and primal cultures, answers will test the tolerance of settler-state societies and the limits of their legal systems, and will reveal the character of our modern society.

The national interest insists upon just answers to these questions. Today most Americans appreciate the Native American cultures and want them preserved, as a result of changing values in a mature nation. Law and policy should keep pace with that social change in attitude. The UNDRIP standards may shine the way toward a more just culture in the post-colonial world. As we strive to find a just balance of rights, relationships, and responsibilities in the twenty-first century, the fate of the few surviving cultures that depend upon the integrity of indigenous habitat hangs in the balance. The world now insists that these questions be addressed and answered by each nation. The UNDRIP specifies that Indigenous Peoples must be given the right to own, control, and use ancestral territories and be provided effective means to protect the environmental integrity of indigenous habitat.[27] These UN standards seek to protect the well-being, dignity, and human rights of hunters, fishers, and gatherers who carry on the oldest way of life of the human race.

The struggle to achieve those standards affect raises some of the gravest matters ever expressed by international institutions. After all, "genocide" is defined by the United Nations as the deliberate destruction of a racial, ethnic or cultural group; and genocidal acts include "inflicting conditions of life calculated to bring about a group's destruction in whole or part."[28] Where indigenous peoples are concerned, some researchers interpret such acts to include "destruction of the habitats utilized by indigenous peoples."[29] As mentioned earlier, the challenge is to protect surviving indigenous groups. Today, most people deplore clear-cutting the world's remaining rainforests. We know that destruction of the Amazon rainforest, for example, will destroy the Indian tribes who live there; and public opinion insists that those cultures be preserved. Yet few realize that rainforest tribes exist *in our nation* and their way of life also depends upon healthy indigenous habitats. They inhabit the Pacific Northwest, from Yurok country in northwest California to Tlingit villages on the Chilkat River and Yakutat Bay. Their dignity, well-being, and survival are important national and

international questions that can not be decided solely by local politicians guided by parochialism, or by self-interest groups driven by narrow ideologies and interests.

2. The Cosmological Conflict over the way Humans View Animals and Plants.

There is a pronounced cosmological tension in Native southeast Alaska. To bring regional issues into perspective, policymakers must consider humanity's two age-old, often competing, ways of life and the conflicting cosmologies that arise from those worldviews. As used here, "cosmology" is the foundation for how a culture understands the natural order of the universe and the world around us, as derived from its religious, social, and political orders. From that vantage point, the fundamental interests at stake in the struggle to colonize ***Haa Aaní*** during the twentieth century emerge from the misty mountains, fjords, and bays of the temperate rainforest. As will be seen, when spurred by the forces of colonialism, the Western agrarian-based cosmology aggressively dominates the natural world, including the peoples who live there. This driving force ultimately produced the Supreme Court's *Tee-Hit-Ton* and *Kake* decisions, which jeopardized tribal property rights, indigenous habitat, and the way of life of the aboriginal tribes indigenous to ***Haa Aaní***. As we chart our course for the future, it is necessary to harmonize human cosmology in the region to strike a better balance and bring out the best in both worldviews.

The underlying cosmological tension in *Tee-Hit-Ton* and *Kake* was over the way humans view animals and plants. The timber sale in *Tee-Hit-Ton* would reduce a rainforest homeland to pulp and paper. This would devastate occupants who "were in a hunting and fishing stage of civilization," according to the Supreme Court.[30] The vital tribal area contained their burial grounds, towns, houses, smokehouses, and hunting camps. The Indians used the land "for fishing salmon and for hunting beaver, deer, and mink," and gathering "wild products of the earth."[31] In contrast, the Government was determined to establish timber-processing operations for the manufacture of pulp and paper. According to the Forest Service, protecting the Indians' way of life would "seriously delay, if not prevent, the development so earnestly desired by Alaskans" (meaning everyone except the aboriginal people who lived in Alaska for millennia).[32] Under the *Kake* decision, the tension between these worldviews would be resolved solely by the newcomers. *Kake* places the exercise of aboriginal fishing rights in TNF firmly under the control of the newly-formed State of Alaska. In so doing, the courts put the fate of the aboriginal cultures into the hands of strangers with an alien cosmology. The different way their worldview treats the natural world placed the tribal people in a vulnerable

position familiar in many colonies during that era.

How a society views animals and plants in the natural world defines its character, culture, and reveals innermost feelings about the living world around us. As explained in much more detail below, human "cosmology" can be divided for purposes of this paper into two venerated ways of life: (1) The hunting, fishing, and gathering existence is the oldest way of life followed by humans since the dawn of our existence. It gave rise to primal cultures that dominated human evolution for hundreds of thousands of years and although endangered today, this lifeway continues to prevail in a few isolated tribal habitats around the world. (2) The agricultural way of life emerged about ten thousand years ago. Over time, agriculturalists swept the planet, except for isolated pockets of hunting, fishing, and gathering cultures. Their cosmology now informs the mindset for viewing nature in modern societies. The two outlooks differ significantly: To inhabit a natural world, primal people must cooperate with animals and plants and encourage natural processes to survive, while agriculturalists living in a man-made world must control and dominate nature to survive. These differences account for much atrocity, discrimination, and conflict found in human history during the conquest of nature; and they were very much at play in the twentieth century struggle to colonize ***Haa Aaní***. A brief overview of these competing cosmologies follows.

A. THE ANIMAL-PEOPLES' COSMOLOGY.

The Indians of the TNF are a race of hunters, fishers, and gatherers. That is made abundantly clear from a government report issued in 1946 by Walter R. Goldschmidt and Theodore H. Hass, entitled *Haa Aaní: Our Land: Tlingit and Haida Land Rights and Use* (1946).[33] For all of human evolution and most of our history, the entire human population subsisted as hunters, fishers, and gatherers.[34] For 160,000 years, this way of life dominated our species. As we spread across the planet, life in this lengthy period instilled gut instincts that shaped our biology, minds, and spirit. The relationships formed with animals during this period wired the human spirit. The habits of animal behavior and plant knowledge were instilled in people. Ancient humans amassed in-depth traditional ecological knowledge about the Natural World that parallels modern man's fascination with Western science. Appropriate conduct for living with them guided human behavior. Hunting brought us into the wild and awakened our awe of animals, beings with remarkable attributes and powers. That awe may have inspired the first religions and art—as suggested by the animal spirits drawn in caves 20,000 years ago.

Spiritually, human hunters were animistic. People believed animals are endowed with spirits and souls. As animal spirits "gave" or "offered" themselves to humans, harvesting and eating them

required hunters to reciprocate by making offerings to them to ensure their return the following year. As illustrated by Native American beliefs, protection and reciprocity came from a sacred "covenant" forged between humans and the animals in mythic times, in which animal relatives willingly "gave" themselves to people in exchange for our prayers, reverence, and respect. We pledged to thank the animals, to respect them through song, dance, art, and story, and to call upon their spirits and seek their eternal return through ceremonies.[35] Those beliefs and practices sanctified our relationship with mystical animals and plants as hunters, fishers, and gatherers and legitimized our presence in their world.

Pockets of this belief system remain in Africa, North America, South America, Asia, and Oceania. One of the largest concentrations of these surviving cultures is in North America. They survived long enough to be studied by anthropologists.[36] Information gleaned from the Yup'ik, Inupiat, Cree, Bella Bella, Tsimshian, Kwakiutl, Nootka, Quileute, Quinault, Makah, Tlingit, Haida, Yurok, Hoopa, Klamath, Salmon Tribes of Puget Sound, Columbia River Tribes, Southwestern Dine, Apache, and Pueblo tribes, and hunter-gathers of the Northern Plains tells us much about Mankind's earliest existence. These contemporary hunters, fishers, and gatherers provide a glimpse of human existence in its earliest mode. Their way of understanding the world is a human legacy. Unfortunately, this cosmology has been forgotten, dismissed, and sometimes demonized by the modern world.

Those Native American cultures named above uniformly derive from a hunting, fishing, and gathering way of life. It produced indigenous cosmologies well-described by Gregory Cajete (Tewa) in *Native Science: Natural Laws of Interdependence.*[37] That worldview revels in Mother Earth's remarkable ability to support life. It proclaims Mother Earth as the foundation for human culture. That is, ethics, morals, religion, art, politics, and economics derive from the cycles of nature, behavior of animals, growth of plants, and human interdependence with all things endowed with a spirit of their own.

The people of ***Haa Aaní*** are traditional gatherers whose robust aboriginal economy was based, in large part, upon the abundant berries, roots, herbs, fruits, medicines, and other natural products found in the verdant rainforest.[38] And much of their culture was made of wood. In the cosmology of Native American gatherers, plants hold an esteemed place of honor as the staff of life and foundation for human and animal life. The plant world, for example, is called "Toharu" in Pawnee, which is a sacred concept for the "living covering" of Mother Earth.[39] Across North America, plants are venerated in creation stories that tell us who we are, why we are here, and what is our place in the world. They are honored in ceremony, song, art, lore, and religion as foods, medicines, and materials. As explained in many tribal traditions and ethnologies, plants have "talked" to people in Native North America and sometimes become their guardians. Accordingly, gatherers approach wild roots, berries,

peyote, corn, tobaccos, cedar, sage, and other medicines in a ritual way, just like humans have done throughout evolution. The prayers, ritual preparation, and pilgrimages that accompany gathering make subsistence profound. They place restraints upon gatherers in their use of plants and govern conduct in the plant world.

The women of the Columbia River tribes remember the covenant with plants. They know that plants came first and took pity upon humans. They hold Longhouse ceremonies to honor plant relatives before the first roots can be dug or the first berries can be picked. Unlike shopping at the corner grocery store, plants are sacred food with spirits of their own that cannot be approached without the proper ritual preparation. Though illogical to Western minds, for the women of these tribes gathering demands a respectful participation with plants as spiritual beings in a natural environment; and it is carried out on a distinctly spiritual plane.

Similarly, the Native American perception of animals mirrors hunting cultures around the world. Hunting is an ancient way of life in North America—a tradition much older than the 10,000 year-old Clovis Site. This tradition evolved songs, dances, ceremonies, art forms, and a spiritual reverence for animals. It produced an elaborate cultural context for hunting and a worldview that explains how humans should conduct themselves with animals.

As noted by scholars Smith, Eliade, and Cajete, the wall that separates humans and animals in the primal world is thin. Like most hunting cultures, the widespread kinship with animals found in Native America was established through covenants, dreams, visions, and lore. Through those means, many animals endowed with power communicated with humans and shaped their cultures. The "conversation of death" between hunter and prey, in the words of author Barry Lopez, which takes place in this context, takes on a primal meaning; and meat thus acquired becomes "sacred meat."[40] Today, Indian hunters often put a pinch of tobacco in the mouths of their kill to assist it on its spirit journey. It is part of the covenant made in mythic times. One Santee Dakota explained: "The animals long ago agreed to sacrifice their lives for ours, when we are in need of food or of skins for garments, but we are forbidden to kill for sport alone."[41]

The Pawnee tribe provides one example of the pervasive animal-influence in tribal cultures in North America. Animals predominate in Pawnee names, stories, songs, ceremonies, hunting, and in the tribal social order itself.[42] In mythic times, early Pawnees gained wisdom and knowledge about the spiritual world from the animals. As Eagle Chief (Pawnee) explained in 1907:

> *In the beginning of all things, wisdom and knowledge were with the animals, for* Tirawa, *the One Above, did not speak directly to people. He spoke to people through his works, the stars, the sun and moon, the beasts, and the plants. For all things tell of* Tirawa. *When people sought to know how they should live, they went into solitude and prayed until in a vision some animal brought wisdom to them.*

> *It was* Tirawa *who sent his message through the animal. He never spoke to people himself, but gave his command to beast or bird, which came to some chosen person and taught him holy things. So it was in the beginning.*[43]

At birth, every child came under the influence of a particular animal which became its guardian in life. That tie could also arise when kindly humans took pity on helpless animals—like bear cubs, puppies, and orphaned horses—who returned kindness with animal-powers. Animal spirits are said to dwell in medicine lodges. Their councils could take pity on deserving humans, teach them secrets, and give them power or protection. Birds are also helpers who mediate between humans and *Tirawaahat.* In mythic times, there was a world without birds, only animals and people; however, some families turned into the birds we see today.[44] Among them, hawks are guardians of warriors and messengers for the Morning Star; and the crows, eagles, magpies, owls, bluebirds, meadow larks, and roadrunners carry messages from the beyond. The mystical power of messenger birds is illustrated in a Pawnee family tale:

> *A youth accompanied a war party a long ways from home on his first raid, when he was wounded by an arrow and left for dead. Before he collapsed several days later, he prayed for help from the Creator* (Atius Tirawaahat), *then fell into unconsciousness. As he came to, an eagle stood before him and said, "I am from* Tirawaahat, *who has taken pity upon your prayer, so I am here to help you." The messenger bird told the youth, "Nearby you will find a buffalo carcass. Though it is old and filled with maggots, it will not make you sick. Eat and remember the blessings of* Tirawaahat, *be sincere in your prayers, and from now on you and your descendants will not get sick from food that you eat." After the eagle flew away, everything he said came true. The people were surprised and thankful when the boy returned home, for they thought he was dead, killed upon the prairie.*[45]

Even clams are regarded as wonderful beings in the Pawnee worldview. They have a cleanly nature, though they live in the mud.

Animal-human relations in Native America are intimate on many levels, as illustrated, again, by Pawnee society. In many stories, Pawnees marry buffalo or other animals, and transformation between humans and them often occurs. The stories teach that humans are closely related to the animals who voluntarily offer themselves to people as food. Thus, entire societies can be shaped by the animals in tribal habitats. Pawnee social fabric consisted of societies that originated from animals in visions. It was a society built upon the Crow Lances, Horse Society, Deer Society, Crazy Dogs, Brave Raven Lance, Young Dog, Otter Lance, and Iruska Society. The Pawnee received many tribal religious ceremonies from the Plains animals, such as the Bear, Buffalo, Horse, White Beaver, and Young Dog Dances. Even medicine came from the animal beings who formed bonds with Indian

doctors and taught humans their medical secrets, how to heal, and gave deserving doctors special powers. Through these many avenues, the traditional Pawnee way of understanding the world is heavily influenced by the spirits of animals.

In short, in tribal cosmology, animals help hunters, fishers, and gatherers become fully human and they are regarded as holy. Identification with revered animals runs deep on many levels. For example, the Pawnee admire the wolf, imitated its ways, and "became" wolves when scouting or at war. For this kinship, they are called "Wolf People" by neighboring tribes. Similarly, many tribes, bands, and clans are named after animals that shaped their cultures. They include Salmon People, Buffalo Nations, Snakes, Crows, Wolf-People, Crayfish Eaters, Whaling People, and the Tlingit Eagles, Ravens, and Wolves.

They are the Animal-people of Native North America. Because they walk in the tracks left by our ancestral hunters, their cosmology remembers and understands human interdependence with animals and plants as the natural order of the universe. As hunters, fishers and gatherers, they are still related to a living world where everything has a spirit. The worldview of Animal-people strongly encourages natural processes so that animals and plants can flourish and will return to habitats shared with humans. As such, their values and lifeways are still imbued with Mankind's ancient conservation ethic. That ecological ethic is evident in nearly every tribal habitat in North America, because those places *teemed* with animal and plant life, even after thousands of years of occupation by hunters, fishers, and gatherers.

B. THE AGRICULTURALISTS' COSMOLOGY.

The Western view of the world and how we should live in it is based upon a ten-thousand-year-old agrarian culture. Agriculture was a major revolution in human history. As used here, "agriculture" is a farming culture that tames, domesticates, and breeds plants and animals; reorders natural features; and controls natural processes to make nature more productive and beneficial to humans. Over time, Western farming civilizations underwent industrial, scientific, and technological revolutions. But they still retained an agriculturalist cosmology. The pervasive effect of agriculture on modern society is described by Jim Mason, an American authority on animal-human relations:

> *For nearly 10,000 years people of the West have farmed—that is manipulated nature for human benefit. Ponder for a moment this long human experience and how deeply it influences our thinking and culture. This is a hundred centuries of controlling, shaping, and battling plants, animals, and natural processes—all things of the world around us that we put under the word* nature. *Controlling—and ultimately battling—nature is a very old way of life to us. It is a stance with nature so*

deeply ingrained in us that we are rarely conscious of it. Controlling nature is second nature to us. We are people of an agrarian culture, and we have the eyes, ears, hearts, and minds of agriculturalists. Whether or not you have ever been a farmer, or even a visitor at a farm, if you are a Westerner you are imbued with the culture of the farmer and it determines virtually everything you know and think about the living world around you.[46]

Agriculturalists must control the natural world to survive. It is impossible to farm virgin land or breed untamed animals for food. So land must be significantly altered to produce crops. Natural hydrology must be reordered for irrigation. Local wildlife must be suppressed, because insects, birds, predators, pests, and vermin kill farm animals or eat crops. Native plant communities must be destroyed to make way for crops grown by man. In the end, nature is conquered.

At its heart, the genius of agriculture is animal husbandry and mass crop production. This requires utter domination of plants and animals. Their biological processes, genetics, behavior, and lives are altered. Strict control is necessary to tame, domesticate, breed, and cultivate them. In this regime, animals and plants lose their stature. They become property with a slavish existence for Man's benefit. This form of enslavement is at odds with the animal-human relation in hunting cultures, as seen in Standing Bear's (Lakota) remarks:

The animals had rights: the right of man's protection, the right to live, the right to multiply, the right to freedom, the right to man's gratitude. In recognition of these rights, people never enslaved the animals, and spared all life that was not needed for food and clothing.[47]

Because agriculturalists must constantly battle the living world to sustain their way of life, their cosmology must support, rationalize, and romanticize the conquest of nature; and it must exalt human domination of all other forms of life. That cosmology is described by Mason as a God-given domination of the natural world.[48] He coined the term "dominionism" to describe the exercise of human supremacy over all living things.[49]

This way of thinking has deep religious and intellectual roots in the Western world. Our exalted place in the world is a foundational religious principle of early agrarian cultures. It was strengthened by secular thinkers during the industrial, scientific, and technological revolutions, as Western civilizations morphed into modern societies. Animal-human relations in modern society were summed-up by Sigmund Freud in 1917:

In the course of his development towards culture man acquired a dominating position over his fellow-creatures in the animal kingdom. Not content with this supremacy, however, he began to place a gulf between his nature and theirs. He denied the possession of reason to them, and to himself he attributed an immortal soul, and made claims of divine descent which permitted him to annihilate the bonds of community between him and the animal kingdom.[50]

Freud described our supposed supremacy as "human megalomania."[51]

In the Book of Genesis, biblical scribes wrote down the religious traditions of Judaism and Christianity in the early agrarian societies of the Middle East. In the foundation myth of Western civilization, the Creation Story of Genesis tells agriculturalists why they are here. After creating the world, plants, and animals, God made humans in his own image and granted them "domination over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth."[52] God ordered humans to multiply and "have domination over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth."[53] God gave these early agricultural people all living things—the herbs, trees, fruits, seeds, beasts, fowl, and crawling creatures. In turn, animals would "fear" and "dread" humans, as the natural order of things:

> *And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea.*[54]

In Genesis, there is no religious restraint in man's relation to animals and plants. Rather, it is God's will that humans should own, rule over, and exploit all living things. This divine mandate, according to Mason, "tells the sacred story of how we came to have dominion over all of nature."[55]

Over the ages, the Western Intelligentsia contributed to the biblical version of domination. A long-line of thinkers—beginning with Aristotle through Roman thinkers, to St. Augustine and St. Thomas Aquinas—heartily endorsed the theme.[56] Aquinas taught that animals have no souls. He departed sharply from hunter-thinking.[57] Western science helped pave the way for the conquest of nature. In the 1600's, Sir Francis Bacon said nature is a slave to man and can be conquered by science. Rene Descartes classified animals as dumb, unfeeling beasts that are incapable of thought, sensation, speech, or communication, animated only by machine-like reflexes. This idea freed us from moral guilt in our dealings with animals, since they are lowly, mindless beings without a soul. It severed any lingering human connection with animals and detached us from their world. As the only sentient spiritual beings on the planet, humans can treat animals and plants as they see fit. According to Mason, this opened the door for unbridled exploitation:

> *Descartes's decoupling from, and desensitizing of, nature blew away any remains of timidity or remorse a person might have in carrying out the ruthless, often violent deeds of nature conquest.*[58]

Thus, science "freed" Westerners from kinship with other living things. They could now dominate life on earth without moral restraint. Absolute human control of the living world, then, rests upon a solid religious, scientific, and philosophical foundation in Western cosmology. As Cajete observed, Western culture "disconnected itself from the natural world in order to conquer it."[59]

Carried to its logical conclusion, "dominionism" creates a "Brave New World" for animals and plants. They live in bondage, subject to the "dark side" of agriculture. We dare not think about the abject cruelty involved in mass animal husbandry, with the stomach-turning treatment of food animals in factory farms, or how untold millions of them are killed in mechanized slaughterhouses.[60] Hidden away from public view, these nightmarish animal factories are haunting places where Man's ruthless application of technology has outpaced our current ethical horizon.[61] Unlike hunter-fishers-gatherers, we are totally estranged from our food supply. Monstrous treatment of non-human life is second nature to people anesthetized by a cosmology that safely distances humans from animals and plants. We cope by thinking, "That's alright, they're only animals—*this is the natural order of things.*" This outlook assaults wild animals and plants with even less compunction; and we do not hesitate to destroy their habitat, so long as it benefits a human interest. Governor Sarah Palin chanted that mantra in 2008, when she told the American public: "You bet we will drill, baby, drill. And we will mine, baby, mine."[62]

Unfortunately, "dominionism" does not stop at animal-human relations.[63] It sometimes spills over into human relations. *If we can enslave or exploit animals, why not people?* When people view others as "animals," racism quickly surfaces. Discrimination, dispossession, and violence usually engulf vilified people who are branded as sub-human "vermin," "monkeys," "savage beasts," "pigs," "baboons," "vipers," "curs," "cockroaches," or "insects"—especially when these animal-stereotypes are reinforced by scientific racism.[64] That climate breeds injustice—racism, intolerance, and colonialism—and fosters socially-acceptable violence normally reserved for pests. In this context, animal exploitation leads to exploitation of people. It provides a mental analogue for injustice.

"Dominionism" in human relations becomes strident when fueled by the forces of colonialism. As Europe colonized the world, its notions of racial, cultural, and religious superiority joined forces with its long tradition of dominating the living world. That potent combination of forces produced one of the most destructive cosmologies in human history. It set in motion a "perfect storm" that engulfed Indigenous Peoples and the natural world. The modern legal systems of those aggressive societies have the capacity to produce manifestly unjust cases, like *Tee-Hit-Ton.*

In retrospect, we can only regret the historical aggression and great harm done to tribal peoples and habitats around the world, as human cosmologies collided during the conquest of nature in the past five hundred years. In that wake, ancient ways of life and the habitats upon which they depend are nearly extinct today. Human and biological diversity in the modern world depends upon curbing the excesses found in those legal regimes and recapturing the values, relationships, and cosmologies of the hunters, fishers, and gatherers who live in ancestral habitats. Unless the avowed goal of the modern world is to eradicate our oldest way of life, the law in each nation should justly mediate between those differences so that all of human culture can survive and co-exist. Today there

is hope that this can be achieved, because many now admire, not despise, the world's remaining hunting, fishing, and gathering cultures. Even hardened city dwellers find walks in the woods to be therapeutic. People grow lawns and gardens not because they need food, but because it somehow feels good and reconnects them, and animals bring out the humanity in autistic children when all other forms of therapy fail. Those urges promote human wellbeing and assist in recovering balance in our lives. Thus, the inbred connection to the natural world is not entirely dead, even in urban dwellers living in an industrialized land. After all, in our heart we are still Animal-people as a result of our biological upbringing, though it may dimly beat in the modern world.

To preserve the hunting, fishing, and gathering cultures, the unwarranted excesses found in agrarian societies that threaten the existence of hunters, fishers, and gatherers must be curbed by policymakers who are in a position to do so. Society must identify those excesses, reconcile differences that separate farmers from hunter-gatherers, and protect the best in both worldviews. This path offers the best hope for rekindling human spirituality after colonialism has run its course and the spiritual wells that fueled the conquest of nature have run dry. Indeed, this may be the *only* path to a more just culture in a mature nation that joins Indigenous and non-Indigenous people together for peaceable co-existence on the same planet. Against this general backdrop of the world's competing cosmologies, we journey next into in the remarkable land of the Tongass Indian tribal nations.

3. The Aboriginal Inhabitants, Cultures, and Natural Resources of *Haa Aaní.*

The Tlingit, Haida, and Tsimshian nations are rainforest tribes who reside in the great Pacific Northwest. After ten thousand years, these aboriginal hunters, fishers, and gatherers merged closely with ***Haa Aaní*** and evolved a striking culture that mirrors their habitat. In mythic times, little difference existed between early humans and the animals and fish that inhabited ***Haa Aaní***, except in form. In those days, spirits freely transformed from animal to human, and back. This metaphysical kinship relationship shaped tribal society. For example, crossing the line that sometimes divides humans from animals, the Tlingit called themselves Eagles or Ravens, and they still do. The Animal-Fish people organized into clans respectfully named after exalted animals or fish who took pity upon early humans, such as, the Killer Whale, Dog Salmon, Wolf, Frog, and Bear Clans. Together, the clans make up present-day Tlingit society and provide identity for the People.

The Tongass tribes inhabit America's largest rainforest—an area about the size of West Virginia. Tribal villages dot shorelines along the islands, bays, rivers, and fjords of southeast Alaska. This homeland forms one of richest environments on earth. It is a remarkable place inhabited by whales, salmon, moose, deer, bears, eagles, and many other creatures. Berries of all kinds grow along the streams; and the beaches provide a breadbasket of seafood. This amazing habitat produced an astounding aboriginal culture. Tsimshian fishermen, who fish in waters on and off the coast of their Annette Island Indian Reservation, set the tone for that aboriginal Pacific Northwest Coast seafaring culture. These islanders migrated to the island from nearby British Columbia in 1887 to inhabit what is the only federally recognized "Indian reservation" in Alaska, recognized by Congress in 1891. The Haida and Tlingit migrated into ***Haa Aaní*** in the earlier mists of time, perhaps 10,000 years ago. Tlingit art, architecture, dance, music, spirituality, technology, and the subsistence way of life arose from the rainforest, rivers, and sea; and they comprise a culture that reflects the rich coastal habitat nestled against snow-covered mountain peaks.

In addition to land and sea, these tribal societies are heavily influenced by the animals and plants of southeast Alaska. This influence is evident in the abstract Tlingit art forms, such as carvings, totem poles, masks, and painting style. This beautiful, animistic art is surreal, as if produced from another world. It is at once imbued with a powerful spirituality deeply-rooted in the natural world. Similarly, the hunting, fishing, and gathering way of life of Tongass tribes are also based upon the same spirituality. Tribal ties to indigenous habitat run deep, because the two are one in the same.

In 2006, the author visited ***Haa Aaní*** to see the land and visit the people involved in the *Tee-Hit-Ton* and *Kake* litigations. The trip to this enchanting place is almost impossible to describe on

paper. The waterfalls, glaciers, immense mountains, and water bodies defy description. Whales steam across the horizon, while large-sized brown bears gallop through the tidelands, among crowds of eagles feasting on salmon, not to mention the marine life that congregates along the shorelines. Here, humans talk to the trees. "The trees are alive," explained one Tlingit attorney, "you cannot cut them without asking permission before they can be used for any purpose." Even to this day, Sealaska—the Native corporation created by federal law for Southeast Alaska—holds an annual Tree Ceremony to give thanks to the spirits of the trees. I experienced Nirvana in the Chilkat River Valley, a home to every known race of salmon. In Klukwan, Tlingit women hunt moose in the bush and lead rich traditional lives, while artists carve spellbinding animals in wood. In this land, Eagles and Ravens imitate animals as they dance; and humans are engulfed by the Natural World.

4. The U.S. Forest Service's Administration of *Haa Aaní* (1908-1955).

The TNF was carved out of Indian land. In 1908, nearly every inch was owned by Tlingit clans, and their Haida and Tsimshian neighbors. Today they comprise eighteen federally-recognized Indian tribes who live within TNF boundaries. As mentioned earlier, the TNF was created subject to any existing property rights.[65] However, Indian land rights were ignored as the Forest Service began its operations. Indian rights, if any, could be determined later.

In the early years from 1908 to 1920, the major agency tasks in Alaska were to finalize national forest boundaries, reconnoiter the natural resources, and map possible dam sites, mill sites, and pulpwood possibilities.[66] A young forester, B. Frank Heintzleman (1888-1963) came to Alaska in 1918 to help inventory the forests. He would later be promoted to Regional Forester and work to limit aboriginal property rights. Ultimately, Heintlzleman became the Governor of the Territory of Alaska from 1953 to 1957.

In 1920, twenty million board feet of timber was cut, primarily along Alaskan shores.[67] President Harding called for the development of a pulp industry in Alaska.[68] The "Roaring Twenties" saw agency growth and flourishing timber sales. Visiting industrialists eyed the pulp possibilities of ***Haa Aaní***, after two staggering sales of 1.6 billion feet of timber caught their attention in 1927.[69] They wanted "a piece of the pie" before all the trees were gone.

During this period, one Tlingit man belonging to the Raven People, named William Paul (1885-1977), emerged as a prominent attorney and indigenous political leader. He brought *Tee-Hit-Ton* as a test case.[70] He was born in 1885 at Tongass Village, Alaska, into the Tee-Hit-Ton Clan. He became a charismatic orator with many accomplishments, supporters, enemies, victories, and defeats. During the 1920's, this interesting Tlingit lawyer emerged as a force. He attacked school segregation in ***Haa Aaní***; won citizenship for his people; secured the right to vote; and fought to protect salmon fishing. He helped build the Alaska Native Brotherhood ("ANB")—founded in 1912 as the nation's first Native American civil rights organization—into a potent political voice. He launched a newspaper in 1923 to press the ANB political agenda; and, in the same year, Paul was elected to the territorial legislature as the first Native legislator. These victories set the stage for a long and distinguished career in the face of great adversity.

Despite the controversy that surrounded his work, William Paul was a real hero. His many feats are all the more remarkable, because they were accomplished before the 1924 Indian Citizenship Act, at a time when Native Americans were a subjugated and demoralized race. In 1929, Paul confronted the biggest challenge of his day: The fight for Native land rights in ***Haa Aaní***. At an ANB

convention, he urged the people to fight for their land. During the 1930's, Paul lobbied for legislation authorizing land claim litigation in the Court of Claims to secure compensation for the taking of aboriginal land. A law was passed in 1935, but it required suit by a central body representative of Tlingit and Haida Indians, even though *clans* are the landowners in Tlingit society. This proviso created internal debate over the best litigation approach. At last, in the 1940's as the debate continued, Paul began filing cases to test his theory that the clans are the proper parties to litigate land rights, instead of the intertribal organization designated in the claims statute. By that time, the controversial litigator had been disbarred from the practice of law in Alaska, but he guided land rights litigation conducted by his two sons, attorneys William Paul, Jr. and Fredrick Paul.

Thus, in the 1940's a formidable Tlingit Raven emerged. William Paul would challenge Forest Service destruction of ***Haa Aaní*** and litigate to protect his way of life. Early victories sent shockwaves to agencies that were disturbing the use and possession of Tlingit land.[71] With the help of his sons, he would fight-on as the architect and star witness in the *Tee-Hit-Ton* test case, which was filed by the Paul litigation team in 1951. They would face adversity in the courts as they confronted the Forest Service managers.

In 1929, when William Paul issued the battle-cry to protect aboriginal land rights, the Forest Service frenzy to extract natural resources from ***Haa Aaní*** was at full-cry. The frantic pace slowed somewhat during the Great Depression, but quickly resumed and was in full force by the 1940s, as Regional Forester Heintzleman marched toward an empire made of pulp. By then, the agency governed a vast fiefdom. It exercised unquestioned power in the TNF to parcel out water rights, homesteads, special use permits for mines, canneries, fox farms, and to build reservoirs, pipelines, and tunnels, like an omnipotent ruler.[72]

The clash with the Indians was inevitable, as rangers made destructive sweeps into the forest from the 1930's to the 1950's to burn or destroy Native subsistence camps and remove their structures from the land. Foresters, loggers, and homesteaders often treated Indians "as trespassers on their own lands as if these lands had been abandoned or ceded."[73] In 1946, Tlingit people complained about "instances of violent confrontation" and a pattern of "being driven out due to intimidation or competition."[74] As ***Haa Aaní*** became a *de facto* colony of the Forest Service, "Government appropriation and restrictive regulation of traditional Native lands [were] a source of tension."[75] A 1944 memorandum describes timber sale procedures:

> *Exterior boundary of area is surveyed and blazed. Strips are then run through the area and a ten to twenty percent sample of the timber is cruised. Any improvements of importance on the area are readily seen, and special clauses are inserted in timber sale contracts which state measures to be used in protecting these improvements.*

Disruption of Native subsistence, land use, and occupancy was unavoidable in the rip and run operations that clear-cut into, among, and around homesites, villages, burial grounds, subsistence camps, and gardens. During the 1940's, the Tlingit Indians were still living on the land attempting to subsist.

During Regional Forester Heintzleman's Administration (1937-1953), the pitched battle began. In 1944, the Department of Interior woke up and began developing protections for aboriginal land and subsistence rights in ***Haa Aaní***. Following various petitions and hearings, Secretary of the Interior Harold Ickes issued a 1945 decision that recognized significant aboriginal land claims, together with hunting, fishing, trapping, and gathering rights, in the TNF and adjacent waters.[76] The Department resolved to establish Indian reservations on those aboriginal lands within the TNF. This proposal shocked foresters who vigorously opposed the creation of Indian reservations in their fiefdom.[77]

The Heintlzeman Administration fought to protect the agency's regime. Agency documents from this period show efforts to rally administrative, political, and public opposition against aboriginal rights, and to lobby in Washington against recognition of those rights.[78] Sounding the alarm, Heintzleman warned, "with not less than 18 Indian groups in the National Forest . . . very substantial portions of the National Forest would be split off for Indian use"—besides, aboriginal land is the best in the TNF and the rest "would hardly be worth retaining."[79] The agency argued it is "extremely improbable" that Congress would subordinate "non-Indian rights, equities and interests."[80] It opposed any relief that would disrupt progress or the "industrial possibilities" of the TNF.[81] The interdepartmental squabbling between the Interior and Agriculture Departments produced a standoff. This allowed the Regional Forester to continue timber sales in aboriginal areas in 1946 and ignore the Interior Department's determination until ordered otherwise by Congress.[82]

By 1947, the Natives were in open revolt. The ANB defiantly charged the Forest Service and pulp corporations with trespass on aboriginal lands. Even more alarming to agency big-wigs, several villages threatened the regime's timber monopoly by negotiating *Indian* contracts to sell timber on aboriginal land. The revolt caused the besieged foresters to retaliate by sending spies into the villages, interrogating the Indians, and threatening villagers with trespass actions to curtail the subversive sales.[83] In turn, the Indians *dared* the Forest Service to arrest them for exercising their property rights.[84] The tug-of-war between the Forest Service, Interior Department, ANB, and the tribal villages, scared away bewildered pulp paper companies. The Forest Service scrambled to quell the revolt which lasted into the 1950's.

In the midst of this turmoil, Paul scored a stunning legal victory in *Miller v. United States* (1947) that stopped the confiscatory rule of ***Haa Aaní*** in its tracks.[85] The Ninth Circuit's *Miller* decision affirmed the existence of congressionally-recognized aboriginal land in ***Haa Aaní*** and

ruled that it cannot be seized by the Government against the consent of Tlingit landowners without paying just compensation.[86] Unfortunately, the *Miller* rule was short-lived. It produced backlash just five months later, when Congress enacted a classic settler-state law. To combat the *Miller* decision, the lawmakers passed a Joint Resolution that authorized the Secretary of Agriculture to sell timber and land within the TNF "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title."[87] Thus, the agency could sell aboriginal timber and land, so long as the receipts were maintained in a special account "until the rights to the land and timber are finally determined." Though it took no position on the validity of Indian land rights, the ramrod measure authorized the immediate sale of their property—the involuntary sale of ***Haa Aaní***. The "final ownership determination" provision in this law was a cruel and meaningless gesture, since there would be little practical hope of recovering alienated land after the fact, much less restoring habitat destroyed by industrialists. Thus, despite tribal opposition to the 1947 act, the Forest Service succeeded in side-stepping the *Miller* decision by simply changing the rules, an easy feat for insiders in a colonized land.[88] The Supreme Court would later describe the law as a "congressionally approved taking of land."[89] This is a euphemism for confiscation. The 1947 law amounted to theft. In short, this rainforest was stolen in 1947 in a classic tale of North American colonialism.

5. The Tlingit Bring Suit in the Courts of the Confiscators.

Under the authority of the 1947 act, the agency sold 60 million board feet in 1950.[90] Pulp investors formed the Ketchikan Pulp Company and, in 1951, won a contract to buy 1.5 billion cubic feet of timber at bargain-basement prices to manufacture pulp over a fifty-year period.[91] The sweetheart deal was a long-awaited triumph. At last, Forest Service dreams of a pulpwood industry would come true.[92] The sale of all the merchantable timber would destroy an immense area in the vicinity of Wrangell, Alaska, the aboriginal homeland of William Paul and the Tee-Hit-Ton Clan. They would resist confiscation of their property by filing *Tee-Hit-Ton v. United States* to test the nature and extent of Tlingit land rights in Alaska.

The early 1950's were bad times for Indian test cases. Those years marked the low point in Native American life, when Indian tribes faced a legal, social, economic, political, and cultural nadir.[93] At this time, the national Indian policy worked to terminate federal Indian trust responsibilities, extend state power over Indian reservations, and assimilate Indians into mainstream society. The last thing on Washington's mind was to protect a divergent way of life, much less aboriginal property rights in far-away ***Haa Aaní***. The Supreme Court began the twentieth century with the Law of Colonialism, in cases like *Lone Wolf v. Hitchcock* (1903) and *United States v. Sandoval* (1913).[94] In 1955, the Supreme Court could hardly be expected to row against the tide. Justice Stanley Forman Reed wrote the *Tee-Hit-Ton* opinion. His views reflected the times. In 1946, he wrote that Indians who occupy their aboriginal homes, without definite congressional recognition of their right to do so, are like "paleface squatters on public lands without compensable rights if they are evicted."[95]

The Supreme Court took the case to resolve two conflicting decisions concerning Tlingit land rights. The decision in the court below held that no rights exist because Congress has not recognized aboriginal land rights in Alaska, whereas *Miller* held several laws confirm such rights.

In the Supreme Court, the Indians advanced two arguments. First, they claimed absolute ownership of the land by virtue of aboriginal occupation since time immemorial. This original Indian title in Alaska is just like ordinary real estate owned by white people, despite the doctrines in *Johnson v. M'Intosh* (1823) and its progeny that espouse inferior Indian land rights. They argued that *Johnson*'s doctrines of discovery and conquest are inapplicable in Alaska, because the historical, political, and legal background in Alaska is fundamentally different from that of the lower forty-eight states. After all, Russia never "conquered" any Alaska tribes; and the Tlingit possess a highly-developed culture and well-defined system of land ownership. Alternatively, the litigators claimed Tlingit land rights under two federal laws pertaining to Alaska that confirm aboriginal possessory interests in land, as

recognized by the Ninth Circuit in the *Miller* case.[96] A congressionally-recognized possessory right to the land arises under the Alaska Organic Act of 1884:

> *Indians . . . shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them [with title to be acquired in a manner prescribed by] future legislation by Congress.*[97]

Similarly, the Act of June 6, 1900 reads: "Indians . . . shall not be disturbed in the possession of any lands now actually in their possession."[98] Under either theory of land ownership, William Paul's team argued that Tlingit property may not be taken against their will without just compensation; and, thus, the sale of timber from Tlingit land is an unconstitutional taking. The Government denied all of the Indians' contentions.

The Supreme Court rejected the Tlingit arguments. It went to great lengths to extend the usual apologies about injustice and avoid blame that are commonly found in unjust decisions. First, the opinion repeats *Johnson*'s excuse: "Conquest gives a title which the Courts of the Conqueror cannot deny."[99] To avoid blame for injustice under the doctrine of conquest, the Court hid behind a presumption of good faith:

> *It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race.*[100]

In any event, justice is irrelevant and immaterial, because "the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy and thus is not a matter open to discussion."[101] Even though justice and morality are beyond the pale when it comes to dispossessing Indians, we should not be alarmed for "American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization" and they would like to "share the benefits of our society" with Indians.[102] (That good will, however, does not "allow the tribes to recover for wrongs." It is extended only as "a matter of grace, not because of legal liability."[103]) After the Court upheld the outright confiscation of Tlingit property, it defended its ruling with a bald claim that, "Our conclusion does not uphold harshness as against tenderness toward the Indians."[104] Despite his platitudes, it is hard to hide manifest injustice.

The Court held that Indian land rights are subject to the doctrines of discovery and conquest. Under those doctrines, those rights disappear "after the coming of the white man" and thereafter Indians can inhabit land only with "permission from the whites."[105] Justice Reed equated discovery with conquest. He reasoned that (1) conquest is a legitimate means to extinguish aboriginal title; (2) the Government conquered all Indian tribes, as a matter of fact—either through warfare or by forcing treaties upon Indians involuntarily; and therefore (3) all aboriginal title in the United States

had been extinguished by conquest prior to the *Tee-Hit-Ton* case, with the sole exception of any lands that Congress had chosen to grant back to the Indians.[106] The opinion states:

> *Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food, and trinkets, it was not a sale but the conqueror's will that deprived them of their land.*[107]

Under this rationale, conquerors do not have to compensate Indian tribes when they seize aboriginal land, because "original Indian title" is not a property right in a conquered land; and any Indian occupancy of aboriginal homelands that is "not specifically recognized as ownership by action of Congress, may be extinguished by the Government without compensation."[108] The Court rejected the argument that these nefarious legal doctrines do not apply in Alaska.[109] In addition, contrary to the holding in *Miller*, the *Tee-Hit-Ton* Court found "nothing to indicate any intention by Congress to grant to the Indians any permanent rights in the lands of Alaska occupied by them by permission of Congress."[110] Consequently, Tlingit property rights "may be extinguished by the Government without compensation" just like Indians in the lower forty-eight states.[111] Relief for the Indians, if any, must come from Congress, not the courts—"no other course would meet the problem of growth of the United States."[112]

Federal Indian law hit rock bottom with the 1955 decision. It sanctioned one of the greatest land heists in twentieth century American legal history. In the eyes of the law, outright confiscation of land is normally considered abhorrent, because it is prohibited by the Bill of Rights. Consequently, legal principles that sanction outright confiscation are suspect, as they come from the bottom of the barrel infected with nefarious notions of raw conquest and abject colonialism.

In the wake of *Tee-Hit-Ton*, the Forest Service stepped-up timber sales in the TNF. In 1959, a second pulp mill opened in Sitka, Alaska. The decision unleashed habitat destruction throughout ***Haa Aaní*** by the Government with impunity. The way of life of Tlingit hunters, fishers, and gatherers was placed into jeopardy as the dispossessed Indians helplessly watched their homeland being turned into paper and pulpwood. Public concern mounted in the ensuing decades as clear-cutting began to injure the habitat and the salmon runs.[113]

In the midst of this dispossession and environmental destruction, the Tongass tribes lost control over the exercise of rights vital to their tribal hunting, fishing, and gathering existence. In the 1962 *Kake* decision, the Supreme Court held that the exercise of those aboriginal rights would be controlled by the state. The newcomer became owners and stewards of the land, as well as the regulators of the Indian way of life. Colonization of ***Haa Aaní*** was complete.

6. Efforts to Overcome the Impacts of *Tee-Hit-Ton* and *Kake*.

Several vital challenges lay ahead for the Tongass tribes during the modern era of federal Indian law. First, the Indians were determined to obtain damages for the taking of their property. Second, they needed to establish a land base in their homeland. Third, they needed legal protections for their hunting, fishing, and gathering existence and to regain self-government in ***Haa Aaní***. Fourth, the tribes needed to protect indigenous habitat in the TNF. Finally, these primal cultures needed to secure a reliable body of law to protect their right to exist as distinct cultures in a modern-day settler state, as a matter of cultural survival. This would be a tall order for tribal leaders who followed in William Paul's footsteps.

Compensation for taking ***Haa Aaní*** came from two sources. In 1968, the Tlingit and Haida received $7,546,053.80 in damages in *Tlingit and Haida Indians v. United States* (1968), as compensation for aboriginal land "taken from them by the United States without payment of any compensation therefore."[114] This action was filed under the 1935 act mentioned earlier, obtained by William Paul, which gave the Court of Claims authority to award damages for Tlingit and Haida land claims.[115] In 1971, Congress contributed additional millions in compensation, as part of an elaborate settlement of all aboriginal land claims and hunting and fishing rights in Alaska. Congress extinguished those rights in the Alaska Native Claims Settlement Act of 1971 (ANCSA) in exchange for $962.5 million and forty-five million acres distributed to Native corporations.[116] The Tongass tribes received their share of these assets, and over a half-million acres of their ANCSA lands came from the TNF.[117] The implementation issues and current concerns surrounding Native land entitlements under federal law some thirty-eight years later will be detailed at the upcoming congressional hearings.

Furthermore, the Indians of ***Haa Aaní*** would be governed by their federally recognized tribes and villages, with a village and regional corporate structure created by ANCSA. The rule of ***Haa Aaní*** as a *de facto* Forest Service colony came to an end, though many Native Alaskan challenges remain to protect tribal existence in a land where aboriginal natural resources are mostly owned and controlled by others under the *Kake* decision and its progeny.[118] Governance and control over natural resources which are vital to the these cultures may also be detailed in the congressional hearings.

The 1962 *Kake* decision turned control over aboriginal hunting, fishing, and gathering rights to the State of Alaska. ANCSA extinguished those aboriginal rights in Alaska altogether. However, at the same time Congress expected the Secretary of the Interior to protect traditional hunting and fishing practices.[119] In 1980, a statutory scheme for protecting traditional Native subsistence

practices on public lands—including the TNF—was created by the Alaska National Interest Lands Conservation Act (ANILCA).[120] As a result of these statutory protections, the Tongass tribes are able to exercise some measure of their aboriginal existence and practice cultural self-determination in our modern society, as a positive first step in achieving the UNDRIP standards set in 2007. To some degree, the federal statute permits the Indians continue to hunt, fish, and gather, but it may fall short of preserving an ancient, but endangered indigenous subsistence lifestyle and cosmology that is under any measure a living treasure, because it provides a rare link to the human past in a modern-day world. The barriers and impediments to the exercise of rights vital to the survival of these cultures will be detailed by their representatives in the Congressional hearings.

ANICLA also curbed rampant timber sales in the TNF that were destroying indigenous habitat. The law created fourteen wilderness areas in the national forest, totaling over 5 million acres. Vital TNF habitat protection increased in 1990, when the Tongass Timber Reform Act designated five additional wilderness areas and several roadless areas in order to retain the wilderness characteristics of the TNF. The last pulp mill closed in 1997. By 2001, employment in the timber industry had fallen to just 780 jobs. Today, 13.2 million acres of the 16.8 million acre TNF are in a protected, non-development status. In the end, the Forest Service dream built upon "rip and run" clear-cutting operations failed.

Any logging done today on Native land in TNF borders is carried out by Native villages or corporations at a pace of development controlled by the Native peoples themselves, and it is done commensurate with the oldest way of life known to the human race, for the indigenous habitat of ***Haa Aaní*** maintains viable populations of fish, wildlife, and plants necessary to support the Tlingit way.[121] Today, traditional food obtained from tribal habitat remains at the center of Tlingit culture. However, challenges remain in accessing those resources and protecting the habitat necessary to produce them.

These significant successes since the *Tee-Hit-Ton* and *Kake* decision would not have been possible without intervention by Congress. As interpreted by Justice Reed, the doctrines of federal Indian law lacked sufficient vitality to protect a lifeway dependent upon tribal habitat in ***Haa Aaní***. To their credit, lawmakers filled the void with statutory protections. Some of that intervention was prompted by the need to resolve aboriginal claims in Alaska and to protect the environment of a magnificent region by a nation that is still searching for a land ethic to co-exist peacefully with the natural world. The Endangered Species Act ("ESA") represents a major shift in "dominionist" thinking, described above. The ESA is the most comprehensive law for the preservation of endangered species ever enacted. It provides effective means to conserve critical ecosystems needed by endangered or threatened species to survive.[122] Unfortunately, this watershed statute is not triggered until a species falters on the brink of extinction, and then it acts to place them on a life-support system; whereas, the hunting, fishing, and gathering way of life in the Pacific Northwest

depends upon healthy habitats that produce viable animal and plant populations. However, American law and social policy may be evolving in that direction. Significantly, federal law now recognizes that the "[m]ajor cause of extinction is destruction of natural habitat;" that animals and plants have intrinsic, incalculable value; and that the preservation of endangered species from extinction is more important than the projects of man.[123] It is but a short step for our society to protect animals and plants in their natural habitats *before* they become endangered, just like the hunting, fishing, and gathering cultures have done since the dawn of time. At that point, our human family will come full circle with life on earth.

This is not simply an environmental issue; and environmental groups are not the new "landlords" in ***Haa Aaní,*** even though their voice is a constructive force in southeast Alaska. The effort to protect indigenous habitat in ***Haa Aaní*** so that the Native cultures will continue to exist and thrive raises much larger human rights, cultural, and anthropological issues; and it will require Congressional attention to save the endangered tribal cosmologies, worldviews that will be critical to our nation in forming a real American land ethic necessary to protect the blessings of Mother Earth. The need for Congress to protect indigenous habitat is made clear by the UNDRIP. The UN asks each modern nation to protect that habitat when Native people depend upon it to carry on their way of life. Article 26 provides: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and it requires legal protections for those lands, territories, and resources. Article 28 asks nations to affirmatively help Indigenous Peoples to conserve and protect that habitat. While not legally binding on the United States, the historic declaration suggests that our nation has an obligation to strengthen laws to protect indigenous habitat in ancestral areas that are presently outside of tribal control. International tribunals and the high courts in other countries are already beginning to recognize and extend similar habitat protection. For example, in *Awas Tingni v. Nicaragua* (2001), the Inter-American Court of Human Rights held that Nicaragua violated tribal property rights by granting a logging concession to a foreign company to log traditional lands.[124] The court held that there is an international human right of Indigenous peoples "to the protection of their customary land and resource tenure."[125] In *Maya Indigenous Community of Toledo District v. Belize* (2000), the Inter-American Commission of Human Rights recommended that logging and oil concessions on traditional tribal land be suspended to protect Mayan land rights.[126] It determined that Belize failed to protect that habitat. These international developments suggest that the *Tee-Hit-Ton* and *Kake* mindsets are outmoded and Congress much uplift federal Indian law to comport with the United Nations' minimum standards.

7. Conclusion.

The conquest of Alaska has run its course. Most Americans seek not to look at the land in the twenty-first century like colonists bent upon exploitation and dispossession, but rather as a society that has joined indigenous and non-indigenous peoples together in a more just culture. With the passage of federal legislation during the modern era of federal Indian law, we can glimpse the hopes of the next generation—Alaskans at peace with the Natural World and all of its inhabitants. Given the hardships imposed by *Tee-Hit-Ton* and *Kake*, we are fortunate that the rainforest tribes of ***Haa Aaní*** managed to persist, and not wink out of existence like so many other tribal cultures in the world during the twentieth century. ***Haa Aaní*** is still inhabited by Eagles and Ravens. Everyone can celebrate the struggle to protect America's greatest rainforest. Today there are millions who love the land and admire the hunting, fishing, and gathering ideals of the Pacific Northwest Indians. Their way of life is everyone's legacy. Let us arise, take stock of the federal laws and social policies that impact Native southeast Alaska, and chart our course for the future.

Endnotes

1 Walter R. Echo-Hawk is an attorney with the Crowe & Dunlevy law firm of Oklahoma and a Justice on the Supreme Court of the Pawnee Nation. Previously, he served as a staff attorney for thirty-five years for the Native American Rights Fund (NARF) with a wide range of federal Indian law experience.

2 Personal Communication with the author. Walter A. Soboleff is a venerated Tlingit elder who turned 100 years old on November 14, 2008.

3 Alaska Native Claims Settlement Act of 1971, 43 U.S.C. §§ 1602-1628.

4 *See, generally*, Eugene Linden, "Lost Tribes, Lost Knowledge," *Time Magazine* (Sept. 23, 1991), pp. 46-56. Linden was deeply concerned about the "cultural holocaust" confronting the world's tribes, because when these cultures die, "vast archives of knowledge and expertise are spilling into oblivion, leaving humanity in danger of losing its past." *Id.* at 46.

5 United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), U.N.G.A. Res. 61/295, U.N. H.R.C., 61st Sess., Annex, Agenda Item 68, U.N. Doc. A/RES/61/295 (2007). The UNDRIP is reproduced at: www.narf.org/events/07/declaration.pdf. *See also*, "United Nations Adopts Historic Declaration On The Rights Of Indigenous Peoples," NARF L. Rev., V. 32, No. 2 (Summer/Fall 2007), pp. 1-17. Article 43 provides: "The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."

6 *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

7 *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *See also*, Blue Clark, *Lone Wolf v. Hitchcock*: Treaty Rights & Indian Law at the End of the Nineteenth Century (Lincoln & London: University of Nebraska Press, 1999); "Symposium: *Lone Wolf v. Hitchcock*: One Hundred Years Later," 38 Tulsa L. Rev. 1 (2002).

8 Lawrence Rakestraw, *A History of the United States Forest Service in Alaska* (USDA Forest Service, 2002) at 17 (citing missionary correspondence to the Secretary of the Interior).

9 *Tee-Hit-Ton v. United States*, 348 U.S. 272 (1955).

10 *Id.* at 289-290.

11 U.S. Const., Fifth Amendment.

12 *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962).

13 *Id.* at 64.

14 Robert N. Clinton, "Redressing the Legacy of Conquest: A Vision Quest for a Decolonized Federal Indian Law," 46 Arkansas L. Rev. 77, 86 (1993).

15 Kirkpatrick Sale, *The Conquest of Paradise: Christopher Columbus and the Columbian Legacy* (New York: Alfred A. Knopf, 1990).

16 *Johnson v. M'Intosh*, 21 U.S. 543, 590-591 (1823).

17 Walter Echo-Hawk, "Genocide and Ethnocide in Native North America," in John Hartwell Moore (ed. in chief), *Encyclopedia of Race and Racism, Vol. 2, g-r* (Thompson Gale, 2007), p. 48; Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1493* (Norman: University of Oklahoma Press, 1987).

18 *See, generally*, Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (London, New York: W. W. Norton & Co., 2005).

19 *Brown v. Board of Education*, 347 U.S. 483 (1954).

20 It was most recently cited with approval by the *Supreme Court in Idaho v. United States*, 533 U.S. 262, 277 (2001).

21 Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1603 *et seq.* ("ANCSA") (extinguishing all Aboriginal land claims in Alaska in exchange for various forms of compensation); Indian Claims Commission Act of 1946, 62 Stat. 683 ("ICCA") (creating a special commission to hear native claims against the United States.)

22 Huston Smith, *The World's Religions: Our Great Wisdom Traditions* (HarperSanFranscico, 1991) at 376. This book contains a great discussion on the nature of primal religion.

23 Mircea Eliade, *The Myth of the Eternal Return* (Princeton Univ. Press, 1971) (trans. by Willard R. Trask).

24 Gregory Cajete, *Native Science: Natural Laws of Interdependence* (Santa Fe: Clear Light Publishers, 2000).

25 *Id.* at 94.

26 *Id.* at 188 (citations omitted).

27 *See*, Articles 18-20, 24-29, 31-32, 38-40, UNDRIP.

28 *See*, United Nation's Convention on the Prevention of and Punishment of the Crime of Genocide (1948).

29 Robert Hitchcock and Tara Tweed, "Physical and Cultural Genocide of Various Indigenous Peoples," in Samuel Totten, et al (eds.), *Century of Genocide: Eyewitness Accounts and Critical Views* (New York: Garland Publishing, 1997), p. 378.

30 *Tee-Hit-Ton*, 348 U.S. at 287.

31 *Id.* at 286.

32 Letter from Claude R. Wichard, Secretary of Agriculture to Secretary of the Interior (February, 5, 1944), p. 2 (author's files).

33 Walter R. Goldschmidt and Theodore H. Haas, *Haa Aanî: Tlingit and Haida Land Rights and Use* (1946, reprinted by University of Washington Press, Seattle and London, Sealaska Heritage Foundation: Juneau, 2000), Thomas F. Thornton, ed. See also, Thomas R. Berger, *Village Journey: The Report of the Alaska Review Commission* (Hill and Wang: New York, 1985); Richard G. Newton and Madonna L. Moss (eds.), *Haa Atxaayi Haa Kusteeyix Sitee, Our Food Is Our Tlingit Way of Life: Excerpts From Oral Interviews* (USDA Forest Service, 2005).

34 Richard B. Lee and Irven DeVore (eds.), *Man The Hunter* (Chicago:Aldine Atherton, 1966).

35 *See, e.g.*, William S. Laughlin, "Hunting: An Integrating Biobehavior System and Its Evolutionary Importance," in Lee and DeVore (1966) at 305; Barry Lopez, *Of Wolves And Men* (New York, London, Toronto, Sydney: Scribner, 1978) at 90-97; Smith (1991) at 372-377; Eliade (1971); Cajete (2000) at 156-165.

36 Lee and Devor (1966).

37 *See* note 24, *supra.*

38 Goldschmidt and Haas ((2000) at 19-26.

39 "Toharu" possess supernatural power in the Pawnee belief system. They play several ceremonial roles in Pawnee ceremonies, such as the Pipe Dance, Kitkahaki Dance, and Young Dog Dance. The plant world is one of the powers who make life possible, and plants helped early humans understand the meaning of sacred things. *See, e.g.*, Alice C. Fletcher, *The Hako: Song, Pipe, and Unity in a Pawnee Calumet Ceremony* (Lincoln and London: University of Nebraska Press, (1904) 1996), p. 31.

40 Lopez (1978) at 90-95.

41 Quoted in Paul Goble, *All Our Relatives: Traditional Native American Thoughts about Nature* (Bloomington, Indiana: World Wisdom, Inc., 2005).

42 *See*, George A. Dorsey, *The Pawnee Mythology* (Lincoln and London: Bison Books Edition, (1906) 1997) (based on turn-of-the century interviews with Pawnee elders); James R. Murie, *Ceremonies of the Pawnee* (Lincoln and London: University of Nebraska Press, 1981), Douglas Parks (ed.); George Bird Grinnell, *Pawnee Hero Stories and Folk Tales* (Lincoln: University of Nebraska Press, (1889) 1961).

43 Quoted in Goble (2005).

44 "Death of the Flint-Monster: Origin of Birds," told by Curly-Head between 1899-1902 in George A. Dorsey (ed.), *Traditions of the Skidi Pawnee* (Boston and New York: American Folklore Society, 1904), pp. 24-30.

45 Told by the author's uncle, Myron Echo Hawk, and recorded by Roger Echo-Hawk.

46 Jim Mason, *An Unnatural Order: Uncovering the Roots of Our Domination of Nature and Each Other* (New York, London, Toronto, Sydney, Tokyo, Singapore: Simon & Schuster, 1993), 21-22.

47 Quoted in Goble (2005).

48 Mason (1993) at 21-22.

49 *Id.* at 25.

50 Cited by Charles Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (New York: Lantern Books, 2002), p. 3 (quoting Sigmund Freud, "A Difficulty in the Path of Psycho-Analysis," (1979) in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (London: Hogarth Press, 1955), Vol. XVII, 130 (James Strachey, trans.)).

51 *Id.* (quoting Sigmund Freud, "Fixation to Traumas—The Unconscious" in Introductory Lectures on Psychoanalysis—Part III (1916-1917), Lecture XVIII, *Complete Works*, Vol. XVI, 285).

52 Genesis (1:26).

53 Genesis (1:28).

54 Genesis (9:2).

55 Mason (1993) at 28.

56 *Id.* at 33-49; Lopez (1978) at 147.

57 North America hunters believe animals have souls. In 1918, Bear-With-Paws (Lakota) stated: "The bear has a soul like ours, and his soul talks to mine in my sleep and tells me what to do." Pete Catches (Lakota) explained: "All animals have power, because the Great Spirit dwells in all of them, even a tiny ant, a butterfly, a tree, a flower, a rock." Thus, the Sioux say, "Do not harm your weaker brothers, for even a little squirrel may be the bearer of good fortune." *See*, quotes in Goble (2005).

58 Mason (1993) at 38.

59 Cajete (2000) at 211.

60 Patterson (2002).

61 *See*, Jim Mason and Peter Singer, *Animal Factories: The Mass Production of Animals for Food and How it Affects the Lives of Consumers, Farmers, and the Animals Themselves* (New York: Crown Publishers, 1980)

62 Scott Sonner (Associated Press Writer), "Palin Appeals to Nevadans to Help Swing Election," San Jose Mercury News (Nov. 4, 2008) (http://www.mercurynews.com/news/ci_10893972).

63 Patterson (2002).

64 *Id.* at 25-50.

65 The proclamation establishing the TNF provided that nothing shall be construed "to deprive any person of any valid right" secured by the Treaty with Russia or any federal law pertaining to Alaska.

66 Rakestraw (2002) at 70, 77.

67 *Id.* at 74.

68 *Id.* 83.

69 *Id.* at 112.

70 Stephen Haycox, "*Tee-Hit-Ton* and Alaska Native Rights," in *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West* (Canadian Plains Research Center, University of Regina and Ninth Judicial Circuit Historical Society, 1992), p. 128-143. Paul's bibliography is published in Nora Marks Dauenhauer and Richard Dauenhauer (eds.), *Haa Kusteeyi, Our Culture: Tlingit Life Stories* (Seattle, London, Juneau: University of Washington Press and Sealaska Heritage Foundation, 1994), pp. 503-524.

71 See, *Miller v. United States*, 159 F.2d 997 (9th Cir. 1947) and discussion *infra*.

72 The agency asserted the authority of the Regional Forester to do all these things. *See, e.g.*, Regional Forester Memorandum, C. M. Archbold, October 9, 1953 (Author's files). *See also*, Rakestraw (2002).

73 Goldschmidt and Haas (1998) at xvii-xviii.

74 *Id.*

75 *Id.*

76 "Claims of the Natives of Hydaburg, Klawock, and Kake, Alaska," (Department of the Interior, July 27, 1945) (author's files).

77 *See, e.g.*, Letter from Secretary of Agriculture Claude R. Wickard to Secretary of the Interior Harold L. Ickes (Feb. 5, 1945) (author's files); Memorandum from Lyle F. Watts, Chief, Forest Service to Secretary of Agriculture (Dec. 11, 1944) (author's files), p. 2.

78 *See, e.g*, Memorandum from B. Frank Heintzleman, Regional Forester, to Chief, Forest Service (June 11, 1946) (relaying territorial opposition to aboriginal rights in the TNF and legislative efforts to extinguish those rights); Memorandum from B. Frank Heintzleman, Regional Forester, to Chief, Forest Service (Oct. 30, 1946) (author's files) (passing along helpful political information about local opposition to aboriginal rights in the TNF); Letter from B. Frank Heintzleman to Region 10 (May 27, 1947) (author's files) (Complaining about Tlingit opposition at a congressional hearing to H.R. 204, which would authorize timber sales in the TNF regardless of any aboriginal property right claims);

79 Memorandum from Regional Forester B. Frank Heintzleman to Chief, Forest Service (Nov. 5, 1945) (author's files); Memorandum from Regional Forester B. Frank Heintzleman to Chief, Forest Service (Oct. 17, 1947) (author's files) (aboriginal land is located in "the most commercially useful zone of the forest.");

80 Letter from Secretary of Agriculture Claude R. Wickard to Secretary of the Interior Harold L. Ickes (Feb. 5, 1945) (author's files), p. 3.

81 *Id.*

82 Memorandum from B. Frank Hentzleman, Regional Forester, to Chief, Forest Service (June 25, 1946) (author's files) (calling attention to Indian protects to a timber sale in aboriginal land recognized by the Interior Department: "We can expect frequent protests . . . until the whole question is finally settled by Congressional action," but in the meantime "it would be inadvisable to try to compromise with the Interior Department in any of these cases at this time."); Memorandum from B. Frank Hentzleman, Regional Forester, to Division Supervisors, Southern and Petersburg (June 12, 1946) (author's files) ("I cannot see that we are justified in suspending any form of Forest Service administration while awaiting a higher decision in the matter."); Confidential Memorandum of C.M. Archbold, Division Supervisor (July 1, 1946) and attachments (passing along confidential orders from Hentzleman to be more careful when awarding special use permits that affect Indian structures, but continue making timber sales in designated areas); Letter from Don C. Foster, General Superintendent, to William A. Brophy, Commissioner of Indian Affairs (June 21, 1946) (author's files) (complaining that the Forest Service sold 1,300,000 feet of timber in an area set aside by the Secretary of the Interior for the aboriginal uses of the Kake community.)

83 Memorandum from B. Frank Hentzleman, Regional Forester, to Division Supervisors (Oct. 20, 1947) (author's files) (ordering the Supervisors to investigate any Indian timber sale as a high priority for possible trespass actions); Confidential and Personal Letter from "Arch" (presumably C.M. Archbold, Division Supervisor) to "Frank" (presumably Hentlzeman) (Oct. 17, 1947) (author's files) ("We will try to stop such cutting [at Kake and Klawock] by trespass proceedings."); Memorandum from C. M. Archbold,

Division Supervisor, to Regional Forester (Dec. 9, 1947) (author's files) (reporting on timber cutting contract between the Kaasan community and the Timber Development Corp.); Memorandum from A. W. Hodgman, Forest Manager, to C. M. Archbold, Division Supervisor (Dec. 8, 1947) (author's files) (reporting investigation on a possible Tlingit sale of timber on aboriginal land claimed by the Kaasan Village); Letter from Lyle F. Watts, Chief, to Georgia Hardwood Timber Company (Dec. 10, 1947) (author's files) (asserting "the Indians have no authority to sell the timber on the national forest land.").

84 Statement of Thomas L. Jackson, Timber Committeeman of the Kake Indian Village (undated) (author's files).

85 *Miller v. United States*, 159 F.2d 997 (9th Cir. 1947).

86 *Miller* held the government is liable for taking Tlingit tidelands. It reached this result in a round-about way. The court first recognized aboriginal title, then ruled that the Russia Treaty extinguished it. Nonetheless, the court still awarded damages, because it determined that Congress has repeatedly recognized and protected a Tlingit right to possess traditional lands. For example, the Alaska Organic Act of 1884 provides that Indians "shall not be disturbed in the possession of any lands actually in their use or occupancy." *Miller* sent shockwaves to the Forest Service, because the disturbance of Tlingit land use and possession was at the core of its administration of the TNF.

87 Joint Resolution, 61 Stat. 920 (August 8, 1947).

88 Heintzeman's letter to Region 10 (May 27, 1947) (author's files) (Reporting on the congressional hearing on the bill and complaining about Tlingit opposition) suggests that he went to Washington D.C. to lobby for the measure.

89 *Tee-Hit-Ton*, 348 U.S. at 275.

90 Rakestraw (2002) at 127.

91 *Id.*

92 Timber-hungry Japanese would establish a second pulp mill at Sitka in 1959. *Id.* at 128.

93 Wilkinson (2005).

94 *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *United States v. Sandoval*, 231 U.S. 28 (1913).

95 *United States v. Alcea Band of Tillamooks et al.*, 329 U.S. 40, 58 (1946) (Reed, J., dissenting).

96 The Tlingit brief in the Supreme Court is reproduced at 1954 WL 72830.

97 Sec. 8, Organic Act for Alaska of May 17, 1884, 23 Stat. 24.

98 Sec. 27, Act of June 6, 1900, 31 Stat. 321, 330.

99 *Tee-Hit-Ton*, 348 U.S. at 280.

100 *Id.* at 281 (quoting *Beecher v. Wetherby*, 95 U.S. 517, 525).

101 *Id.* (quoting *Beecher*).

102 *Id.*

103 *Id.* at 282.

104 *Id.* at 290-291.

105 *Id.* at 279.

106 Newton (1980) at 1241-1242.

107 *Tee-Hit-Ton*, 348 U.S. at 289-90.

108 *Id.* at 288-289.

109 *Id.* at 278. The Court took the "all-Indians-are-alike" approach, even though the Tlingit lived in major permanent communities and enforced sanctions for violating their property rights and extended them to the early settlers.

110 *Id.* at 288.

111 *Id.* at 289.

112 *Id.* at 290.

113 Rakestraw (2002), pp. 139-145, 155-176.

114 *Tlingit and Haida Indians v. United States*, 389 F.2d 778, 791 (Court of Claims, 1968).

115 49 Stat. 388.

116 43 U.S.C. §§ 1601 et seq. The complex statutory settlement scheme is described in *Cohen's Handbook of Federal Indian Law* (Lexis Nexis, 2005 ed.), § 4.07[3].

117 Rakestraw (2002), pp. 159-160.

118 For example, the Tlingits are still implementing their land entitlements under ANCSA, nearly 30 years later. In addition, they must now contend with some environmentalists who consider ***Haa Aaní*** their new fiefdom, as well as Forest Service hold-outs who harbor old notions of conquest and dominionism. However, the days of absolute rule of ***Haa Aaní*** by the Forest Service as a *de facto* colony are gone.

119 *Cohen's* (2005 ed.), § 4.07[3][a]. The extinguishment of aboriginal hunting, fishing, and gathering rights by ANCSA was preceded by the Supreme Court decision in *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), which subjected Tlingit trap fishing to state regulation.

120 16 U.S.C. §§ 3101 *et seq.* That complex scheme and the enormous on-going efforts to implement it are described in *Cohen's*, *supra*, § 4.07[3][c].

121 Record of Decision entered by Regional Forester Dennis E. Bschor (Feb. 24, 2003), pp. 19, 26.

122 *See, Tennessee Valley Authority v. Hill*, 437 U.S. 154, 180 (1978).

123 *Palila v. Hawaii Dept. of Land and Natural Resources*, 471 F. Supp. 985, 994995 (D. Haw. 1979). *See, Tennessee Valley Authority v. Hill*, 437 U.S. at 168-169 (the social and scientific costs attributable to the disappearance of a species cannot be calculated); *Kandra v. United States*, *supra* (extinction is the *ultimate harm*); *State of Ohio v. U.S. Dept. of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (animals have value that cannot be captured by their monetary worth); *Palila v. Hawaii Dept. of Land and Natural Resources*, *supra* (endangered species are of the utmost importance to mankind); *Rio Grande Silvery Minnow v. Keys*, 333 F.3d 1109 (10th Cir. 2003) (Endangered species take precedence over the "primary mission" of federal agencies.)

124 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, [2001] IACHR Petition No. 11 577.

125 *Id.*

126 *Maya Indigenous Community of the Toledo District v. Belize*, Case No. 12.053, Report No. 40/04, Inter-Am. C.H.R. OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004), ¶ 1, (http://www1.umn.edu/humanrts/cases/40-04.html).

WRITTEN TESTIMONY OF THE
REPRESENTATIVES OF THE
SOUTHEAST ALASKA LANDLESS NATIVE COMMUNITIES

prepared for the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING

Regarding

S. 2554 - Alaska Native Landless Equity Act

February 26, 2026

Chair Barrasso, Ranking Member Cortez Masto, and members of the Subcommittee:

We appreciate the opportunity to submit written testimony regarding S. 2554, the Alaska Native Landless Equity Act. This legislation would redress an historic injustice in the context of the 1971 settlement by Congress of Alaska's aboriginal lands claims. We look forward to answering any questions that the Committee or Committee Members may have about our communities, our struggle for justice, or this legislation.

Background and Context for Legislation

S. 2554, the Alaska Native Landless Equity Act, would redress the omission of five Alaska Native communities from the settlement of aboriginal land claims in Alaska.

When Congress settled the land claims of the Alaska Native people in 1971, Congress elected to establish 12 "regional" Alaska Native Corporations and approximately 200 "village" and "urban" Alaska Native Corporations throughout the state. Through this legislation—the Alaska Native Claims Settlement Act (ANCSA)—Congress transferred more than 44 million acres of land to the new Alaska Native Corporations, and these Native Corporations were directed by Congress to provide for the economic, social, and cultural well-being of their Alaska Native owners.

For all regions of Alaska except the Southeast region, Native villages presumed to be eligible to establish Village Corporations were listed in Section 11 of ANCSA. Section 11 also included language allowing any village not listed to appeal their status to the Secretary of the Interior. Because the U.S. Court of Claims had previously authorized a small (and partial) monetary settlement for the Tlingit and Haida people of Southeast Alaska in 1968, Congress addressed the

Southeast villages in a separate section of ANCSA—Section 16. Ten Southeast Alaska villages were listed in Section 16 and—due to the partial settlement in 1968—each village listed in Section 16 was limited to receiving just one township (23,040 acres) of land. (Native communities in other regions of Alaska were authorized to select between three to seven townships of land.) However, unlike Section 11, Section 16 did not include language authorizing any village not listed to appeal their status to the Secretary.

Our five communities—the Alaska Native communities that predated the current municipalities of Haines, Ketchikan, Tenakee, Petersburg, and Wrangell—were left off the list of Native communities authorized to establish Alaska Native Corporations, despite the fact that nearly 3,500 Alaska Native individuals were enrolled to our communities. Three of our communities appealed to the Department of the Interior, but the Department concluded that Section 16 of ANCSA did not establish a right of appeal for Southeast communities. Our only recourse was to return to Congress to seek legislation to be included in ANCSA.

In an attempt to understand why our five communities were left out of ANCSA, Congress in 1991 directed the Department of the Interior to produce a study examining the historical and legislative record relevant to each of our five communities. The Department contracted with the University of Alaska's Institute of Social and Economic Research (ISER) to produce a report. The 128-page ISER report, published in 1994, outlines the long history of each of our communities as a traditional Alaska Native community. The report provides no policy recommendations but makes clear that Congress did not give a reason for leaving our five communities out of ANCSA.

The Alaska Native Landless Equity Act would create a new "urban" Alaska Native Corporation for each our five communities and authorize the conveyance of one township (23,040 acres) of land to each, just as ANCSA in 1971 authorized for every other Alaska Native community in Southeast Alaska.

The five townships (115,200 acres) of land involved in this legislation necessarily would be withdrawn from the 17-million acre Tongass National Forest, which comprises most of the federal lands in Southeast Alaska. (Glacier Bay National Park is the only other significant unit of federal land in the region.)

Our five communities appear to have been excluded from ANCSA because the U.S. Forest Service and the timber industry were historically opposed to aboriginal land claims in the Tongass. We address this history below and we have provided a more detailed history as well, attached.

In the 1940s, the Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, which ruled that Native lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation.[1] To reverse this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title."[2] This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Native land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny."[3] The Court concluded that Native peoples do not have Fifth Amendment rights to aboriginal property and that Congress, in its sole discretion, must decide whether or how to compensate Native peoples for the loss of their lands.

The land at issue in *Tee-Hit-Ton Indians v. United States* case involved our Tlingit people who settled in Wrangell, one of the five communities that is still seeking a settlement of its aboriginal land claims today.[4] That litigation stemmed from a decision by the Forest Service to offer up 350,000 acres of land near Wrangell for a timber sale.[5] Ironically—and sadly—75 years later the Forest Service is still resistant to the conveyance of land to the Native people at Wrangell because of "the implications . . . to the timber program on the Tongass National Forest as over 20 percent of the proposed conveyance is within the suitable timber base."[6]

It has been suggested that our five communities were excluded from ANCSA because the populations of our five communities had become predominantly non-Native by the time ANCSA was enacted in 1971. Importantly, however, ANCSA as enacted did not in fact restrict the establishment of Alaska Native Corporations to communities with populations that were predominantly Alaska Native. Congress listed all other similarly-situated Alaska Native communities in Alaska of which we aware, including the predominantly non-Native villages of Kasaan and Saxman (for which Village Corporations were established), the urbanized village of Nome (for which a Village Corporation was established), and the urbanized, predominantly non-Native communities of Sitka, Juneau, Kodiak, and Kenai (for which Urban Corporations were established). Our exclusion from ANCSA simply cannot be justified by ANCSA itself, its

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[1] 159 F. 2d 997 (9th Cir. 1947).
[2] Joint Resolution of August 8, 1947, 61 Stat. 920, 921.
[3] 348 U.S. 272, 280 (1955).
[4] Rashah McChesney, "In Tlingit Land-Rights Loss, a Native American Rights Attorney Lays Out Injustice and Hope for the Future" (Nov. 9, 2019).
[5] *Id.*
[6] *See* Statement of Christopher French, Associate Chief, U.S. Department of Agriculture, Forest Service before the U.S. Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining 8 (Feb. 12, 2026), available at https://www.energy.senate.gov/services/files/3A5DFC86-1278-46D7-B788-1877AA1CD26D.

legislative history, precedential concerns, or by broader policy considerations relating to aboriginal land claims in the United States.

We have now waited more than 50 years, and more than half of the original "Landless" shareholder population has passed away waiting for the equitable resolution of our omission from ANCSA. In the context of a statewide effort like ANCSA, we are a small group. Perhaps that makes it hard for us to be heard. But nearly 3,500 Alaska Native people—or 22 percent of total enrollment in the Southeast Alaska region—enrolled to these five communities. Despite our losses, our community continues to grow. Our Landless shareholders and the descendants of our original shareholders together have grown to a population of 4,800.

For more information about the history of our communities, we direct your attention to two background documents, which are attached and briefly described below.

University of Alaska ISER Report

As described briefly above, in 1993, Congress instructed the Secretary of the Interior to investigate the exclusion of our five unrecognized communities from ANCSA. In turn, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA) contracted with the University of Alaska's Institute of Social Economic Research (ISER) to investigate why our five communities were excluded from ANCSA. This research materialized into a lengthy report titled, "A Study of Five Southeast Alaska Communities" (ISER Report). The ISER Report provides a detailed overview of "how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were recognized under ANCSA." You will find that the ISER Report does a good job of detailing the history of the five unrecognized communities as traditional Alaska Native communities.

Nov. 18, 2020 Landless Testimony

Following the November 18, 2020 hearing of this Subcommittee on a substantially similar version of this legislation, we prepared lengthy written testimony that provides a thorough analysis of the claims of our five communities in the context of the broader Alaska Native land claims movement; much of our analysis summarizes the findings of the ISER Report. The testimony also provides answers to a range of questions and concerns that have been raised over time about legislation introduced on our behalf. This detailed testimony is attached.

Response to Testimony of U.S. Forest Service and Bureau of Land Management

This legislation has been amended many times to address feedback provided by the State of Alaska, Southeast Alaska communities, USFS, BLM, the timber industry, conservation groups,

hunting and fishing groups, and other Alaska Native communities. For example, the legislation has been amended to guarantee continued public access to all of the land conveyed for noncommercial recreational uses and subsistence hunting and fishing, a concession that did not apply to the other Alaska Native communities that received lands under ANCSA.

At this time, we would like to briefly address the testimony and comments recently submitted to the Committee by USFS and BLM; our responses to a range of questions and concerns raised over time about legislation introduced on our behalf can be found in our previous testimony attached.

U.S. Forest Service

USFS's testimony suggests that this legislation has implications for "the timber program on the Tongass National Forest as over 20 percent of the proposed conveyance is within the suitable timber base."[7]

We note that the land at issue in *Tee-Hit-Ton Indians v. United States* case (discussed above) involved Tlingit people who settled in Wrangell, one of the five Native communities that is still seeking a settlement of our aboriginal land claims today. That litigation stemmed from a 1951 decision by USFS to offer up 350,000 acres of land near Wrangell for a timber sale. It is therefore ironic that the Forest Service is still—75 years later—resisting the conveyance of land to the Native people at Wrangell because those conveyances have "implications . . . to the timber program on the Tongass National Forest."[8] The fact that the Tongass National Forest was created on our homelands and necessarily involves lands within the suitable timber base is not a legitimate reason to deny our people ownership of these lands.

We must also correct a key mischaracterization of the history of our efforts to secure the rights to our homelands. In the testimony, USFS states that three of our five communities "were determined to be ineligible" to receive benefits under ANCSA when they applied, and that "[n]otwithstanding the determination of ineligibility," the Alaska Native people in our five communities were enrolled as at-large shareholders in Sealaska Corporation.[9] As explained above, when three of our five communities appealed their omission in ANCSA to the Department of the Interior, the Department only determined that Section 16 of ANCSA—in which the communities in Southeast Alaska are listed—does not offer a *process* for appealing omission

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[7] *See* Statement of Christopher French, Associate Chief, U.S. Department of Agriculture, Forest Service before the U.S. Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining, at 8 (Feb. 12, 2026), available at https://www.energy.senate.gov/services/files/3A5DFC86-1278-46D7-B788-1877AA1CD26D.
[8] *Id.*
[9] *Id.*

from the list. The Department never considered, let alone determined, whether our communities were ineligible. USFS mischaracterizes this history as a determination that our communities were deemed ineligible; they were not.

Further, the fact that the Alaska Native people in our five communities are enrolled shareholders in Sealaska Corporation is not relevant. Sealaska Corporation is the Regional Corporation established for the Southeast region of Alaska. Under ANCSA, Alaska Native people throughout the state enrolled both to their Village Corporation and to their respective Regional Corporation. It is unclear the point that USFS is trying to make by calling out that the individuals in our communities are shareholders of Sealaska "[n]otwithstanding the determination of ineligibility," which as we note above is untrue, but it is irrelevant to the inequitable treatment of our villages being left out of ANCSA and denying would-be shareholders the benefit of being shareholders in their respective Village Corporations.

Bureau of Land Management

BLM is responsible for conveying land under ANCSA to Alaska Native Corporations. We have greatly appreciated the willingness of BLM staff to work with our congressional delegation on technical modifications to this legislation. We thank BLM for their continued efforts to provide constructive input.

Conclusion

The Tongass National Forest is a politically sensitive place. We understand this. But it is also true that the Tlingit and Haida people have been pursuing a fair settlement of aboriginal land claims in the Tongass National Forest for over 100 years.

With respect, we believe that Congress erred in omitting five of our communities from the list of Alaska Native communities eligible to form an Alaska Native Corporation in 1971. The ISER Report, prepared at the direction of Congress, provides a more than adequate documentation of the history of our communities as traditional Native communities.

In the infamous *Tee-Hit-Ton Indians v. United States* decision, the U.S. Supreme Court held that the Tlingit and Haida claims to the land are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." The Court concluded that Native peoples do not have Fifth Amendment rights to aboriginal property and that Congress, in its sole discretion, must decide whether or how to compensate the Tlingit and Haida people for the loss of their lands.

S. 2554 redresses the omission of the Native communities at Haines, Ketchikan, Petersburg, Tenakee, and Wrangell from ANCSA by authorizing the Alaska Native individuals enrolled by BIA to those communities under ANCSA, and their descendants, to form Urban Native Corporations and to receive certain settlement lands pursuant to ANCSA. The omission of our communities is a gross inequity that has had long term, negative impacts on our communities. This inequity will continue without a formal act of Congress. As you know, we have no other recourse.

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A Study of Five Southeast Alaska Communities

Prepared For

U.S. Department of Agriculture, Forest Service

U.S. Department of the Interior, Bureau of Land Management
and Bureau of Indian Affairs

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February 1994

This publication is printed on recycled paper.

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Contract No. 53-0109-3-00368

A Study of Five Southeast Alaska Communities

Preface

In early 1993, Congress directed the Secretary of the Interior to prepare a report examining whether Congress had inadvertently denied five communities—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—in Southeast Alaska status as recognized villages or urban places under the 1971 Alaska Native Claims Settlement Act (ANCSA). Natives from these five study communities were eligible to enroll as at-large shareholders of Sealaska, the regional corporation established for Southeast Alaska. But they were not eligible to form village or urban corporations—and therefore received no land entitlements. Land entitlements that the ten village and two urban corporations in Southeast received have proved very valuable, because they included stands of commercial timber.

The Forest Service of the U.S. Department of Agriculture and the Bureaus of Land Management and Indian Affairs of the U.S. Department of the Interior contracted with the Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage to prepare a report presenting the available, factual evidence on why the five study communities were omitted from ANCSA—and how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were recognized under ANCSA.

Congress will use the historical record in this report to help determine whether the study communities were intentionally or inadvertently denied recognition under ANCSA. The legislative history in many instances is not explicit, and a judgment about Congress's omission of these study communities is complicated by the fact that from the outset Native communities throughout Southeast Alaska were treated differently under ANCSA. To shed light on Congress's intention, we compiled the available evidence from the period before the claims settlement through implementation of ANCSA provisions.

The first two chapters of the report examine Congress's broad authority to settle aboriginal land claims and the development and application of Congressional and administrative criteria for villages and urban communities recognized under ANCSA. Attorney Bart Garber wrote these two chapters. He examined in detail the history of the settlement act—including several earlier proposed settlement bills—and interviewed a number of people who were involved in the process that ultimately led to passage of ANCSA in 1971. He particularly looked for evidence of how the status of the study communities changed, and why it changed, under the different settlement bills introduced between 1967 and 1971.

Chapter 3, by anthropologist Charles Smythe, examines the Tlingit and Haida land claims settlement—Alaska's first aboriginal land claims settlement, resulting from a suit the Natives of Southeast Alaska brought against the federal government. The author compares the participation of the study communities with that of other Southeast Alaska communities in the court case and the subsequent settlement.

Chapter 4, by Lee Gorsuch, ISER's director, assesses similarities and differences in Native population characteristics of the study communities and other communities at the time ANCSA was passed. He uses two sources for those comparisons—the 1970 U.S. census, and the Alaska Native roll compiled for ANCSA in the first half of the 1970s.

Chapter 5 describes historical Native use and occupation of the five study communities and of ANCSA communities in Southeast Alaska. ("Use and occupation" includes historical Native stewardship and management of land.) The author, anthropologist Charles Smythe, uses a number of criteria—ranging from sites of early Native settlements to presence of government schools for Natives—to assess similarities and differences in historical use and occupation of communities that were and were not recognized under ANCSA.

Chapter 6, also by anthropologist Charles Smythe, reports how ANCSA enrollment procedures were carried out in both the study communities and the recognized villages and urban communities. For that work he consulted available documents and also spoke with community residents who took part in the enrollment process.

Chapter 7, by ISER economist Steve Colt, reports on the financial benefits that shareholders of Southeast village and urban corporations have realized over the years, as compared with benefits the at-large shareholders received. He points out that "benefits" can be defined in many ways, some of which can't be quantitatively measured. His work, based on corporate reports and other sources, looks chiefly at cash distributions and income from timber harvests.

Appendixes (bound in separate volumes) provide detailed histories of Native occupation and use in the five study communities, a legal analysis of ANCSA, and other relevant source documents as listed in the Table of Contents.

About the Authors

Steve Colt is a research economist with the Institute of Social and Economic Research. He has for several years examined the finances of the Native corporations established under the Alaska Native Claims Settlement Act (ANCSA).

Bart K. Garber is an Anchorage attorney who has studied the legal history and implementation of ANCSA.

Lee Gorsuch is the director of the Institute of Social and Economic Research. He has a long-standing interest in Native land claims and the effects of ANCSA.

Charles Smythe is an anthropologist with wide experience in studying the histories of the Native peoples of Southeast Alaska.

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Note: Appendixes are bound separately.

Executive Summary: A Study of Five Southeast Alaska Villages

Introduction and Background

In early 1993, Congress told the Secretary of the Interior to examine why five communities in Southeast Alaska—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—had been denied eligibility to form village or urban corporations under terms of the 1971 Alaska Native Claims Settlement Act (ANCSA). Three federal agencies—the Forest Service, the Bureau of Land Management, and the Bureau of Indian Affairs—then contracted with the Institute of Social and Economic Research at the University of Alaska Anchorage to prepare a report on that question.

This report will be presented to Congress. Congress will use it to help determine whether the five communities were intentionally or inadvertently denied eligibility to form village or urban corporations. The report presents the available evidence on the omission, and looks at how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were able to form village or urban corporations under ANCSA. Finally, it estimates some of the financial benefits the shareholders of Southeast village and urban corporations and the at-large shareholders of the study communities have received from ANCSA.

ANCSA awarded about $1 billion and 44 million acres to Alaska's Native people and called for establishment of village and regional corporations to manage the money and land. In four larger communities, the act also allowed establishment of urban corporations instead of village corporations. All Native beneficiaries enrolled to a regional corporation, and most also enrolled to either a village or an urban corporation.

The $1 billion in ANCSA money was divided—based on population—among the regional and the village and urban corporations. A little over half of the land entitlement went to village and urban corporations, with the regional corporations getting subsurface rights to village corporation lands. The balance of the land entitlements went to the regional corporations under a land-loss formula.

Section 11 of ANCSA listed villages—in all regions except Southeast—that would be eligible to form village corporations, once the Department of the Interior had confirmed that they met the eligibility criteria. The villages were required (as discussed more below) to have at least 25 Native residents and to have populations that were mostly Native; they also could not be "modern and urban in character." An additional provision allowed villages that were not listed in section 11 to become eligible by proving that they met the criteria. Finally, a special provision allowed four larger communities—Juneau, Sitka, Kenai, and Kodiak—that did not meet the requirements for Native villages to form urban corporations.

Provisions for Southeast Communities Under ANCSA

Native communities in Southeast Alaska were treated differently from communities in other regions—because the Tlingit and Haida Indians had received an earlier claims settlement (as discussed below). The first administrative settlement bill (one of the precursors to ANCSA) excluded Southeast communities altogether. But findings of the U.S. Court of Claims and the Indian Claims Commission supported arguments of Tlingit and Haida groups that not all their aboriginal rights had been extinguished by the earlier settlement. Subsequent settlement bills began listing Southeast villages.

Ultimately, ANCSA included a separate section—Section 16—for Southeast villages. That section listed 10 Southeast communities that were eligible to form village corporations. But unlike earlier sections that dealt with villages in other regions, section 16 did not include a provision for unlisted villages. Two additional Southeast communities, Juneau and Sitka, were included in a special provision that allowed four communities to form urban corporations. All the village corporations in Southeast Alaska got less land than corporations elsewhere, because they had benefited under the earlier Tlingit and Haida settlement.

The Study Communities

The study communities—Haines, Ketchikan, Wrangell, Petersburg, and Tenakee—are all located in Southeast Alaska but were not listed in Section 16. So what benefits were the Native residents of the study communities granted or denied under ANCSA?

- Natives from the study communities did not have the option of establishing village corporations. They became at-large shareholders of Sealaska, the regional corporation for Southeast Alaska.
- At-large shareholders received proportionate shares of cash distributions from the ANCSA settlement fund in lieu of distributions to village corporations. They also receive, as do the village and urban shareholders, ongoing cash distributions and other benefits from Sealaska.
- Without village corporations, the study communities did not get the 23,040 acres that each of the village and urban corporations in Southeast Alaska received. Those land entitlements have proved particularly valuable in Southeast Alaska, where there are extensive stands of commercial timber.

The Alaska Claims Settlements

Congress can settle aboriginal claims almost any way it chooses, as long as the settlements reflect "Congress's unique obligation toward Indians" and do not violate their constitutional rights. (See Cohen's *Handbook of Federal Indian Law*, 1982 ed., at 221; Getches and Wilkinson, *Cases and Materials on Federal Indian Law*, 267-68, 1986 ed.) Alaska Natives have won two settlements of aboriginal claims, and the settlements reflect two different approaches.

The first, the Tlingit and Haida settlement, came after Congress authorized the Tlingit and Haida Indians of Southeast Alaska to take their claims before the U.S. Court of Claims. The Court of Claims decided in 1959 that the Tlingit and Haida should receive compensation, and in 1968 valued their land claims at $7.5 million. To manage the settlement, Congress recognized a consolidated tribal body—the Central Council of the Tlingit and Haida Indians of Alaska.

The second settlement was the much larger 1971 Alaska Native Claims Settlement Act, under which Congress settled aboriginal claims of all Alaska Natives. In that settlement, Congress itself awarded both land and money and mandated creation of village, urban, and regional business corporations to manage the assets.

Participation of the Study Communities in the Tlingit and Haida Settlement

Several steps led up to the Tlingit and Haida settlement: the 1935 Jurisdictional Act, allowing the Tlingit and Haida to take their claims before the U.S. Court of Claims; the subsequent establishment of the Central Council of the Tlingit and Haida Indians; the 1959 Court of Claims decision that the Indians were entitled to compensation; the 1965 amendments to the Jurisdictional Act, broadening the function of the Central Council and the eligibility criteria for beneficiaries; and the 1968 Court of Claims award of $7.5 million in compensation for lost Tlingit and Haida lands.

Who benefited under the settlement changed considerably from the early steps in the 1930s to the judgment in 1968. The 1935 act talked about "tribal communities," and the 1959 Court of Claims decision specifically listed Tlingit-Haida tribes and the modern communities associated with those tribes. In 1965 amendments to the Jurisdictional Act, Congress broadened eligibility for benefits under the settlement so that any group of Tlingit and Haida Indians could organize, seek membership in the Central Council, and thereby become eligible for settlement benefits.

Table 1 lists communities named in the 1959 and 1968 Court of Claims decisions in the Tlingit and Haida settlement and the Southeast communities recognized under ANCSA. How did the study communities of Haines, Ketchikan, Wrangell, Petersburg, and Tenakee take part in the activities leading up to the settlement, and how did they benefit under the settlement?

- All of the study communities took part in the early organizational meetings of the Central Council of the Tlingit and Haida Indians. Between 1953 and 1960 Ketchikan, Wrangell, and Petersburg regularly participated in Tlingit-Haida annual conventions. Haines sometimes had its own delegates and sometimes sent a resident as part of the Klukwan delegation. Tenakee appears not to have been active in the organization in the 1950s.

Table 1. Comparison of Southeast Communities Listed in Tlingit and Haida Decision and in ANCSA

Communities Listed in 1959 and 1968 T&H Court Decisions*	Communities Listed in ANCSA
Angoon[a]	Angoon
	Craig
Douglas[a,b]	
Haines[a,b]	
Hoonah[a]	Hoonah
Hydaburg[a]	Hydaburg
Juneau[a,b]	Juneau
Kake[a]	Kake
	Kasaan
Ketchikan[a,b]	
Klawock[a]	Klawock
Klukwan[a]	Klukwan
Petersburg[b]	
Saxman[a]	Saxman
Sitka[a,b]	Sitka
Skagway[b]	
Wrangell[a,b]	
Yakutat[a]	Yakutat
Total: 16	**12**

[a] Listed in 1959 decision as modern communities associated with tribal groups
[b] Named in 1968 decision as communities where Indians should receive compensation for lost lands.

- In its 1959 ruling, the Court of Claims listed Haines, Ketchikan, and Wrangell among the modern communities associated with Tlingit and Haida tribes. It did not list Tenakee or Petersburg
- The court also reported that a third of the modern communities it had recognized were not located at the same sites as the original villages. These included the study communities of Haines and Ketchikan, as well as Juneau, Douglas, and Saxman.
- In a report accompanying the 1965 amendments to the Jurisdictional Act, the Senate cited "Juneau, Douglas, Ketchikan, Wrangell, and Petersburg" as larger communities that without the amendments would have received "little or no benefit" from the expected settlement.
- In its 1968 award, the Court of Claims listed the study communities of Haines, Ketchikan, Petersburg, and Wrangell (as well as Douglas, Juneau, Sitka, and Skagway) as places where the Tlingit and Haida had lost lands when townsites were created. It did not list Tenakee
- As of 1971, four of the five study communities—Haines, Ketchikan, Petersburg and Wrangell—as well as 13 other Southeast communities and two out-of-state chapters were recognized as members of the Central Council of the Tlingit and Haida Indians.

Eligibility Criteria for ANCSA Village and Urban Corporations

Criteria For Village Corporations Except Southeast

Under terms of the Alaska Native Claims Settlement Act, Native communities benefited through both regional and village corporations (and, in a few cases, through urban corporations). Communities that were judged ineligible to form village corporations were not able to select lands. The criteria for eligible communities evolved over several years and through a number of draft settlement bills.

When the claims settlement act was passed in 1971, it listed (in Section 11) the villages eligible to form village corporations and required the Secretary of the Interior to confirm that the listed villages met the eligibility criteria: that they had at least 25 Native residents as of 1970, that they were not modern and urban in character, and that a majority of their populations were Native. A separate provision of the law allowed villages that were not listed to become eligible by proving that they met the criteria.

- It is not clear where the requirement for a minimum of 25 Native residents originated. The Federal Field Committee for Development Planning, which compiled tribal lists before ANCSA was passed, consistently used a population of 25 as the standard measure of village existence. Also, in 1970 the state government generally required communities to have populations of at least 25 to organize as municipalities, and the 1970 census identified unincorporated communities, including Native villages, with populations of from 25 to 1,000.
- The requirements that eligible villages have mostly Native residents and that they not be modern and urban appear to have originated for several reasons. Powerful members of Congress insisted on present aboriginal use of claimed lands as a prerequisite for sharing in any settlement.. For example, Wayne Aspinall, chairman of the House Committee on Interior and Insular Affairs, sponsored a settlement bill that defined Native villages as those that were not "of a modern and urban character" (Hearing on HR 3100, HR 7039, HR 7432, 1971).

The State of Alaska also objected to including communities not "primarily Native in character" (Id. at 366, testimony of Governor Hickel). And the state government had an interest in limiting the number of communities eligible to select land because at that time it was also selecting lands under its statehood entitlement. Finally, up until ANCSA was passed, all the proposed settlement bills had included some form of Native subsistence privilege that would have allowed closure of land around villages to all except local Native subsistence users—and the more eligible villages there were, the more land could have been closed (Sen. Rep. Doc. No 92-405 at 43-44). (That provision was not included in the final settlement bill.)

Criteria for Urban Corporations

Earlier proposed settlement bills had dealt in various ways with the issue of how Natives not living in small, rural Native villages could benefit from the settlement. When the final claims settlement was enacted, it had three options for Natives living in urban areas: they could enroll to village corporations in the communities they were originally from; they could enroll as at-large shareholders of their regional corporations, in lieu of a village corporation; and those Natives living outside the state could vote on whether to create a 13th regional corporation.

Aside from those general provisions, ANCSA also included a special provision for four communities—Sitka and Juneau in Southeast Alaska and Kodiak and Kenai in Southcentral Alaska. Those specific communities were authorized to form urban corporations and select one township each. ANCSA described these urban places as communities that were "originally Native villages, but [came to be] . . . composed primarily of non-Natives" [43 USC 1613(h)(3)].

- There appears to be no record of criteria or evaluation used to determine if these communities were more qualified than others. Bill Van Ness, who was at that time chief counsel for the Senate Interior and Insular Affairs Committee, said in an interview for this report that the urban corporation provision was never formally introduced in any bills leading up to the passage of ANCSA, and that no one had objected to the four communities' gaining eligibility. Hank Eaton, who was at that time a lobbyist for Kodiak Natives, recalled in an interview that he and other representatives of the four communities lobbied congressmen in both houses. John Borbridge, who at that time was a lobbyist for the Tlingit and Haida, recalled in an interview that Alaska's Senator Ted Stevens introduced the provision in the final bill, and that the sense of the conference committee was that no more communities would be accepted for urban corporation status.

Eligibility of Study and Other Southeast Communities

Communities throughout Southeast Alaska were, as described above, treated differently under ANCSA. A separate section—Section 16—of ANCSA listed 10 eligible villages in Southeast and restricted their land awards to one township each. Two additional Southeast communities, Juneau and Sitka, were allowed to form urban corporations.

How were the five study communities treated in early settlement bills, and what historical evidence is there about why they were not included on the list of eligible communities in the final claims settlement?

- The study communities—except for Tenakee—did appear on some earlier versions of Native village lists but were excluded from others.
- The study communities disappeared from the list of Southeast villages at the same time as the 1970 census data became available and as the village eligibility criteria evolved to require that villages have at least 25 Natives, not be modern and urban in character, and have a majority Native population.
- The omission of the study communities is not clearly explained in any provision of ANCSA or in the accompanying conference report.

Eligibility Determinations for Unlisted Southeast Villages

ANCSA included a provision that gave unlisted villages a chance to prove to the Interior Department that they in fact met the eligibility criteria for forming village corporations. The Senate's version of the final claims settlement bill had included a similar provision for unlisted Southeast villages, but the conference committee did not adopt it in the bill that became law, nor did it explain why.

Representatives of three of the study communities—Tenakee, Ketchikan, and Haines—appealed to the Alaska Native Claims Appeal Board to try to gain eligibility to form village corporations. The board denied all three appeals and said:

- That ANCSA had "created an exclusive list of eligible villages in Southeast Alaska which cannot be added to . . ."
- That it was "apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act," and
- That Congress's failure to provide a specific provision for unlisted Southeast villages was evidence that Congress did not intend them to have the same opportunity to become listed as unlisted villages in other regions of the state. (In Re: Appeal of Ketchikan Indian Corporation, 2 ANCAB at 171.)

Comparison of Southeast Community Populations

A comparison of the 1970 populations of the study communities and the Southeast communities that were recognized under ANCSA sheds some light on differences among and similarities between the two groups of communities.

- Total populations of the study communities were comparable to those of Southeast communities recognized under ANCSA.
- Natives made up close to the same percentage of the population in Ketchikan (15 percent) and Wrangell (19 percent) as in Juneau (20 percent). Petersburg's Native population (12 percent) was smaller as Table 2 shows.
- Natives made up 24 percent of Haines's population—similar to the proportions in Saxman (27 percent) and Kasaan (27 percent), but considerably below that of the other medium and small Southeast communities recognized under ANCSA. Natives in ANCSA communities other than Saxman and Kasaan made up a majority of the population—anywhere from 82 to 94 percent.
- In Tenakee, the U.S. census recorded six Natives making up 7 percent of the population.

Table 2. Comparison of Native Population and Enrollments in ANCSA and Study Communities

URBAN PLACES	PERCENT NATIVE POPULATION 1970 CENSUS	ENROLLMENT TO COMMUNITY	PERCENT OF ENROLLEES LIVING IN COMMUNITY
Juneau	20%	2,722	67%
Ketchikan	15%	1,862	64%
Sitka	23%	1,863	77%
LARGE COMMUNITIES			
Petersburg	12%	428	72%
Wrangell	19%	747	64%
MEDIUM COMMUNITIES			
Angoon	94%	629	62%
Craig	56%	317	53%
Haines	24%	321	51%
Hoonah	71%	876	63%
Hydaburg	88%	565	40%
Kake	90%	558	79%
Klawock	91%	508	46%
SMALL COMMUNITIES			
Kasaan	27%	120	39%
Klukwan	89%	253	14%
Tenakee	7%	64	0%
Saxman	27%	196	57%
Yakutat	82%	342	70%

Study communities

Comparison of Enrollment Procedures

The first step in enrolling for benefits under ANCSA was identifying a place of residence. Natives could identify the community where they were living at the time or a community where they or their families had traditionally lived. Later, the Interior Department made determinations of which villages were eligible to form village corporations. Natives who were enrolled to communities that were later determined to be ineligible became at-large shareholders of Sealaska regional corporation.

There were two enrollment periods—an initial period and a later period for those who had missed the first. The 1976 amendments to ANCSA also included a provision that would have allowed Natives who had enrolled to villages that were later declared ineligible a chance to change their enrollments. But in fact

that amendment was never implemented. Some communities outside Southeast Alaska instead won changes in eligibility through the 1980 Alaska National Interest Lands Conservation Act. And, as noted below, the Interior Department ruled that the provision did not apply to Southeast communities.

Nearly 3,500 Natives—or 22 percent of total enrollment in the Sealaska region—enrolled to the study communities. Table 2 shows the number of persons who enrolled to the study communities and to the Southeast communities recognized under ANCSA. What evidence is there about how the enrollment process in the study communities compared with that in the recognized Southeast villages? And were there substantial differences in enrollment patterns among residents of the study communities and the communities listed in ANCSA?

- The policies and procedures for enrollment were uniformly applied in the study communities and in the ANCSA-recognized communities, according to available documents and interviews with community enumerators.
- Many Natives in the study communities were unaware that their villages were not listed as eligible to form village corporations, according to several enumerators interviewed for this report. And in many cases they were unaware of the significance of villages' being listed or unlisted.
- It is not clear how much enrollment to the study communities may have been affected among those who were aware that the communities were unlisted. Some enumerators interviewed for this report felt that it caused Natives to enroll elsewhere, but others felt that it had no significant effect on enrollment.
- Natives who enrolled to the study communities were declared ineligible to have their places of enrollment changed under a 1976 amendment to ANCSA. That determination came in a 1983 opinion of the Department of the Interior. Attorneys for Sealaska regional corporation and for a resident of Haines unsuccessfully challenged that opinion.

The proportion of enrollees to a community who actually lived in that community is another measure of similarities and differences among the study and the ANCSA communities. As of 1974:

- In the three large study communities and the two Southeast urban places recognized under ANCSA, the share of Native enrollees who resided in the communities where they enrolled was similar. The proportion of enrollees who lived in the communities varied from 64 to 77 percent, as Table 2 shows.
- Among the small and medium communities recognized under ANCSA, between 14 and 79 percent of enrollees lived in the communities where they enrolled. The study community of Haines fell into that range, with 51 percent of those who enrolled to Haines also living there.
- None of those who enrolled to Tenakee lived there.

Histories of Use and Occupation in Study and Other Communities

We can use a number of measures to compare the histories of Native use and occupancy in the study communities and in the listed communities in Southeast Alaska :

Traditional Native settlements (villages or camps) at sites of modern communities, before the arrival of whites

Indian occupancy of identifiable areas in the early towns

Indian land reservations or exclusions from the Tongass National Forest

Indian possessions and Native townsite lands

Federal schools for Indians

Churches or missions serving Natives

Participation in Native Organizations

Traditional Native settlements at sites of modern communities

- It was common in Southeast Alaska for modern communities to be established directly on or near areas and sites of Native settlements and camps. This was true of the five study communities and of recognized ANCSA communities. Non-Natives were drawn to these places by fish, minerals, or other resources. Indian settlement patterns were characterized by seasonal population dispersal and aggregation.
- Ketchikan and Petersburg were summer villages and fish camps before white settlers arrived, while Haines and Tenakee were winter villages. Wrangell was a summer village and then became the primary village of the Stikine kwan in 1836, after the Russians established a post there.
- Among communities recognized under ANCSA, Sitka was the site of a principal village of the Sitka kwan before the Russians established a settlement there in the early 1800s. Juneau was established at the site of a Native fish camp. Craig was established directly across from a former village on Fish Egg Island. Kasaan was a large Haida village; the site of the village was moved about 5 miles in 1901, when the manager of a mining company offered education and job opportunities to residents.

Indian Occupancy of Identifiable Areas in Early Towns

- One or more areas in all the study communities were considered to be Indian villages or Indian towns. That was also true in the ANCSA recognized communities of Juneau and Sitka and in a number of smaller ANCSA communities. However, in some of the smaller ANCSA communities like Kasaan and Craig, Native residents often lived throughout the community rather than in specific areas.

Land reservation or exclusion from the Tongass National Forest

- Federal land reservations were set aside for Natives at Haines and Ketchikan in the early 1900s. The Indian village at Tenakee was excluded from the Tongass National Forest under a federal land order in 1935.
- Federal land reservations were also made in the ANCSA communities of Hydaburg, Klawock, and Klukwan early in the century. The ANCSA communities of Kasaan and Craig were also excluded from the Tongass National Forest in the 1920s and 1930s.
- School reserves for federal Indian schools were also set aside in many Southeast communities, including the study communities of Petersburg, Wrangell, and Haines.

Indian Possession or Native Townsite Lands

- Haines, Ketchikan, Wrangell, and Petersburg had Indian possession lands identified when the townsites were first established. There is no record of Indian possession lands in the Tenakee townsite, since the Indian village was outside the original townsite.
- Juneau had no Indian possession lands in the original townsite, and Sitka had Indian possessions totaling less than an acre—because the Indian villages in those communities were outside the original townsites. There is no record of Indian possessions in the original townsite of Craig.
- The Bureau of Land Management made no distinction in the administration of townsite lands occupied by Natives in the study communities and in ANCSA-recognized communities.

Government Schools for Indians

- Federal Indian schools operated in Haines, Ketchikan, Petersburg, and Wrangell during the period between 1881 and 1948. There were also federal government schools in all 12 Southeast communities recognized under ANCSA.
- Tenakee had a territorial school, as did the ANCSA community of Craig.

Churches and Missions Serving Indians

- The first churches to organize in all the study communities were Native churches—that is, churches that were either started as missions for Natives, or churches that Native themselves established. Such activity of Native churches was common among ANCSA recognized communities as well.

Participation in Native Organizations

- All the study communities had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did ANCSA-recognized communities.
- Ketchikan, Petersburg, Wrangell, and Haines belonged to the Tlingit and Haida Central Council as of 1971, as did ANCSA communities as well as Metlakatla; Seattle, Washington; and Oakland, California. Tenakee was not active in the council in 1971.
- All the study communities except Tenakee formed IRA organizations in the 1930s and 1940s, as did ANCSA recognized communities.

Financial Benefits from Village and Urban Corporations

The village corporations and the lands awarded them under ANCSA have benefited Alaska Natives in a number of ways—including the subsistence, cultural, and spiritual values of the land. Most observers would agree that the corporations have also provided valuable economic and social benefits through their political power and ability to nurture leadership in shareholders. But it's impossible to put a dollar figure on those kinds of values.

It is possible, however, to estimate financial benefits village and urban corporations in Southeast Alaska have provided their shareholders. Corporations in Southeast Alaska differ from village corporations elsewhere in the state in two important ways. First, Southeast corporations received only one township (23,040 acres) each, because communities in Southeast Alaska had benefited from the earlier Tlingit and Haida settlement. Village corporations elsewhere received anywhere from three to six townships each. Second, much of the land Southeast corporations selected had valuable timber. Few other villages in Alaska found themselves surrounded by such an economically valuable resource.

The estimates of financial benefits for corporation shareholders in Southeast are based on a fairly complete set of annual reports for five of the ten village corporations and both of the urban corporations. Reliable data for the other five village corporations are not available. Although our sample includes only half the village corporations, it covers nearly two-thirds of the village shareholders and 100 percent of the urban shareholders. So the data presented below represent benefits received by 82 percent of the village and urban corporation shareholders in Southeast.

Since it is not our goal to compare financial performances of individual village corporations, we present the village data in composite form, as a weighted average of the five sets of village data. The result gives us a sense of the average financial benefits.

The five study communities were not able to form village corporations and did not receive land grants. How have the financial benefits of the enrollees from the study communities—who are at-large shareholders of Sealaska—compared with those of village and urban shareholders?

- All shareholders—at-large, urban, and village—were entitled to equal per capita payments from the ANCSA settlement fund and are still entitled to equal resource revenue sharing payments required under section 7(i) of ANCSA. The difference is that at-large and urban shareholders collect those payments directly, while payments to village corporation shareholders go to the village corporations, which do not necessarily pass them directly on to shareholders. Some may have invested them well and earned good returns for shareholders, but some may have lost the money through bad investments. So even though payments are calculated on an equal per capita basis, the at-large and urban shareholders have received larger direct cash payments from these sources.
- However, cash distributions from the ANCSA fund and from resource revenue sharing have proved to be minor compared with the financial benefits Southeast village and urban shareholders have received from timber harvesting on their lands.
- On average, shareholders in the sample five village corporations had received more than $57,000 in cash distributions as of 1992. The average per shareholder book equity—a measure of the shareholders' stake in corporate assets— of the five village corporations was more than $117,000 as of 1992 (Table 3).

Table 3. Shareholder Distributions and Book Equity of Five Southeast Village and Two Urban Corporations

Fiscal Year	Average of 5 Village Corporations Total (In Thousands of Dollars)	Dollars per Shareholder	Average of Two Urban Corporations Total (In Thousands of Dollars)	Dollars per Shareholder
1977	0	0	0	0
1978	0	0	0	0
1979	$71	$126	0	0
1980	338	601	0	0
1981	1,453	2,580	0	0
1982	26	46	0	0
1983	234	416	0	0
1984	501	889	0	0
1984A(1)	536	952	0	0
1985	840	1,492	0	0
1986	781	1,387	0	0
1987	3,492	6,200	$3,554	$1,554
1988	5,081	9,021	409	179
1989	5,655	10,040	780	341
1990	5,015	8,904	728	318
1991	3,643	6,469	1,243	543
1992(2)	4,713	8,368	4,219	1,845
Total Distributions	$32,379	$57,491	$10,933	$4,780
Reported Per Shareholder Book Equity, 1992 (Includes some ANCSA Land assets)		$117,073		$31,83

[1] Several corporations adjusted the start of their fiscal year during the 1980s. As a result, there are in some cases more data points than calendar years.

[2] Distribution Data for 1992 are incomplete. Average is computed from only 3 corporations

Source: Corporation Annual Reports

- On average, shareholders in the two Southeast urban corporations had received about $4,800 in cash distributions through 1992—far less than the village corporation shareholders. Urban shareholders have received less because (as Table 3 shows) their total distributions have been smaller, and they have many more shareholders—so the distribution per shareholder is much smaller. Part of the reason for the smaller distributions by the urban corporations is that their land conveyances and therefore logging were delayed a number of years. The average per shareholder book equity in the urban corporations was about $32,000 as of 1992—again, much less than the equity of village corporation shareholders.
- The five village and two urban corporations also earned $430 million between 1986 and 1988 by selling their net operating losses. A provision of the 1986 Tax Reform Act gave Alaska Native corporations the ability to sell their operating losses to more profitable businesses looking for tax write-offs. The Southeast corporations were able to measure those losses as the difference between the value of a log at the time the land was conveyed to the corporation and the value of the log at the time it was either cut, sold, or written off as having no value. As of 1992, much of the cash generated by sales of losses remained locked up in escrow accounts, pending IRS audits of the transactions.
- Overall, the Southeast village and urban corporations have been the most financially fortunate groups of all ANCSA corporations, as measured by financial returns per shareholder to date. There are two main reasons for their good fortune. The first is that their ANCSA lands included valuable timber, and the second is that they were able to make substantial profits from the sale of net operating losses—which were not actual cash losses but were based on the decline in the value of timber.
- Past financial performance, however, does not predict future fortunes of these or any other corporations. First, Congress ended sales of net operating losses in 1988, so those will not be a future source of income. Second, much of the commercial timber on village corporation lands has already been harvested. Those corporations with commercial timber will still have to deal with volatile world market prices for timber.

This summary has briefly reviewed our findings about the historical circumstances of the study communities and the available record about how they came to be omitted from the ANCSA list of eligible Southeast communities. We now turn to our detailed discussions.

Chapter 1. Congress and Alaska Land Claims Settlements

By Bart K. Garber

This chapter looks broadly at Congress's authority to settle aboriginal land claims and at the settlement techniques it used in the Tlingit and Haida settlement[1] and in the Alaska Native Claims Settlement Act (ANCSA). These descriptions provide a broad context for the more detailed discussions, in Chapter 2, of the legislative and administrative development of criteria to determine eligibility for villages under ANCSA and specifically of how the eligibility criteria were applied to the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

Review of ANCSA's legislative history reveals that the five study communities were dropped from the list of eligible villages in section 16 of ANCSA by Congress and not by the Secretary of the Interior [(43 USC, 1615 (a)]. Therefore, unless the Interior Department misinterpreted the eligibility process or misapplied the criteria, then the application of the ANCSA eligibility criteria may not be all that enlightening, unless Congress reconsiders its earlier decision about which Southeast villages to include. (See In *Re: Village of Tenakee,* VE # 74-60, 2 ANCAB 173, September 9, 1974; and In *Re: Appeal of Ketchikan Indian Corporation,* ANCAB # LS 77-33, 2 ANCAB 169, December 5, 1977.) Of particular interest is whether the exclusion of the five study communities was intentional or inadvertent (HR Rep. No. 102-256, 102nd Congress, 1st Session, 42-43, 1991).

Congressional Discretion in Settling Aboriginal Claims

Congress enjoys nearly unfettered discretion in fashioning aboriginal claims settlements. (See Cohen's *Handbook of Federal Indian Law,* 3-7, 12-13, 1982 ed.) Nonetheless, some minimal standards apply. First of all, Congress and the executive branch can only deal in the area of Indian affairs (including the settlement of aboriginal claims) where the subject community is "distinctly Indian:"

> Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the Unites States are to be determined by Congress, and not by the Courts (*United States v. Sandoval,* 231 U.S. 28, 1913).

Beyond this rudimentary standard of judicial review, the form and content of aboriginal claims settlements historically have been determined by the political and moral condition of the United States at a given time and, in some instances, by the legal status of a particular tribe's claims (Cohen at 47-50).

Settlements with Indian tribes in the early years of the nation were tempered by the federal government's desire to sustain the peaceful settlement of the frontier (Cohen at 62-78). More recently, tribes have had to prove that they hold something more than bare aboriginal claims in order to successfully sue for compensation. For example, in *Tee Hit Ton Band of Indians v. United States,* (348 U.S. 272, 279; 1955), the court found that unrecognized, bare aboriginal claims to land are not

[1]The term "Tlingit and Haida Settlement" refers to a group of federal laws, amendments, and court of claims judgements that resulted in the payment of over 7.5 million dollars by the United States to the Tlingit and Haida Indians of Southeast Alaska for prior takings of Alaska Native clan land and related rights. Act of June 19, 1935, 49 Stat. 388, CH. 275; Act of August 19, 1965, 79 Stat. 543; Act of July 9, 1968, 82 Stat. 307; Act of July 13, 1970, Pub. L. No. 91-335, 84 Stat. 431 (codified at 25 U.S.C. § 1211); *Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. 315, 177 F. Supp. 452 (1959); *Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States,* 182 Ct. Cl. 130, 389 F.2d 778 (1968).

considered permanent property rights protected by the United States Constitution. Without a legally enforceable right, Indian tribes in Alaska had to rely on moral and political persuasion to settle their aboriginal claims with the United States. (See, for example, R. Arnold, *Alaska Native Land Claims*, 117-144, 1978.)

For the most part, the Tlingit and Haida settlement and ANCSA are examples of voluntary settlements of otherwise unenforceable aboriginal claims. Congress simply failed to recognize Alaska Native tribal and community aboriginal rights of occupancy in all but a few instances.[2] Without constitutionally protected permanent property rights, Alaska Natives had to rely on jurisdictional statutes that waived the immunity of the United States and authorized payment for various aboriginal claims. Without a statutory right to sue, tribes relied on legislative settlements. Congress authorized the Tlingit and Haida to seek a settlement of their aboriginal claims in the Court of Claims:[3]

> The Court of Claims would examine "[a]ll claims of whatever nature, legal or equitable, which the said Tlingit and Haida Indians of Alaska may have, or claim to have, against the United States, for lands or other tribal or community property rights, taken from them by the United States... (Act of June 19, 1935, 49 Stat. 388, CH. 275 § 2).

Congress and, ultimately, the Alaska Natives, elected a political settlement of the Native claims that were outstanding as of 1971:

> The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known...The pending bill does not purport to determine the number of acres to which the Natives might be able to prove an aboriginal title. If the test developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage could be large—but how large no one knows. A settlement on this basis, by means of litigation if a judicial forum were to be provided, would take many years, would involve great administrative expense, and would involve a Federal liability of an undeterminable amount.
>
> It is the consensus of the Executive Branch, the Natives, and the Committee...that a legislative rather than a judicial settlement is the only practical course to follow... (H.R. Rep. No. 523, 92d Cong., 1st Sess., reprinted in 1971 *U.S. Code Cong. & Admin. News* 2194).

Congressional settlements of Indian claims will withstand judicial review so long as the legislation is "tied rationally to the fulfillment of Congress' unique obligation toward Indians" and so long as Congress conforms its legislative activity to the requirements of the Bill of Rights, including the due process clause of the Fifth Amendment (Cohen at 221; D. Getches & C. Wilkinson, *Cases and Materials on Federal Indian Law*, 267-268, 1986 ed.). Congress met this test with respect to ANCSA (*Paul v. Andrus*, 639 F. 2d. 507, D.C. Cir. 1980). In any case, no one successfully challenged the constitutionality of ANCSA within the one year limitation period set out by the act (*Paul v. United States*, 687 F. 2d. 231, Ct. Cl., 1982, *cert. denied*, 461 U.S. 927).

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[2]Congress declared two statutory reservations (Metlakatla in 1891 and Klukwan in 1957) and authorized six reservations created by the Secretary of the Interior pursuant to the Indian Reorganization Act. (See Federal Field Committee for Development Planning in Alaska, *Alaska Natives and The Land 444*, 1968.)

[3]Some Alaska Native villages and tribal groups, including the Tlingit and Haida, had filed claims pursuant to the Indian Claims Commission Act of 1946 and other federal statutes (Federal Field Committee at 445-446).

Nevertheless, Congress now wants to determine whether it "inadvertently denied village or urban corporation status" to the five study communities under ANCSA.[4] To aid Congress in making its determination, below we compare the treatment of the study communities under two different settlement acts—the Tlingit and Haida settlement and ANCSA. The central underlying question is whether some study communities were nominally included in the Tlingit and Haida settlement but excluded under ANCSA, and, if so, do any changes in the situation of these communities or in the applied eligibility criteria help explain the denial of status under ANCSA?

The Tlingit And Haida Settlement

The Tlingit and Haida settlement and ANCSA reflect two approaches the United States can use to settle aboriginal claims. Despite its unique reliance on the corporation as a settlement mechanism and fee simple land conveyances, ANCSA achieved objectives fundamental to every settlement: Tribal land claims were extinguished in exchange for money and conveyances of smaller parcels of land. (See H.R. Rep. No. 92-523 at 2193-2194; 43 U.S.C. §§ 1603, 1605, 1611, 1613). Congress obtained earlier cessions of Indian lands by providing payments of cash, goods, services, and guarantees of federal protection for Indians remaining on the remnants of their ancestral lands or removed to other lands reserved for their use (Cohen at 62, 66-70, 121-125). In some situations, the United States merely paid tribes or their members for the lands taken from them (*Id.* at 70, 170-175).

By comparison, the Tlingit and Haida settlement was a cash settlement authorized by a jurisdictional act and quantified through litigation (Act of June 19, 1935, 49 Stat. 388). Land that Congress had taken to create the Metlakatla Indian Reservation, the Tongass National Forest, and the Glacier Bay National Monument was not returned to the village-based clans (*Tlingit and Haida Indians of Alaska v. United States*, 147 Ct. Cl. 315, 177 F. Supp. 452, 1959). Instead, the Court of Claims determined that the clans' claims were worth over 7.5 million dollars (*Tlingit and Haida Indians of Alaska* and *Harry Douglas, et al. v. United States*, 182 Ct. Cl. 130, 389 F.2d 778, 1968). Congress appropriated funds for the settlement and recognized a new tribal consortium, called the Tlingit and Haida Tribes of Alaska, which would manage the settlement funds on behalf of its members[5] (Act of August 19, 1965, 79 Stat. 543; Act of July 9, 1968, 82 Stat. 307; Act of July 13, 1970, Pub. L. No. 91-335, 84 Stat. 431, codified at 25 U.S.C. § 1211).

Congress frequently distinguishes between tribal groups which possess claims and others which it authorizes to manage settlement assets when structuring a settlement of Native claims. Cohen illustrates Congress's authority in this regard with the example of two tribes, A and B, that combine to form tribe C and share a common reservation and common funds (Cohen at 12-13). Congress can extinguish tribe A and tribe B's claims to their historical homelands in exchange for a reservation or funds that they hold and manage jointly as tribe C. (See, for example, *Washington v. Fishing Vessel Association*, 443 U.S. 658, 664 n.5, 1979; and *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 192, 1978. In those cases, "loosely related" groups of villages were combined and recognized as tribes by the United States.)

[4]This mandate and the expiration of the limitation period preclude any review of the propriety of the eligibility criteria themselves.

[5]Members had to reside in the United States or Canada and must have resided in Alaska prior to the jurisdictional Act of 1935 or been a descendant of such a person.

Congress can later recognize tribe A or B again for the purpose of adjudicating unresolved claims, even though the two have already consolidated as tribe C. (See Act of June 28, 1898, ch. 517, § 25, 30 Stat. 504, construed in *Delaware Indians v. Cherokee Nation,* 193 U.S. 127, 1904; and Act of Feb. 25, 1889, ch. 238, 25 Stat. 694, construed in *United States v. Old Settlers,* 148 U.S. 427, 1893.)

Cohen's hypothetical example of tribes A, B, and C closely resembles the treatment experienced by the Tlingit and Haida tribes of Southeast Alaska in the Tlingit and Haida settlement and in ANCSA. The Court of Claims identified the clans (Cohen's tribes A and B) as the principal land claiming user groups among the Tlingit and Haida (*Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. at 361-366). These clans were located in a number of Native communities, or "tribes...in the geographical sense," which the Indians called "kons" or "kwaans" [6] (*Id.* at 361-362). The Court of Claims listed fourteen tribes located in 31 villages with at least two or more clans making up each village (*Id.* at 363-364).

Congress was much less clear, however, in designating the beneficiaries of the Tlingit and Haida settlement. The jurisdictional statute describes the beneficiaries of the Tlingit and Haida settlement, alternatively, as members of "any local community of these tribes," "each tribal community," "a Tlingit and Haida central council," and "such Indian communities" (Act of June 19, 1935, 49 Stat. 388, § 8). Congress ultimately resolved this confusion without specifically defining tribal or Indian communities, by amending the 1935 jurisdictional act to provide for a collective settlement managed by a consolidated tribal body—the Central Council of the Tlingit and Haida Indians of Alaska (Act of August 19, 1965, 79 Stat. 543).

The central council's constitution identifies the council as the "general and supreme legislature and governing body of the Tribes" (Constitution of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, Article I). Presumedly, these tribes are the ones identified by the Court of Claims (*Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. at 361-366). However, the central council also identifies communities that, in turn, elect delegates to the council, prescribe and rule on the qualifications and status of delegates, and determine membership (Central Council Constitution, Article VI, Section 1.h). The list of member communities has fluctuated over time. All five study communities, including Tenakee, have been active members in the past. (See Chapter 3.) In 1971, 19 communities were listed as member communities.[7] More recently, the number of member communities has expanded to 21 with the addition of Anchorage and Pelican (Case at 379 n. 70).

The story of Tlingit and Haida claims settlements might have ended with the Court of Claims judgment, except that the Tlingit and Haida settlement did not extinguish all aboriginal claims in Southeast Alaska. The Court of Claims noted that more than 2.6 million acres of land in Southeast Alaska had not been taken or extinguished by the federal government (*Tlingit and Haida Indians of Alaska* and *Harry Douglas, et al. v. United States,* 182 Ct. Cl. at 134-135). Furthermore, in 1969, the Indian Claims Commission concluded that the Tlingit and Haida had preserved claims to fishing rights by timely filing a petition under the Indian Claims Commission Act (Act of August 13, 1946, ch. 959, 60 Stat. 1049, codified as amended at 25 U.S.C. §§ 70 to 70v-3; *Tlingit and Haida Indians of*

[6] See Shinkwin, Chapter Eight, "Traditional Alaska Native Societies," in *Case* at 335-337.

[7] Haines, Ketchikan, Petersburg, Wrangell, Angoon, Craig, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, Yakutat, Seattle, and Oakland. See Smythe, Chapter 3 of this report.

Alaska v. United States, 20 Ind. Cl. Comm. 508, May 14, 1969). These claims laid the foundation for Tlingit and Haida participation in ANCSA.

Alaska Native Land Claims Settlement

Congress extinguished the remaining claims[8] of the Tlingit and Haida clans (Cohen's tribes A and B), and required a new group of Native organizations to manage the ANCSA assets—in this case, regional, village, and urban corporations rather than the Tlingit and Haida Central Council (Cohen's tribe C) [(43 U.S.C. §§ 1607, 1613 (h)(3), 1615)].

As with the Tlingit and Haida settlement, Congress drew only rough correlations between the tribes purporting to possess aboriginal claims and those organizations which it required to manage ANCSA assets. Congress mandated the creation of new managing organizations for claims settlement assets. "Village corporations" organized under state law were to "hold, invest, manage and/or distribute lands, property, funds, and other rights and assets *for and on behalf of ... Native village[s]*," which in turn were defined as any "tribe, band, clan, group, village, community, or association in Alaska...composed of twenty-five or more Natives" [(43 U.S.C. §§ 1602 (j) and (c)]. "Group corporations" did the same for "Native groups," which were nothing more than Native villages with fewer than 25 Natives, "who comprise a majority of the residents of the locality" [(43 U.S.C. §§1602 (n) and (d)]. "Urban corporations" did the same for "members of an urban community of Natives" [(43 U.S.C. § 1602 (o)]. By comparison, Congress allowed one regional tribal organization to manage the Tlingit and Haida cash settlement on behalf of all the Tlingit and Haida tribes and communities.

Native individual and community eligibility under the Tlingit and Haida settlement did not automatically lead to eligibility under ANCSA. Individual Native eligibility under ANCSA was tied to a quarter blood quantum requirement or, in the absence of proof of a minimum blood quantum, acceptance by any Native village or group [(43 U.S.C. § 1602 (b)]. Tlingit and Haida Natives were enrolled on the basis of descent, without regard to blood quantum [(Act of June 19, 1935, 49 Stat. 388, ch. 275 § 7; Act of August 19, 1965, 79 Stat. 543; Central Council Constitution, Article II and Rules of Election, Rule 21 (b)]. The central council designated Tlingit and Haida communities without regard to any particular criteria beyond the residency of some Tlingit and Haida individuals and in no way limited its selection to Native communities. (See supra, note 7 and text at note).

The ANCSA criteria for Native communities (that is, villages and groups) are more objective or defined than the standards applied by the Central Council. However, Congress's designation of eligible urban Native communities may not have been objective or defined, except by specific identification (Interview August 26, 1993, with William Van Ness, former chief counsel, Senate Interior and Insular Affairs Committee, 1966-77). In the end, the Tlingit and Haida settlement clearly influenced the ANCSA legislative process, but could not guarantee Southeast village success in later ANCSA community eligibility decisions (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, Sept. 9, 1974; In *Re: Appeal of Ketchikan Indian Corp.*, ANCAB # LS 77-33, 2 ANCAB 169, December 5, 1977).

[8] *Tlingit and Haida Indians of Alaska v. United States*, 28 Ind. Cl. Comm. 169 (June 7, 1972) dismissing Southeast fishing claims due to their extinguishment as a matter of law under Section 4 of ANCSA.

The Tlingit and Haida settlement and ANCSA demonstrate how much Congress can vary in settling aboriginal claims. Congress enjoys such broad discretion in this respect that any timely challenge of the settlements would likely have failed.[9]

The analysis now shifts, in Chapter 2, to the legislative and administrative development of criteria used to determine the status of villages and urban places under ANCSA.

[9]The most egregious "settlements" have been found valid and constitutional even where Congress severed the relationship between a tribe and the United States and transferred management authority over the tribe's assets to a corporation organized under state law [Menominee Termination Act of June 17, 1954, ch. 303, § 9, 68 Stat. 250, 252 (repealed 1973), construed in, *Menominee Tribe v. United States*, 607 F.2d 1335, 1340-44 (Ct. Cl. 1979), *cert. denied*, 445 U.S. 950 (1980)].

Chapter 2. Review of ANCSA Eligibility Criteria

By Bart K. Garber

This chapter reviews the evolution and application of criteria for Native communities to be judged eligible to establish village or urban corporations under ANCSA. In particular, it looks at how those criteria were applied to the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

Benefits under ANCSA "accrue to Natives not through clans, families, or other traditional groupings, but, instead, through the modern form of business organization called a corporation" (R. Arnold, *Alaska Native Claims* 146, 1978). If a Native community qualified as an eligible Native village, Native group, or urban community of Natives, the Natives residing in the Native community could incorporate and receive various benefits under ANCSA as a "village corporation," a "group corporation," or an "urban corporation" [43 U.S.C. §§ 1601 (j), (n), (o)].[1] The five study communities were not included on the list of eligible Southeast villages or urban Native communities, nor were they given the opportunity to prove their qualifications for either status. The omission of the five communities was not clearly explained in any provision of ANCSA or in the accompanying conference report. Review of the legislative history of the act as it relates to the development of the concepts of and the criteria for Native villages and urban communities concepts and criteria may help explain the exclusion of the study communities.[2]

Historical Development of the Term "Native Village"

Native Groups Under Early Settlement Bills

Congress ultimately used the definition and criteria for a "Native village" as the baseline for determining community eligibility and entitlements under ANCSA. The act defined "Native village" as:

> [A]ny tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives [43 U.S.C. § 1602 (c)].

Native communities with fewer than twenty-five Natives were called Native groups and could organize group corporations if they constituted a majority of the people in particular localities (43 U.S.C. § 1602 (d), construed in *Chugach Alaska Corp. v. Lujan*, 915 F. 2d 454, 9th Cir. 1990). "Natives in four towns that originally were Native villages, but [came to be]... composed predominantly of non-Natives" were authorized to organize urban corporations [43 U.S.C. § 1613 (h)(3); Joint Statement of the Committee of Conference, Conf. Rep. No. 746, 92d Cong., 1st Sess. Report, reprinted in 1971 *U.S. Code Cong. Admin. News*, 2248 (hereafter referred to as *Conference Report*)] Native villages that met the population

[1] The act also divided the state into twelve regions roughly representing the geographic areas of operations of the existing regional Native associations (43 U.S.C. § 1606). Each regional Native association appointed incorporators who organized twelve regional corporations to manage part of the settlement assets on behalf of individual Native shareholders enrolled to their region [43 U.S.C. §§ 1606 (d) - (h)]. Natives residing outside the state eventually organized a thirteenth regional corporation [43 U.S.C. § 1606 (c)].

[2] The study communities were only denied eligibility to form village corporations. Natives from those villages still benefited from ANCSA through Sealaska regional corporation.

requirements and were not modern and urban in character could organize as village corporations [43 U.S.C. § 1607, 1610(b); see generally, *Village of Uyak v. Andrus*, 580 F.2d 601 (9th Cir. 1978), cert. denied, 439 U.S. 1052].[3]

Congress originally used the term "Native group," not Native village, in describing Native communities eligible for benefits under proposed settlement acts. ANCSA still includes one reference to this older use of the term "Native group" in the declaration of policy: "There is an immediate need for a fair and just settlement of all claims by Natives and *Native groups*[4] of Alaska, based upon aboriginal land claims" [(43 U.S.C. § 1601(a); emphasis added)]. The substance of the declaration of policy came from the Senate amendment, S. 35 (*Conference Report* at 2253). S. 35 defined a "native group" as "any tribe, band, clan, village, community or village association of Natives in Alaska" (S. Rep. Doc. No. 405, 92d Cong., 1st Sess. 3, 1971; hereafter referred to as S. Rep. Doc. No. 405).

Senator Gruening of Alaska introduced one of the first Native claims bills on February 1, 1968. That bill authorized Alaska "native groups" to incorporate under state or federal law, select lands, and receive royalties derived from Outer Continental Shelf development as compensation for their claims, based on aboriginal use and occupancy of Alaska lands. [See *Alaska Native Land Claims: Hearings on S. 2906, S. 1964, S. 2690,* and *S. 2020 Before the Comm. on Interior and Insular Affairs, 90th Cong., 2d Sess. 2, 4 (1968);* hereafter referred to as *Alaska Native Land Claims: Hearings on S. 2906"].*[5] S. 2906 defined a "native group" as:

> any tribe, band, village, community, association, or other identifiable group of Indians, Aleuts, or Eskimos of Alaska, resident in Alaska, including identifiable groups of residents of a locality which, as such a group, claims Indian title to land in Alaska by virtue of aboriginal use and occupancy at any time (Alaska Native Land Claims: Hearings on S. 2906 at 16).[6]

S. 2906 borrowed elements of its definition for "native group" from S. 1964, the first bill prepared for the first session of the 90th Congress by the Secretary of the Interior. That bill provided jurisdiction in the Court of Claims to compensate Alaska Natives for losses of aboriginal or "Indian title" lands (Federal Field Committee for Development Planning in Alaska, *Comparative Analysis of Land Claim Proposals Submitted to the 90th Congress* 6-8, 1968; see also, *Alaska Native Land Claims: Hearings on S. 2906* at 96, statement of Barry W. Jackson). Congress had done the same for southern Indian tribes in the Indian

[3]All eligible Native villages organized as village corporations under this section regardless of their particular entitlement. Villages listed or found eligible pursuant to 43 U.S.C. § 1610(b) received between 3 and 7 townships of surface estate depending on their populations; Southeast villages listed at § 1615 received one township of land each; Villages located on former reserves could elect to receive the surface and subsurface of their former reservation lands as their village corporation entitlement, with the additional condition that their shareholders would not receive regional corporation stock [43 U.S.C. § 1618 (b)].

[4]The use of the term in this context does not refer to the definition set out in ANCSA [*cf.*,43 U.S.C. § 1602(d)].

[5]Settlement bills introduced before S. 2906 all drew more or less on the Tlingit & Haida settlement model, which used the United States Court of Claims to adjudicate Native claims. Some of these bills also proposed modest land conveyances. The Department of the Interior introduced the first bill, S. 1964, on June 15, 1967. Senator Bartlett introduced a similar bill, S. 2690.

[6]S. 2906 expanded the use of the term even further: "The term 'group' or 'native group' may, when appropriate, include not only 'native group' but also 'regional native association,' 'regional native corporation' and the statewide native corporation" [Sec. 516(e)].

Claims Commission Act (25 U.S.C. §§ 70 to 70v-2, 1983). The Indian Claims Commission provided groups not generally regarded as Indian tribes an opportunity to assert their claims against the federal government. The act allowed the commission to hear claims "on behalf of any Indian tribe, band, or other *identifiable group of American Indians residing within the territorial limits of the United States of Alaska*" (25 U.S.C. § 70a; emphasis added). The commission later clarified its position noting that so long as a "group can be identified and it has a common claim, it is ... an 'identifiable group of American Indians' " (*Loyal Creek Band or Group of Creek Indians*, 1 Indian Cl. Comm'n 122, 129, 1949).

Not surprisingly, the definition of "native group" first used in S. 2906 contains the same three elements required by the claims commission for asserting an Indian claim against the federal government:

Claims Commission Act Criteria

- an identifiable group of Native Americans
- residing within the territorial limits of the United States
- possessing a common claim

S. 2906 Criteria

- identifiable group of Indians, Aleuts, or Eskimos of Alaska
- residing in a locality in Alaska
- which, as such a group, claims Indian title to land in Alaska by virtue of aboriginal use and occupancy at any time

The definition in S. 2906 referred to tribes, bands, villages, communities, and associations as examples of the kinds of identifiable Native groups that could pursue common claims under the proposed law. In this respect, S. 2906 foreshadowed much of what was to come in ANCSA and in the bills that led to it: S. 2906 identified village-based groups as the principal claimants and beneficiaries of a Native claims settlement package made up of land and money for lands lost, managed by corporations organized under state law.[7] The bill also raised a variety of issues that eventually led to the development of the more restrictive Native village criteria and, by default, the criteria for Native groups and urban communities under the Alaska Native Claims Settlement Act of 1971.

This analysis of the Native village definition and criteria could move forward to ANCSA from S. 2906 and the report of the Alaska Task Force, which wrote that bill.[8] However, examining the history of federal Indian policy in Alaska also provides useful information. The federal government had developed an administrative policy to deal with Alaska Natives—a policy that would later contribute to the administrative settlement drafts and those that borrowed from them.

[7] Earlier bills, including S. 1964, S. 2690, and S. 2020 (both referring to "claimants") used the claims commission model for an identifiable group of Native Americans but did not specifically designate or define the term "native group" (*Alaska Native Land Claims: Hearings on S. 2906* at 16-23).

[8] *Proposal for Settlement of the Alaska Native Land Claims, A Report of the Governor's Task Force on Native Land Claims*, Juneau, January 10-16, 1968 in *Alaska Native Land Claims: Hearings on S. 2906* at 74-78.

Federal Indian Policy and Alaska Native Villages

From 1936 to the early 1960s, the official policy of the federal government in Alaska centered on the revival of Native social, economic, and political life at the community level, pursuant to the Indian Reorganization Act (IRA), as amended (Act of May 1, 1936, 49 Stat. 1250, codified at 25 U.S.C. § 473a, 1983; see D. Case, *Alaska Natives and American Laws*, 10, 1984). The Alaska IRA amendment reads as follows:

> Sections 461, 465, 467, 468, 475, 477 and 479 of this title shall after May 1, 1936 apply to the Territory of Alaska; Provided, that groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476, and 477 of this title.

Not surprisingly, IRA "communities" turned out to be predominantly Native villages. The Task Force on Alaska Native Affairs found:

> Of the 69 associations established in Alaska pursuant to the 1936 Act, 57 included the following provision in their constitutions:
>
> 'To control the use by members or non-members of any reserve set aside by the Federal Government for the village, and to keep order in the reserve.'
>
> Considering the employment of the word "village" in the above provision, it is evident that both the natives and the Bureau of Indian Affairs felt that there would be a coincidence of membership between these associations and the communities from which their members were drawn and that officials of the association would serve as governing bodies for the villages (Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs 83-84, December 28, 1962).

Native villages were considered the core community among Alaska Natives, and the federal government acknowledged this fact in the IRA amendment. The Native members of the community only had to share a common bond of occupation, or association, or residence within a well-defined community. Native villages did not require any minimum population or character for a community to organize under the IRA. Of the five study communities, all except Tenakee organized IRAs in the 1930s and 1940s.

By the early 1960s, federal promotion of the IRA in Alaska began to wane. The Department of the Interior was promoting a transfer of local government authority from federally chartered local governments to municipal governments organized under state law. The Task Force on Native Affairs reported on "problem areas" in village organization:[9]

> 1. The need for establishing village governments consistent with the system of municipal organization found throughout the State.
>
> Comment: Native villages vary in size and quality for incorporation as cities of different classes. A majority, however, at least fulfill the criteria for fourth class cities. The Task Force suggests that the Juneau Office discuss with those communities which already have I.R.A. constitutions the pros and cons of dissolving their village associations and incorporating under State law. At the same time, it should work with non-

[9]The second recommendation pointed out "2. The desirability of providing for State-licensed business organizations in the native communities as an alternative to the granting of Federal charters." *Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs* at 87.

> I.R.A. villages to encourage them to organize in similar fashion (Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs at 86).

Earlier in its report, the Task Force on Alaska Native Affairs noted that "since 1957, Alaska state has provided for the incorporation of villages containing more than 25 adult inhabitants ... denominating such communities 'fourth class cities' "(*Id.*at 86). The BIA area director at the time instructed the staff to help Native communities organize under state law—which required a minimum population of 25 in a community—rather than under the IRA, according to John Hope, who was with Tribal Operations, Juneau Area Office, Bureau of Indian Affairs, 1947-55 and 1963-80 (Telephone interviews with John Hope, August 17 and November 1, 1993). At about the same time, baseline studies were being done that would later be used as source documents for settlement act proposals. [See, for example, Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More* (1967)].

John Hope participated in the gathering of the data that led to the Federal Field Committee village population study. Hope said no explanation was given to staff for the threshold village population of 25. The Federal Field Committee's fixation with the number 25 goes beyond listing places with more than 25 residents—"Also listed are places that are predominantly non-Native but which have a Native population of at least 25" (Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More*, at i). The number 25 cannot be explained by any federal Indian policy imperative. The U.S. Bureau of the Census, however, presents unincorporated communities in the same manner as incorporated places of equal size. Since most municipalities cannot organize without a minimum population of 25, it follows that unincorporated Native villages would be recorded by this standard. The 1970 census identified unincorporated communities, including Native villages in Alaska, with populations from 25 to 1000 (U.S. Bureau of Census, *1970 Census Of Population—Number of Inhabitants, Alaska*, VI, 1971).

The same BIA staff was later asked to create lists of villages that might be eligible to participate in various Native claims settlement acts. The analysis now returns to the Governor's Task Force Report in January of 1968.

The Governor's Task Force

The Department of the Interior introduced the first draft Native claims settlement act bills in the summer of 1967, just as the Federal Field Committee was completing another village population study. None of the parties were satisfied with this first round of claims commission oriented bills. The Natives, the federal government, and the State of Alaska all agreed to make a concerted effort to find some legislative common ground that could break the historical impasse over Native claims in Alaska (*Alaska Native Land Claims: Hearings on S. 2906* at 62, statement of William L. Hensley). The testimony of Edgar Paul Boyko, the attorney general for Alaska at that time, provides the most succinct history of the events which led to a historic working session between the parties, an Alaska Task Force Report, and S. 2906:

> A little more than a year ago the newly formed Alaska Federation of Natives met and caused to be drafted and introduced into Congress, legislation dealing with a proposed method of settling Alaska native land claims. A great deal of discussion ensued, and meetings and conferences were held, attended by native leaders, representatives of the State of Alaska and of the U.S. Department of the Interior, the three parties most immediately concerned with this problem. It soon developed that neither the State nor the Federal

> Government could fully accept the proposed bill as originally submitted on behalf of the Federation of Natives. Early in 1967, Governor Hickel addressed a conference of the Alaska Federation of Natives here in Anchorage, and outlined to them his imaginative concept of a proposed approach: the granting of fee title for the growth and development of native communities; of non-exclusive surface rights for the protection of the native economy and their traditional way of life; and of monetary compensation for lands to which they claim aboriginal rights, but which have been taken from them by disposal to third parties on the part of the Federal Government. Governor Hickel's concept has become the accepted standard, and while there has been a variety of approaches and proposed methods of accomplishing this end, this conceptual approach remains unaltered and accepted universally by all parties concerned.
>
> Shortly thereafter, representatives of the U.S. Department of the Interior visited Alaska and met with the Governor and his staff. They revealed at that time that the U.S. Department of the Interior planned to sponsor legislation of its own, which in due course was disclosed and introduced, and also became the basis for serious study and discussion. It soon developed that once again neither the natives of Alaska nor the State could fully accept the proposal advanced by the Department of the Interior, although many valuable features were contained therein and have been preserved in the present draft.
>
> Acting under the Governor's instructions, I met with the Alaska Federation of Natives at another meeting in Anchorage last October [1967]. At that time I proposed that the State develop a compromise version embodying some of the best features of the original Alaska Federation of Natives draft and the Interior Department draft, and perhaps adding some of its own. I suggested that, rather than have the State draft its own version, and then disclose it to the other interested parties as a completed piece of work—which might very well result in hardened attitudes and pride of authorship—we should strive for a cooperative effort. We invited the Alaska Federation of Natives to designate a committee to work with the Governor and me, and other officials of the State, in a joint effort to frame such proposed legislation which all parties could support. This offer was accepted, and, at the request of native leaders, the Governor created a special task force in his own office, which was largely staffed by officers and directors of the Alaska Federation of Natives and other representative leaders of the native communities and assisted by private attorneys representing native claimant groups, and the attorney general's office.
>
> As a result of Secretary Udall's visit to Alaska to meet with representatives of the natives and the State on the native claims issue, the Secretary moreover authorized participation in these meetings by representatives of the Department of the Interior, thus creating a tripartite group and giving great impetus to the hope of reaching the kind of agreement which would make possible the kind of legislative climate in which an attempt at settling this thorny problem would have a real chance of success (*Alaska Native Land Claims: Hearings on S. 2906* at 326-327, statement of Edgar Paul Boyko).

The Task Force Report outlined the components of a proposed settlement which were ultimately incorporated into a draft bill—S. 2906 ("Proposal for Settlement of the Alaska Native Land Claims, A Report of the Governor's Task Force on Native Land Claims, Juneau, January 10-16, 1968" in *Alaska Native Land Claims: Hearings on S. 2906* at 74-78). The task force proposal consisted of: (1) a grant of 40 million acres of land in fee, or in trust, allocated on the basis of proportional enrollments of individuals to villages, regions, and a statewide organization incorporated under state business charters; (2) a federal grant of 10 percent royalty interest in Outer Continental Shelf revenues with an immediate advance payment of $20 million to compensate for lands reserved or disposed of to third parties; (3) a state grant of 5 percent royalty interest in state selected lands, commencing upon the lifting of the land freeze[10] and resumption of state land selections; and (4) a terminable license to use the surface of lands under occupancy and used by Natives for subsistence purposes. Congress spent the

[10]PLO 4582, 34 Fed. Reg. 1025 (January 23, 1969).

next four years refining this model for a land claims act, by rejecting some concepts,[11] straying from others,[12] and bartering along the way,[13] before eventually returning to the core concepts first outlined in the task force proposal.[14]

The following sections follow the traces left by the Governor's Task Force, S. 2906, and other legislative proposals that give some clues to the origin of the Native village and urban community criteria and ultimately the creation of village lists.

Native Village Beneficiaries Under S. 2906.

The Governor's Task Force settlement bill, S. 2906, called for the enrollment of every Native to one Native group (S. 2906 § 507). Each Native group determined its own membership and enrollment. Natives could enroll to the villages where they currently lived, or to the villages where they or their ancestors had come from (S. 2906 § 507). Native groups that failed to enroll at least 25 Natives would have their members enrolled to another group.

Nothing in S. 2906 or in testimony regarding the bill indicates why the 25 person population figure was used. The definition of Native group in S. 2906 did not include a population requirement. The definition only refers to "identifiable groups of residents ... which as a group...claims Indian title to land ... by virtue of aboriginal use and occupancy at any time [S. 2906 § 516 (a)]. The group could incorporate as a state business corporation or an IRA and receive land and money under the bill—and neither requires 25 members to incorporate.

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[11] For example, the idea of a statewide corporation (S. 2906 § 307) was eventually rejected. Some feared that the well-funded, statewide corporation would become a political arm of the Natives of Alaska. Ironically, this statement came from a legal representative of various Native groups [*Alaska Native Land Claims: Hearings on S. 2906* at 101 (Statement of Barry W. Jackson); *see* H.R. Rep. No. 523 at 2198].

[12] One deviation from the Task Force's proposal and intentions was the idea of granting settlement assets to Natives organized as municipal corporations instead of for-profit business corporations. The Task Force explained their policy choice as follows:

> In order to facilitate future development, the village-as-a-municipal-corporation shall be separated from the village-as-an-incorporated-tribal-group. Among the differences between these concepts are the following: Whites may become resident members of the municipality; residence is not required for membership in the corporation; corporation membership in the course of time is to be translated into stock in a business corporation under Alaska law. A membership interest will be represented by 100 shares of stock which are not alienable by the first holder, except at death, and successor holders must be descendants of those on the original roll until 100 years have elapsed, when the shares shall be freely alienable, subject to any "close corporation" provisions in the articles and by-laws (*Alaska Native Land Claims: Hearings on 2906* at 75).

The same reasons were cited by the conference committee in rejecting the final House bill proposal for a municipal settlement vehicle at the village level (Conference Report at 2252).

[13] Later settlement proposals for Native land conveyances ran the gamut from 10 to 16 million acres before eventually returning to the 40 million acre figure. [*See* H.R. Rep. No. 523 at 2241-2242 ("Chronology of Interior's Proposals for Settlement of the Alaska Native Land Claims" from the dissenting view of Hon. Rep. John P. Saylor).]

[14] Congress eventually provided 962.5 million dollars in cash payments from the federal and state governments instead of royalties (43 U.S.C. § 1605), and offered the general regulatory protection of the federal government for Native subsistence uses on federal lands instead of a licensing system for such uses (Conference Report at 2250).

It may be that only villages with 25 members could be "identified" by verification on the most recent tribal list (*Villages in Alaska and Other Places Having a Native Population of 25 or More*, 1967). Regardless, the Federal Field Committee consistently used the 25 person population as the standard for village existence (*Alaska Natives and the Land* at 8). The last House proposals which used the municipal corporation as the settlement vehicle had an additional rationale for the 25 resident requirement—municipal corporations required that number to incorporate under state law. (See H.R. Rep. No. 92-523 at 2197.)

Natives did not need to constitute a majority of a Native village or exhibit current aboriginal use and occupancy of land under S. 2906 to participate in its proposed settlement. Two sections of the bill proposed exceptions that persist in subsequent settlement proposals. First, villages which were relatively new or which had relocated in recorded history could still file a claim based upon aboriginal use and occupancy during such period (S. 2906 § 504). Second, Native villages which had been abandoned involuntarily or which had been absorbed by non-Native communities could also file claims based on aboriginal use and occupancy before their involuntary abandonment or absorption (S. 2906 §505). These exceptions broke from an early tendency in the claims commission bills (e.g. 1964) to tie Native group land entitlements to present use by a Native community and a traditional use or need standard.[15] The official Governor's Task Force commentary explains these exceptions:

> Section 504. Claims of New Villages
>
> Native villages which have relocated or been reestablished during the last 100 years as a result of volcanic explosion, flood, loss of game, and other reasons. This section permits these villages to participate in the settlement.
>
> Section 505. Claims of Abandoned Villages
>
> This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In the latter case, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups (*Alaska Native Land Claims: Hearings on 2906* at 108).

Despite the disavowal of the requirement of present aboriginal use and occupancy and the need for a majority Native population, the exceptions tend to prove the rule—only current Native aboriginal land use (that is, subsistence lifestyles exhibited by a predominantly Native community) would assure an entitlement under the Governor's Task Force proposal. The exceptions (relocated villages and the original urban corporation provision) were tightened or eliminated in subsequent acts. More to the point, the majority Native and "not modern and urban in character" requirements were officially made the rule for Native village certification.

[15] "The Secretary of the Interior is authorized to grant in trust...to...a group of natives...title to the village site or sites now occupied by such group...and ... to grant title to such additional lands within the environs of such site or sites as would contribute significantly...to the livelihood of the community, taking into account factors such as population, economic resources of the group, traditional way of life, and the nature and value of the land proposed to be granted" (S. 1964, Sec. 3, *Alaska Native Land Claims: Hearings on S. 2906* at 16).

Not Modern and Urban in Character and A Majority of Native Residents

Powerful members of Congress insisted on present aboriginal use of claimed lands as a prerequisite to sharing in any settlement:

> Aboriginal title depends on actual use and occupancy by a recognized aboriginal group. Many Alaska Natives have left the villages of their ancestors and no longer participate in present village use of land. They live in Seattle, Anchorage, Fairbanks, and in other cities. The point is, these Natives no longer use the land (Hearings on H.R. 3100, H.R. 7039, H.R. 7432—To Provide for the Settlement of Certain Land Claims of Alaska Natives, and for other Purposes at 79; Comments of Hon. Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs; 1971).

Congressman Aspinall excluded modern and urban villages from entitlements under his proposed bill, H.R. 3100:

> Many individual Natives no longer reside with a Native group that uses public lands, and those individuals have no valid claim based on present use and occupancy....
>
> "Native village" means a Native group in Alaska that is comprised of twenty-five or more Natives, who live in a community that is not of a modern and urban character (Id. at 2-3).

Although the proposed bills at this late date purported to eliminate the relationship between value of aboriginal use and occupancy and the lands granted under legislative proposals, in H.R. 3100 Sec. 2 (g) (*Id.* at 2), city lifestyles (e.g., no subsistence use of land) would have disqualified a village from a group entitlement.

The governor contributed additional reasons for limiting village certification to predominantly Native villages and not those in urban environments:

> The first type of circumstances which activate a State policy objection is the denomination for these purposes as "Native villages," towns, cities or villages which are not, at the present state of historical development, primarily Native in character.... For instance, the city of Kenai is non-Native in population, and its economy is integrated into the cash economy of the State, as is the surrounding territory. The City of Nome was settled by gold miners and although through migration has acquired a majority of Eskimo population, it is culturally mixed and urban in character. It is difficult to assess the precise effect of conveying all the vacant land in and around such city to a corporation controlled by a racially defined minority within it, but it may have the effect of dividing the City more than it unites it, working to the long term disadvantage of both elements in the population (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 366, testimony of Governor Hickel).

The distinction between "cities and towns not .... primarily Native in character," "culturally mixed and urban in character" and communities which are a majority non-Native blurred over time. By October 1971, the Senate incorporated all three criteria into the eligibility requirements for Native villages under S. 35—at least 25 Natives had to reside in the village, the village could not be modern and urban in character, and the majority of residents could not be non-Natives (Sen. Rep. No. 92-405 at 3, 42). State land selection concerns might not have been the only reason for limiting the number of eligible Native villages. Up until the final passage of ANCSA, every bill included a Native village subsistence privilege, usually provided through a license or permit on federal lands. Under the Senate proposal, the Secretary of the Interior could close areas around Native villages to entry by all those except local residents for subsistence purposes (Sen. Rep. Doc. No. 92-405 at 43-44). The more Native villages, the more potential for subsistence closures. The dynamics of all the different legislative proposals pointed toward limiting the scope of village eligibility.

Village Lists

Villages listed in ANCSA are presumed eligible for the benefits of the act [43 U.S.C. §§ 1610(b), 1613(a)]. The reason for the lists had everything to do with the conflicts over land selection priorities:

> It is our feeling that both the listing of Native villages in the bill and a cut-off date for qualifications of 25 Native residents important to establish definite boundaries for land withdrawals. If the villages are not listed in the bill then for a certain period of time after enactment of the legislation there would be no way to determine what land would be subject to Native settlement and what would be available for State selection or other use.... Identifying the village in the bill and tying land withdrawals and patents to specifically defined areas surrounding the listed villages will avoid such future conflict (Letter from Rogers C. B. Morton, Secretary of the Interior, to Hon. Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs, Hearings on H.R. 3100, H.R. 7039, H.R. 7432—To Provide for the Settlement of Certain Land Claims of Alaska Natives, and for other Purposes at 9, 1971).

The initial lists included in the administrative bills were generated by the area director of the Bureau of Indian Affairs in Juneau (Telephone interview August 17, 1993, with John Hope, Tribal Operations, Juneau Area Office, 1963-1980). The length of the lists depended on the eligibility criteria in each bill. Congressman Lloyd Meeds' list, included in H.R. 7039, excluded no one. The definition of "Native village" in H.R. 7039 included Native villages "composed of twenty-five or more Natives, regardless of whether or not resident in a predominantly Native area" (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 18). The list of villages that was finally included in sections 1611 and 1615 of ANCSA evolved from ones generated by the Secretary of the Interior after the 1970 census data became available (*Id.* at 97, 111-114).

Southeast Village Lists

From the outset, Native villages in Southeast Alaska faced an uphill struggle to participate in a legislative settlement of Alaska Native claims. The first administrative bill, S. 1964, excluded them altogether (S. 1964, Sec. 4(a), *Alaska Native Land Claims: Hearings on S. 2906* at 19). Testimony by John Borbridge made it clear that the Tlingit and Haida Indians retained claims to million of acres of land in Southeast Alaska, in addition to certain claims pending in the Court of Claims (*Id.* at 341-347). The Court of Claims noted that more than 2.6 million acres of land in Southeast Alaska had not been taken or extinguished by the federal government (*Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States,* 182 Ct. Cl. at 134-135). Furthermore, in 1969, the Indian Claims Commission concluded that the Tlingit and Haida had preserved claims to fishing rights by timely filing a petition under the Indian Claims Commission Act of August 13, 1946 (Ch. 959, 60 Stat. 1049, codified as amended at 25 U.S.C. §§ 70 to 70v-3; *Tlingit and Haida Indians of Alaska v. United States*, 20 Ind. Cl. Comm. 508, May 14, 1969). These claims laid the foundation for Tlingit and Haida participation in ANCSA.

From that point on, Southeast villages—including all the study communities except Tenakee—were included on Native village lists with villages throughout the state (H.R. 7039, Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 31-35; S. 1830, 91st Cong., 1st Sess. 46-56, October 2, 1969). Other lists were limited to eligible Southeast villages (H.R. 7432 and S. 1830, June 10, 1970), excluding the study communities but including Tatitlek (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 31-35, 57; S. Rep. No. 925, 91st Cong., 2d Sess. 166, 1970).

Southeast village representatives endured constant attacks and pressure from non-Native advocates, who opposed any recognition of Southeast Native land claims in Southeast towns they considered to be historically non-Native (Hearings on H.R. 13142, H.R. 10193, and H.R. 14212, Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 91st Cong., 1st Sess. 581-582, 1969, statement of Leo Mark Anthony; and Hearings on H.R. 13142, H.R. 10193, and H.R. 14212 at 608-610, 1969, statement of William L. Paul). By the 1960s, Tlingits and Haidas found it difficult to overcome the strength of the non-Native communities' denial of the Native origins of most communities in Southeast Alaska (Telephone interview August 13, 1993 with Byron Mallot, former special assistant to Senator Gravel).

The study communities disappeared from the Southeast list at the same time as 1970 census data became available, and the criteria for the statewide village list shifted to a population of at least 25 Native residents, a majority Native population in the village, and communities that were not urban and modern in character[16] (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 97, 111-114). The final version of S. 35 contained an unlisted Southeast village subsection that ran parallel with the provision for unlisted villages in other parts of the state (S. Rep. Doc. No. 92-405 at 45). The provision would have allowed the Secretary to make findings with respect to the eligibility of unlisted Southeast villages much the same as with unlisted villages in section 1610(b)(3). However, the provision was not adopted by the Conference Committee (Conference Report at 2257), and Southeast villages found themselves without an appeal from a denial of Native village status (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, 177, Sept. 9, 1974; identical opinion In *Re: Village of Haines*, VE # 74-85, Sept. 9, 1974; acc'd, In *Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, Dec. 5, 1977).

Historical Development of the Term "Urban Community"

Section 14 (h)(3) of ANCSA authorized the Secretary of the Interior to withdraw and convey to Natives residing in Sitka, Kenai, Juneau, and Kodiak 23,040 acres each as an entitlement for these urban corporations. "Natives in four towns that originally were Native villages, but [came to be] ... composed predominantly of non-Natives" were authorized to organize urban corporations (43 U.S.C. § 1613 (h)(3); Conference Report at 2248). The issue of urban group status can be traced to section 505 of S. 2906:

> Section 505. Claims of Abandoned Villages
>
> A native group relocated to a native village which has been abandoned involuntarily during recorded history, or which has been absorbed by a non-native community, may file a claim based upon aboriginal use and occupancy before such involuntary abandonment or absorption (*Alaska Native Land Claims: Hearings on S. 2906* at 14).

[16]The respective total and Native populations for each of the landless villages were as follows in the 1967 report of the Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More*: Ketchikan 10855/1605; Haines 1000/300; Petersburg 1800/360; Tenakee 125/30; Wrangell 1700/500. The 1970 Census figures were reported as follows: Ketchikan 6994/1064; Haines 463/109; Petersburg 2042/242; Tenakee 86/6; Wrangell 2029/380 [ISER, *Alaska Review of Business and Economic Conditions*, Vol. X, No. 2 (Sept. 1973)].

The Governor's Task Force commentary explains this section as follows:

> This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In latter cases, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups.

Another section, Section 516, provides a clarification:

> ... Note that certain urban native groups, such as the Fairbanks Native Association, which do not as a group claim Indian Title, are not "native groups" under the act. Their members must be enrolled on the rolls of their historic villages (Id. at 108).

The ability of historic Native groups located in urban locations to participate in ANCSA was assured by some bills which would have extended benefits to Native groups "regardless of whether or not resident in a predominantly Native area" (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 18). But this version of a settlement act did not survive. Instead, the Senate shifted to the idea of a national corporation for non-resident Natives living out-of-state, and an urban corporation for Natives living in places that were ineligible because they had so many non-Native residents (Conference Report at 2254). However, these corporations did not survive the conference committee. Instead, the conference committee included a section which authorized non-resident, out-of-state Natives to vote on creating a 13th regional corporation. In addition, in-state Native residents of urban locations could enroll as at-large shareholders in their respective regional corporations and enjoy a larger monetary distribution over time than village shareholders [43 U.S.C. §1606(j)]. Finally, Natives residing in the historic villages of Sitka, Kenai, Juneau, and Kodiak were able to incorporate as urban corporations and were thereby entitled to 23,040 acres each and a modest planning grant [43 U.S.C. 1613 (h)(2)].

The ANCSA urban corporation provision was never officially introduced in any bill leading to the passage of ANCSA, according to Bill Van Ness, who was at that time chief counsel for the Senate Interior and Insular Affairs Committee (Telephone interview, August 26, 1993). Representatives from the four communities had spoken to Senator Stevens about the provision the year before, in 1970, according to John Borbridge, who was at the time a Tlingit and Haida representative (Telephone interview, October 14, 1993). Senator Stevens was favorably inclined toward the provision but did not act on it *(Id.)*. The four urban villages tried again during the conference committee deliberations in late 1971. Spokesmen for each of the urban communities took turns lobbying various congressmen in both houses, according to Hank Eaton, who represented the urban community of Kodiak (Telephone interview, Sept. 23, 1993). Senator Stevens was approached about the provision again during the conference committee and introduced the provision into the final bill, according to John Borbridge.

The Federal Field Committee identified six urban places in Alaska—Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, and Sitka—and four examples of "non-Native" towns—Wrangell, Petersburg, Kenai, and Seward. The four urban corporations were organized in Juneau, Kodiak, Sitka, and Kenai (*Alaska Natives and the Land* at 6). The Field Committee reported that of the five study communities, Wrangell was located at the same place as the original village (Id. at 274). Sitka was also found to be located at the site of its original village, but Juneau was not.

Bill Van Ness recalled that the urban Native corporation provision was enacted because no one objected to these four communities' gaining eligibility (Telephone interview, August 26, 1993).

Van Ness also said that, to his knowledge, no criteria or evaluations were used to determine if these four communities were any more qualified than others (*Id.*). John Borbridge recalled that the sense of the conference committee was that no more communities would be accepted for urban corporation status (Interview with John Borbridge, October 14, 1993). At the time, it was not clear whether Southeast villages had other options to qualify for village status under ANCSA—that would be discovered later in the village eligibility decisions regarding Tenakee, Haines, and Ketchikan (*Id.*).

Native Village Certification Under ANCSA

The Secretary was required to make eligibility determinations for more than two hundred villages within two and a half years after enactment of ANCSA [43 U.S.C. §1610(b)]. Villages found eligible could incorporate and were entitled to the land benefits described in section 1613 of ANCSA. A list of established Native villages ("listed villages") was set out in section 1610(b)(1), and these villages were deemed to be eligible unless the Secretary made a finding that fewer than 25 Natives resided in the village on the 1970 census enumeration date, that the village was modern or urban in character, or that the village was populated by a majority of non-Native residents [43 U.S.C. § 1610(b)(2)].

Since villages in Southeast Alaska, listed in section 1615(a), were not "listed in subsection (b)(1)," they could have been required to fulfill the eligibility criteria for unlisted villages found in section 1610(b)(3). Notwithstanding that technical distinction, Southeast villages were treated as "listed" villages under the regulations [43 C.F.R. § 2651.2 (a); see example, In Re: *Kasaan*, VE 74-17, VE 74-18, June 14, 1974: Appeal by the Forest Service and the Alaska Wildlife Federation and Sportsmen's Council of acting area director's decision finding Kasaan eligible for benefits under ANCSA].

Unlike listed villages, unlisted villages carried the affirmative burden of establishing that at least 25 Natives resided in the village on the census enumeration date and that the village was not modern and urban in character [U.S.C. § 1610(b)(3)]. An unlisted village would be found eligible and be added to the list, once the Secretary of the Interior had made a finding about all necessary facts required by the subsection. The Secretary later determined that Congress did not intend to allow unlisted Southeast villages an opportunity to prove their village status, the way unlisted villages in other parts of the state could (In *Re: Village of Haines*, VE 74-85, September 9, 1974; In *Re: Village of Tenakee*, 2 ANCAB 173, VE 74-60, September 9, 1974; In *Re: Appeal of Ketchikan Indian Corporation*, 2 ANCAB 169, LS 77-33, December 5, 1977).

Any Native group that failed to meet the minimum village population standards could be considered for special land entitlements, as under section 1613(h)(2).

The first proposed village eligibility regulations met with broad disapproval in the Native community (*Alaska Native Management Report*, October 24, 1972 at 2). Natives were concerned that even if the regulations were redrafted, many Native villages would be found ineligible under the "modern and urban character" standards (*Alaska Native Management Report*, March 13, 1973 at 1). This widespread dissatisfaction could have been avoided, if the local Alaska Bureau of Land Management (BLM) officials responsible for preparing regulations had consulted the Native community before the regulations were published. Final regulations were not adopted until May 30, 1973. That lack of consultation contributed to unnecessary delays and an initial poor working relationship between the BLM and the Native community.

Almost all appeals of village certification decisions were brought by third parties who felt threatened by village corporation land selections. State municipal governments, non-Native sports hunting associations, and—in some instances—federal land management agencies used the village certification process as a way of defeating village land selections. (See, e.g., *Stratman v. Watt*, 656 F.2d 1321 (9th Cir., 1981), *cert. denied*. 102 S.Ct. 1744; and, *Alaska Native Management Report*, January 31, 1974 at 3; September 16,1974 at 1.)

The director in the Juneau area office of the Bureau of Indian Affairs (BIA) was responsible for making village eligibility determinations under regulations adopted on May 30, 1973 [43 C.F.R. § 2651.2(a), 1973)]. The area director was required to investigate and examine available records and evidence that could have a bearing on the eligibility of any listed village *[Id.* at 2651.2(a)(1)]. An authorized representative of the village was required to submit an application for determination of eligibility for unlisted villages [*Id.* at 2651.2(a)(6)]. The application had to include prima facie evidence of compliance with the requirements of eligibility under the regulations.

The village eligibility regulations expounded on the language in ANCSA as follows:

1. Twenty-five or more natives had to reside in the village on April 1, 1970, but residence was presumed if a Native was properly enrolled to the village.

2. The village had to have an actual physical location evidenced by the occupancy of at least thirteen Natives during 1970. However, no village "which is known as a traditional village" would be disqualified, if occupancy could be shown sometime during the ten years preceding 1970.

3. A village was modern and urban in character only if it possessed all of the following attributes:

a. Population over 600;

b. Centralized water and sewer system serving a majority of residents;

c. Five or more established businesses;

d. Organized police and fire protection;

e. Private resident medical and dental services;

f. Fully maintained streets and sidewalks. [Id. at 2651.2(b)(1),(2),and (3)].

When he finished his review, the area director published his proposed decision in the Federal Register and in local newspapers [*Id.* at 2651.2(a)(2)]. Any interested party could file a protest within thirty days *[Id.* at 2651.2(a)(3)]. Absent a valid protest, the decision was final and would be published a second time in the Federal Register [*Id.* at 2651.2(a)(2)].

The director would evaluate any protests and supporting evidence and render a decision on the eligibility of the village within thirty days of receipt of the protest *[Id.* at 2651.2(a)(4)]. The decision on appeal would be published and become final, unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeals Board (ANCAB) (*Id.*).

The Secretary of the Interior established the ANCAB, or the "ad hoc board," as it was referred to in the regulations, to hear appeals of BIA village eligibility and village land selection determinations. ANCAB operated as a fact finding board which recommended decisions for Secretarial review and approval.

The Secretary was not bound by ANCAB's recommendations. The Secretary appointed four members, familiar with Native village life, from outside the Department of the Interior to sit on ANCAB. ANCAB, in turn, assigned Interior Office of Hearings and Appeals administrative judges to hear the appeals (*See* GAO *Report on Enrollment and Village Eligibility* at 10). ANCAB reviewed the record and the decision recommended by the administrative law judges, and then sent its own recommendations to the Secretary without providing an opportunity for the parties to review the administrative judges' decisions or submit exceptions.

Of the 215 villages listed in ANCSA, the BIA found 201 eligible and 14 ineligible. (See generally, GAO *Report on Enrollment and Village Eligibility* at 9-14). ANCAB received twelve appeals on the listed village determinations. All twelve appeals involved villages that the BIA had determined were eligible. Only eight of the twelve appeals proceeded to hearing before the administrative judges. The judges upheld the BIA's determination of eligibility in seven of the eight cases. ANCAB recommended reversal of two of these decisions, and the Secretary accepted ANCAB's recommendation.

Of the three listed villages that ANCAB found ineligible, one did not have an identifiable physical location evidenced by occupancy consistent with Native culture and lifestyle (Salamatoff), another failed to show proof of at least twenty-five resident Natives enrolled to the village (Pauloff Harbor), and the third failed to show an identifiable physical location and sufficient number of Native residents (Uyak). The three ineligible villages filed suit in the United States District Court challenging the Secretary's decisions (*Koniag, Inc. v. Kleppe*, 405 F. Supp. 1360, D.D.C., 1975). The District Court overruled the Secretary and reinstated the BIA's determinations that all three were eligible. The Secretary appealed the decision for all the villages except Pauloff. The District of Columbia Circuit Court of Appeals affirmed in part, reversed in part, and remanded the case for administrative determination on the grounds that the secret procedure involved in ANCAB review of the administrative judges' decisions denied due process to the parties and violated the ANCSA policy of maximum participation by Natives in matters that concern their property rights (*Koniag Inc., Village of Uyak v. Andrus*, 580 F.2d 601, 609, D.C. Cir., 1978). Salamatoff and Uyak were later legislatively confirmed as eligible villages in the 1980 Alaska National Interest Lands Conservation Act (ANILCA, Pub. L. No. 96-487 §§ 1427, 1432, 94 Stat. 2327).

Unlisted villages faced a more precarious fate when the ANCAB reviewed the BIA director's decision. [See *Report of the Secretary* 1982, § 1610(b)(3)]. Thirty-one unlisted villages submitted eligibility applications. The BIA declared that twenty-four of these villages were eligible and seven ineligible. Twenty-eight of these determinations were appealed (twenty-three eligible, five ineligible). Except for Eklutna's protest of the Knik determination, the appeals of villages found eligible were made by non-Native third parties (*Alaska Native Management Report*, January 31, 1974 at 3). Ultimately only 20 of these appeals were decided by the administrative judges and ANCAB. ANILCA also resolved most of the pending issues on eligibility regarding unlisted villages (ANILCA §§ 1427, 1432).

In summary, once final village eligibility regulations were adopted, village eligibility determinations were made expeditiously by the Secretary, but third parties forced many of the Secretary's decision into adjudication. The adjudication process was long and expensive. Ultimately, many of the disputes were resolved by legislation as part of ANILCA.

Southeast Village Eligibility Determinations

Following the passage of ANCSA, three Southeast villages, including the study communities of Haines and Tenakee, filed timely appeals of eligibility decisions of the area director of the Bureau of Indian Affairs with the Alaska Native Claims Appeal Board. (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, 177, Sept. 9, 1974; Identical Opinion In *Re: Village of Haines*, VE# 74-85, Sept. 9, 1974; *Forest Service, et. al v. Village of Kasaan*, ANCAB VE# 74-17, VE# 74-18, June 14, 1974).

Ketchikan Indian Corporation, the IRA organization in Ketchikan (another study community), filed an untimely request for determination of its village eligibility and land entitlement (In *Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, 170, Dec. 5, 1977). The Ketchikan IRA appealed the area director's adverse decision. The ANCAB resisted the area director's request to dismiss the case as untimely, and instead applied the rational of the decisions it had made on the earlier appeals by unlisted villages. It found as follows:

> On August 30, 1974, this Board issued a Final Order in re Appeal of Village of Tenakee, VE # 74-60, finding the Village of Tenakee not eligible for benefits under the Act and the same was approved by then Secretary of the Interior Rogers B. Morton on September 9, 1974. The final order...developed the legislative history of the Southeast Region, discussed applicable sections of the Alaska Native Claims Settlement Act and concluded that the designation of villages in Southeastern Alaska in §16(a) of ANCSA created an exclusive list of eligible villages of Southeast Alaska which cannot be added to, stating:
>
> It is ... apparent from a comparison of the appropriate provisions relating to withdrawals, selections and conveyances of land that unlisted Southeast villages are not intended to receive benefits under the Act. The distinctions made between 'identified' non-Southeast villages and listed Southeast villages is consistent throughout all of the withdrawal, selection, and conveyance procedures spelled out in the Act. It is thus apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act.
>
> ...The Appellant in the present appeal, Ketchikan Indian Corporation, is located in Southeastern Alaska and purports to be a village or community entitled to benefits under the Alaska Native Claims Settlement Act despite the fact it did not seek a determination of eligibility prior to the September 1, 1973, deadline ... However, just as the Village of Tenakee, the Appellant is not listed within § 16(a) of ANCSA and thus regardless of the significance of the application deadline for determination of eligibility this appeal must be controlled by the previous decision and therefore dismissed [sic] (In Re: Appeal of Ketchikan Indian Corp., 2 ANCAB at 171).

In essence, the ANCAB found that the only way an unlisted Southeast village could acquire benefits under ANCSA was to be treated as a non-Southeast village and thereby conceivably acquire larger land entitlements than the listed Southeast villages and create inconsistencies in land selection reallocation formulas found in section 12(b) of the act. (In *Re: Village of Tenakee*, 2 ANCAB at 175-176). Finally, the conference committee's failure to adopt the Senate's parallel unlisted Southeast village provision cinched the case:

> The provisions for the Southeast and non-Southeast villages are parallel, but distinctly different, and the failure of Congress to provide any parallel provision for the eligibility of unlisted Southeast villages is consistent with the other distinctions made by Congress in conferring land benefits upon the listed Southeast villages subject to the Tlingit-Haida Settlement, and upon the listed and unlisted villages elsewhere in Alaska (Id. at 177).

The conference committee did not explain its omission of the unlisted provision (Conference Committee at 2257).[17] None of the other study communities attempted to assert their eligibility during the regulatory period following the passage of ANCSA. Any attempt on their part, however, would likely have been futile, given the Secretary's decisions regarding unlisted Southeast villages.

[17]Certainly, population figures and knowledge regarding the settlement patterns in Southeast Alaska were better known than in other parts of the state. However, the reasons for the committee's decision are only conjecture.

Chapter 3. The Tlingit and Haida Settlement

BY CHARLES W. SMYTHE

This chapter compares the participation of the five study communities and of the recognized ANCSA Southeast villages and urban communities in the first Native land claims settlement in Alaska—the settlement the Tlingit and Haida Indians won after bringing suit against the federal government. The chapter also discusses the form of the settlement, known as the Tlingit-Haida settlement, which was originally proposed as a community-based settlement and later was legislatively changed to a region-based settlement by recognizing the Tlingit and Haida Central Council as a regional tribal organization.

Origins of the Tlingit and Haida Settlement

The Tlingit and Haida land claims lawsuit was instituted after the Natives of Southeast Alaska secured passage of the Jurisdictional Act of June 19, 1935 (49 Stat. 388), "Authorizing the Tlingit and Haida Indians of Alaska to bring suit in the United States Court of Claims, and conferring jurisdiction upon said court to hear, examine, adjudicate, and enter judgement upon any and all claims which said Indians may have, or claim to have, against the United States, and for other purposes." The participation of the five Southeast study communities in the events leading up to this act, and in the subsequent activities and organizations which carried the action through to the decisions granting compensation for lost property rights, including the establishment of the Central Council of Tlingit and Haida Indians of Alaska, is described below and compared with that of Southeast villages recognized in ANCSA.

The Jurisdictional Act defined the Tlingit and Haida Indians to be all those Indians of whole or mixed blood who in 1935 were living in the southeastern region of "Russian America," or the Territory of Alaska. It granted the authority for these Indians to pursue all claims "for land or other tribal or community property rights taken from them by the United States without compensation," or "which the United States appropriated to its own uses and purposes without consent of the said Indians," or "for the failure or the refusal of the United States to protect their interests in lands or other tribal or community property in Alaska, and for loss of use of the same, at the time of the purchase of... Russian America, now Alaska, from Russia, or at any time since that date and prior to the passage and approval of this Act..." It also authorized compensation for the loss "of their right, title, or interest, arising from occupancy and use, in lands or other tribal and community property, without just compensation therefor ..."

The act also authorized a community settlement. It specified that "all persons of Tlingit or Haida blood, living in or belonging to any local community of these tribes" in Southeast Alaska were entitled to share in the judgement. "Each tribal community shall prepare a roll of its tribal membership, which roll shall be submitted to a Tlingit and Haida central council for its approval. The said council shall prepare a combined roll of all communities and submit it to the Secretary of Interior for approval. Approval of the roll by the Secretary of Interior shall operate as the final proof of the right of such Indian communities to share in the benefits of this Act..." The subsequent recognition of the Central Council as the beneficiary entity of the Tlingit and Haida settlement derives from this wording.

The act did not provide any further specification of tribal community, such as a list of eligible communities, or of procedures for establishing and approving a tribal membership roll. It did say, however, that any judgement funds would be apportioned to the different Tlingit and Haida communities listed on the roll in proportion to the number of names on the roll. The act also designated that the funds would be expended "for the future economic security and stability of said Indian groups, through the acquisition or creation of productive economic instruments and resources of public benefit to such Indian communities..."

Prior to the court's decision on the Tlingit-Haida case, the Central Council organization was modeled after the Alaska Native Brotherhood (ANB) and Alaska Native Sisterhood (ANS). Its leadership was drawn from the ANB and ANS, and it met during the annual ANB/ANS conventions. Central Council membership was comprised of Tlingit and Haida communities with active ANB/ANS camps. In the 1930s and 1940s, these included the study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Saxman, Sitka and Yakutat. Haines, Kasaan, and Tenakee were less active in the 1950s, but the participation of the other communities remained at earlier levels.

The history of the Tlingit and Haida land claims began with the ANB and ANS. The idea of pursuing claims for the loss of lands and property rights in Alaska is attributed to one of the founders of ANB, a Tsimshian named Peter Simpson, who first posed the question, "Whose land is this?" and urged the Native leaders to take action. Ironically, one of the five study communities, Haines, is recognized as the site from which attorney William L. Paul, Sr. initiated the Tlingit and Haida land claims, during the 1929 annual ANB convention in Haines.

Paul invited Judge James Wickersham to the 1929 convention in Haines. When Judge Wickersham addressed the convention, he called upon the ANB to pursue Congressional action to redress the loss of land and the timber on it. He read a list of communities that should be included, and mentioned four of the five study communities by name: Haines, Petersburg, Wrangell, Ketchikan (also named were Klukwan, Hoonah, Douglas, Juneau, Angoon, Sitka, Kake, Hydaburg, and Kasaan). Presumably, these were the communities in attendance at the meeting (Brown 1993: personal communication; Paul 1946).

At this meeting, the ANB Grand Camp passed a resolution which authorized the executive committee to expend funds from the grand treasury to pursue this course. "We began actively seeking out lawyers and solutions and bending the arms of several legislators (principally the delegates from Alaska) toward getting the legislation that we would need to actually permit us to sue the United States government" (Brown, in Hope 1982:36). Also at this meeting, the decision was made to include every Tlingit and Haida Indian, regardless of how much the individual contributed to the cause.

Wickersham drafted the legislation which was introduced in Congress and which would enable the Tlingit and Haida tribes to sue the United States for the loss of tribal property, and of its use and possession, in Alaska. Members of the ANB and ANS worked with him in introducing it, and later in keeping it in front of the body after Wickersham returned to Congress as the territorial delegate in 1930. In 1935, Wickersham's successor, Anthony Dimond, succeeded in achieving passage of the special jurisdictional act granting authority to the Tlingit and Haida Indians of Alaska to pursue these claims.

Implementing the Jurisdictional Act: Creation of the Tlingit and Haida Indians of Alaska

The first organizational meeting of the Tlingit and Haida Indians of Alaska took place in Wrangell in 1935, after passage of the act. Before that assembly, the BIA required every community and village in Southeast Alaska with Tlingit and Haida residents to hold public gatherings and elect delegates to the Wrangell meeting.

> The first organizational meeting was held in Wrangell ... It was hosted by Wrangell, and our ANB and Tlingit and Haida meetings ran concurrently. We had the ANB Convention going on at the ANB Hall and we were able to get space at the Salvation Army Hall to hold our Tlingit-Haida meetings. As I recall, the first Tlingit and Haida meeting we held in the evening after the ANB business was completed at the ANB Hall. That was when we fulfilled the requirements for organizing. ...[elected officers]... At that first meeting we selected our presiding officer, secretary, and also accepted a slate of delegates from the different towns. Delegates were seated on the basis of one delegate for each one hundred Indians of each community or fraction thereof (ibid.:37).

Haines, Ketchikan, Petersburg, and Wrangell participated in that meeting, along with Sitka, Angoon, Klawock, Craig, Hoonah, Kake, Douglas, Juneau, Hydaburg, Saxman, Klukwan and Yakutat.

After elections, the motion was made and passed, "We go ahead with the suit under the 'Tlingit and Haida Land Bill,' " (ibid.:49). On another motion, William L. Paul, Sr., was appointed to serve as attorney to prosecute the lawsuit; he was also authorized to select an associate and submit the name to the Central Council. He notified the meeting that he would ask Judge Wickersham to be lead counsel. A committee was elected with the power to contract with an attorney. A major problem discussed at this meeting was fund-raising; the assembly decided to send fund-raising teams around to the communities and pass "the potlatch bowl" around in meetings in each community.

In 1939, the ANB passed a resolution to form an executive committee that would serve in the capacity of the Central Council, under the act of 1935, for the purpose of pursuing the land claims. The Central Council would be organized similarly to the ANB, with each local camp constituted as the "tribal community" referred to in the 1935 act. But the BIA maintained that the Central Council had to be distinct from the ANB, because the ANB membership was open to non-Natives, which was inappropriate in the present case as the Central Council was to represent only members of Tlingit and Haida tribes.

In consequence of this objection, another organizational meeting of the Central Council was held in 1941, at which delegates selected their attorney and adopted a contract. These actions took place with attendance by and approval of the BIA. At this meeting, the Central Council membership comprised 18 communities, including all five study communities: Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Juneau, Saxman, Sitka, and Yakutat. In the minutes of this meeting, there is reference to prior meetings in 1939-40 with similar membership. The group arrived at the selection of Grady Lewis, William L. Paul, Sr., and Fred Paul as attorneys.

Filing the Tlingit and Haida Lawsuit

After further delay, a BIA-approved contract was signed in 1947 between the Tlingit and Haida Indians of Alaska and attorneys James E. Curry and Associates, selected by the Central Council to represent them in land claims before the U.S. Court of Claims. The suit was filed on October 1, 1947. In subsequent years, the Central Council continued to meet informally and follow the progress of the lawsuit. In 1950, Curry wrote to the 18 member communities and suggested they form "Tlingit and Haida Claims Committees." The mailing list used by the attorney was that of the ANB, and it included the five study communities.

In 1951, the attorneys prepared an overall petition covering all the local groups, including the modern organizations, individual bands, and local groups. This new petition covered the individual claims of the various towns. In the list of organizations representing aboriginal tribal groups, Curry included the Wrangell Indians representing the Stikine Tribe; the Chilkat Indian Village of Klukwan and Chilkoot Indian Association of Haines, representing the Chilkat Tribe; and the Tlingit Indians of Ketchikan representing the Tongass Tribe. Tenakee was represented through Angoon, as its tribal affiliation was linked with Angoon, and Tenakee residents began to move to Angoon in this period.

In 1954, descendants of traditional Tlingit and Haida tribes, who were recognized as chiefs or active leaders of Tlingit and Haida clans, intervened as parties plaintiff in the suit. A comparable lawsuit was also filed before the Indian Claims Commission with corresponding plaintiffs, including the Tlingit and Haida Indians of Alaska, representatives of the Tlingit and Haida Nations, representatives of the 14 Tlingit Tribes and the Haida Tribe, and the IRA governments of organized communities (in their own right and as representative of their respective tribes). The following tribes were represented: Chilkat, Auk, Taku, Hoonah, Yakutat, Lituya, Sitka, Angoon, Kake, Kuiu, Henya, Stikine, Tongass, Sanya, and Kaigani (Haida).

In the early 1950s, the lawyers' mailing list corresponded to the ANB membership list, and included all the five study communities (Haines, Ketchikan, Petersburg, Tenakee, and Wrangell), as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, and Yakutat. An examination of the available minutes and attendance records of annual Tlingit and Haida conventions held between 1953 and the early 1960s indicates active and regular participation by Haines, Ketchikan, Petersburg, and Wrangell, together with other communities. In some years, Klukwan delegates included a Haines resident, in place of a separate Haines delegation. The available information indicates that Tenakee was not active in the 1950s. By comparison, the same records suggest that Kasaan was also inactive through this period, until about 1963. Douglas apparently affiliated with Juneau in 1959, as it no longer appeared as an independent delegation in the 1960s.

The 1959 Tlingit and Haida Claims and Aboriginal Indian Title

On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida Indians had established aboriginal Indian title to the land in Southeast Alaska and were entitled to compensation for the uncompensated taking of their lands by the United States, and for the failure or refusal of the United States to protect the interest of the Indians in their lands or their hunting and fishing rights, pursuant to the Act of June 19, 1935. It was held that the Tlingit and Haida Indians exclusively used and occupied most of Southeast Alaska at the time of purchase of Alaska in 1867, and that the land had not been abandoned by the Indians prior to the dates of taking.

Part of the land, water, and rights used and occupied by the Indians in 1867 was subsequently lost through the failure of the United States to exempt such property rights from the operation of the general land laws in Alaska and from the failure of the government to enforce such minimum protection as was authorized in the laws (particularly section 8 of the Organic Act of Alaska). This included areas lost to mining and industrial sites, homesteads, mineral leases, and townsites established by white settlers. The court also held that other lands were taken outright by the government, including the Annette Islands reserve and various areas set aside for the Tongass National Forest and Glacier Bay National Monument [(U.S. Court of Claims (147 Ct. Cls.) 1959)].

The U.S. Court of Claims identified the Tlingit and Haida tribes listed the principal winter villages for each of the tribes as of 1867, and identified 14 modern Tlingit and Haida tribal communities associated with these tribes (see Table 3.1). The modern communities were the following:

Angoon	Ketchikan
Douglas	Klawock
Haines	Klukwan
Hoonah	Saxman
Hydaburg	Sitka
Juneau	Wrangell
Kake	Yakutat

Three of the five study communities (Haines, Ketchikan and Wrangell) were listed in the 1959 decision, while Petersburg and Tenakee were not. In comparison, among the 12 Southeast communities recognized in ANCSA, Craig and Kasaan were not identified in the decision. Another community, Douglas, was listed in the Tlingit and Haida decision but was not recognized in ANCSA (Petersburg was included in the 1968 decision; see Table 3.2).

The court recognized that since the U.S. acquired Alaska in 1867, there had been movements of Tlingit and Haida Indians from traditional villages to larger, modern communities in the region:

> At the present time, the Tlingit and Haida Indians live in a number of native villages which are almost entirely Indian, but some live in large communities in principal cities of Alaska (Finding of Fact No. 25).

The court included six of these larger towns and cities in its enumeration: Haines, Juneau, Douglas, Sitka, Wrangell, and Ketchikan. The modern villages named in the findings were Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock, Saxman, and Hydaburg. In enumerating the modern Indian communities in Southeast Alaska, the court was following a tribal orientation which was inherent in the proceedings, but which served to limit the final enumeration.

In identifying modern communities (those in existence in 1935), the court followed a tribal framework; that is, it first identified the names of Tlingit and Haida tribes and then the names of the modern communities associated with those tribes. This effort was consistent with the legal framework established in the 1935 jurisdictional act, which concerned "tribal ... property rights," as described above. But it also introduced constraints and errors regarding the identification of modern Tlingit and Haida communities. For example, some communities were in existence before 1935 (such as Petersburg, Tenakee, Craig, and Kasaan) that were not mentioned by the court, although they had tribal affiliations.

On the other hand, the Kuiu tribe was singled out as "no longer in existence as a tribe;" that is, no longer associated with its own tribal community (Finding of Fact No. 26). However, the court stated that its members had migrated to other communities including Klawock, Kake, and Wrangell. The implications of migration of other tribal members to different tribal communities was not discussed by the court, except insofar as the list of modern communities indicated a consolidation of more dispersed settlements that existed in 1867.[1] This tribal emphasis resulted in some inconsistencies in the court's list of communities.

[1]The Tongass tribe was incorrectly identified with Saxman, and likewise the Cape Fox tribe was associated with Ketchikan; the accurate modern community affiliation of these subdivisions is the reverse.

Table 3.1. Names of Modern Communities Where the Indians of the Tlingit and Haida Tribes Live

TRIBE	VILLAGE(S) AS OF 1867	MODERN COMMUNITY
Tlingit Tribes		
1. Yakutat	Yakutat	Yakutat
2. Chilkat-Chilkoot	Klukwan	Klukwan
	Kalwalt	Haines
	Chilkoot	
	Yandestuka	
	Diea	
3. Huna	Huna	Hoonah
	Tuxugu	
4. Auk	Aynskultu	Juneau
5. Taku-Sumdum	Taku	Douglas
	Sumdum	
6. Hutsnuwu	Basket Bay	Angoon
	Angoon	
	Killisnoo	
	Neltushkun	
7. Sitka	Sitka	Sitka
8. Kake	Kake Village	Kake
	Kake	
9. Kuiu	Kuiu	none
10. Stikine	Wrangell	Wrangell
11. Henya	Shakan	Klawock
	Tuxekan	
	Klawock	
12. Sanya	Yes Bay	Ketchikan
	Cape Fox	
	Loring	
13. Tongass	Tongass	Saxman
Haida Tribe		
1. Haida	Kasaan	Hydaburg
	Sukkwan	
	Hawkan	
	Klinkwan	
	Koianglas	

Source: *The Tlingit and Haida Indians of Alaska* v. *the United States*, Finding of Fact No. 25.

In addition to associating each community with a single tribe, the court also reported which communities were and were not located at the same places as the original villages. The court held that five communities (or 33 percent of all Southeast communities recognized by the court), were not located at the sites of historic tribal villages. These were Haines, Juneau, Douglas, Ketchikan, and Saxman. The court identified Saxman with the Tongass tribe, which may have been the case at an earlier period in its history, but at the time of its establishment, and again by 1959, Saxman was identified with the Cape Fox people. The Tongass people are associated with the Native community in Ketchikan.

After the 1959 Decision: The Central Council of Tlingit and Haida Indians

As described above, the 1935 jurisdictional act identified the role and function of the Central Council. The beneficiaries of the Tlingit and Haida settlement were identified as "all persons of Tlingit and Haida blood, living in or belonging to any local community of these tribes" in southeast Alaska. Each "tribal community" was authorized to prepare a roll and submit it to the Tlingit and Haida Central Council for approval. The Central Council, in turn, would prepare a combined roll and submit it to the Secretary of the Interior for final approval. The Central Council was authorized by name in the 1935 act, but as its statutory role would not be necessary until there was a favorable decision, it operated informally to follow the progress of the lawsuit through the years until 1960.

The definition of "community" was significant in the Tlingit and Haida proceedings, since distributions were to be apportioned to the different Tlingit and Haida communities according to the number of names on each community roll. This form of settlement was established in the special jurisdictional act authorizing the lawsuit, as described previously. The original version of this act called for a per capita distribution. But at the suggestion of the Department of the Interior, it was changed shortly before passage to prohibit per capita payments and to provide that judgements must be used for the future economic stability and development of Tlingit and Haida communities (Carver: 1964).[2] Sections 7 and 8 were added to the act to effect these goals. As will be described below, these issues were re-visited after the decision, and the form of the settlement was reshaped with the active participation and encouragement of the DOI and BIA.

After the decision, the Central Council met in Angoon in conjunction with the 1960 annual ANB convention. This gathering was regarded by the BIA as the meeting at which the Central Council would be formed and begin developing enrollment procedures, following its mandate in the 1935 act. In the meeting, the Central Council requested Tlingit and Haida communities to carry out a census of tribal members to provide an estimate of community rolls and for use in proposing amendments to the jurisdictional act. Sometime later, the Central Council distributed lists of Southeastern communities, together with their populations by race, based on the 1960 census. The lists included categories for

[2] The reason for this tribal and community form of settlement, as opposed to a per capita distribution, was the nature of the resources (lands) in question, which were identified as capital resources that served to maintain the entire Native population for the benefit of successive generations (see Opinion and Findings of Fact, Tlingit and *Haida Indians of Alaska v. United States,* pp. 15-17).

indigenous settlements, non-indigenous towns, cities having Native communities and present-day Native villages. These lists are indicative of the kinds of concerns that existed within the council regarding community eligibility.[3]

The lack of any clear definition of the term "tribal community" in the jurisdictional act (or its legislative history) caused controversy over the years of the lawsuit. William L. Paul, Sr. brought up the issue in Wrangell in 1941 at the early organizational meeting of the Tlingit and Haida Indian Tribes of Alaska. In the 1950s, he and others brought suits (most notably the Teehitton case) in federal and state courts on behalf of local tribal groups, which opposed the granting of tribal recognition to members of other tribes (immigrants) living in the tribal communities. These efforts were ultimately unsuccessful.

The issue was problematic to the attorneys working for the Tlingit and Haida tribes, who were forced to file the case in the name of all the various modern organizations and groups as well as the aboriginal bands. This was necessary, in their view, because the Attorney General contended that modern groups did not have authority to represent the aboriginal tribes.[4] Some difficulty was also evident in the 1959 opinion of the court, which made no mention of Petersburg or Tenakee, although each had a history of native occupation since well before the passage of the jurisdictional act.

In the early 1960s, the predominant view, and the position of the Central Council and the Department of the Interior, was that the term "tribal community" applied to any of the modern villages, towns, and cities in which there were communities of Tlingit and Haida Indians. The position was justified by the need to extend recognition to Tlingit and Haida communities in Anchorage as well as in the Lower 48 states, which were excluded from the settlement because the 1935 act limited payments to communities in Southeast Alaska. The opposing position maintained that since local clans were the tribal land-holding units in traditional Tlingit and Haida communities, and since the settlement was for lands lost by such groups, any award should be distributed to the matrilineal descendants of such "original" units based on the amount of land each controlled in 1867. Proponents of this view in Wrangell organized their own delegation to the Central Council, so that there were two groups claiming to represent Wrangell at the annual convention for two years in the early 1960s.

[3] The eligibility of existing Tlingit and Haida communities within the meaning of "tribal community" employed in the 1935 act was at issue in this time. For example, the question of Craig's status as a "tribal community" was raised by the chairman of the local Tlingit and Haida Committee in 1960. The BIA Juneau area director responded with an opinion from a Regional Solicitor that Craig would not be considered a "tribal community" because it came into existence after the construction of a cannery there, and the original residents of Craig came from Klawock, Hydaburg, and possibly other Tlingit and Haida villages. The Solicitor's opinion was that Craig residents would need to be enrolled with the Indian village group where their ancestors formerly resided (Hawkins 1960). When the question was passed to a higher authority through Alaska's Senator Bartlett, the BIA response was that Craig's status would be decided according to the rolls prepared by communities and submitted through the Central Council for approval by the Secretary of Interior under the 1935 act, which was yet to be carried out.

[4] In Curry's opinion, the parties plaintiff should include the Tlingit and Haida Indians of Alaska, Tlingit Tribe or Nation, Haida Tribe or Nation, each of the aboriginal bands (as described by Haas), the various modern groupings suing in their own behalf, and the various modern groupings suing as representatives of the aboriginal groups and in behalf of the Tlingit Nation and Haida Nation. The list of modern organizations that represent aboriginal tribal groups included Wrangell Indians representing the Stikine Tribe, Chilkat Indian Village of Klukwan and Chilkoot Indian Association of Haines representing the Chilkat Tribe, and Tlingit Indians of Ketchikan representing the Tongass Tribe (Curry 1951).

Within a few years of the 1959 decision, the Central Council decided to expand its role and function over that defined in the original jurisdictional act. With the approval of the BIA, the Council began to seek recognition as a formally-constituted regional organization with a substantial role in planning how the claims award would be spent. A planning committee was formed in 1963 to develop a plan for the use of the judgement award; membership was comprised of representatives of all Tlingit and Haida communities (including Ketchikan, Petersburg, and Wrangell). At annual conventions in Wrangell in 1963 and in Yakutat in 1964, the Central Council passed resolutions supporting proposed bills to modify the 1935 jurisdictional act to allow for these organizational changes and to extend membership and representation on the Central Council "to persons of Tlingit or Haida blood residing in the various local communities or areas in the United States." Members of the Central Council were dispatched to Washington, D.C. in 1963 and 1964 to lobby and speak in support of the proposed amendments. Some Juneau members also lobbied on behalf of an amendment to approve per capita distributions.

Representing the Central Council, Andrew Hope and Ted Denny testified to the historical fact that since 1867, a substantial migration and resettlement of the Tlingit and Haida Indians had taken place. Large numbers of Tlingit and Haida Indians had left their original Native villages to live in modern towns and cities in Southeast Alaska and beyond, in order to obtain employment, more advantageous educational opportunities for their children, or for other reasons. Hope used Juneau as an example of a town to which Indians migrated that was never the site of a traditional Native village. Alternatively, he presented other modern cities and towns, such as Ketchikan, Petersburg, and Sitka, which are populated "not only by descendants of the local clans which were native to the area which included the site of the particular city or town, but also by descendants of local clans which had traditional Native villages in other geographical areas." Rhetorically, he posed the question whether these (migrating) individuals were to be prohibited from participating in the act, or were expected to return to their Native village community to receive benefits (Hope 1965a and 1965b).

The amendments had strong backing from the Department of the Interior, which supported the Central Council in its efforts to re-constitute itself as a tribal self-governing organization with expanded functions and authorities. Congress passed the amendments on August 19, 1965 (P.L. 89-130), although it remained opposed to using the settlement for per capita payments. On the issue of eligible communities, the Senate report made the following statement:

> The 1935 act was designed to meet conditions that existed at that time. Since the passage of the jurisdictional act, circumstances and conditions have changed considerably. Increasing numbers of Tlingits and Haidas have chosen to make their homes outside of their local villages or communities in Alaska. Numerous individuals and families moved into the large towns and cities of southeast Alaska such as Juneau, Douglas, Ketchikan, Wrangell, and Petersburg. Several hundred have resettled in the Puget Sound area, especially in Seattle, and in California. Under existing law they would receive little or no benefit from the expected judgement fund (Senate Report No. 159, 89th, 1st).

The House report adopted a similar position (House Report No. 521, 89th, 1st). The amended jurisdictional act provided a new structure for the distribution of the claims award which did not entail payments to tribal communities. The Central Council became the vehicle for the award on behalf of individual enrollees. In consequence, the community eligibility issue was resolved. Any group of Tlingit and Haida Indians who decided to organize and cooperate among themselves could seek approval of the Central Council to elect delegates to the annual conventions, and thereby gain participation in the

decision-making process of the newly constituted organization. The Central Council became a political and administrative institution for its members, who were represented by delegates to the annual conventions. A planning committee, first formed in 1963, developed a six-point plan for using the judgment award. Approved by Congress in 1970, this plan identified program area in educational scholarships and vocational training, services for the elderly, housing, and community development.

In May 1966, delegates from 18 communities met in annual convention and reorganized the structure of the Central Council. With the adoption of BIA-approved rules for election, the Central Council was reconstituted with authority to use and expend the settlement funds in accord with the amendments to the 1935 jurisdictional act. On June 1, 1966, the BIA published in the Federal Register (Vol. 31, No. 105, pp. 7744-45) amendments to existing regulations governing preparation of tribal membership rolls to implement requirements for enrollment with the Tlingit and Haida Indians of Alaska. Eligibility was open to all persons of Tlingit or Haida blood residing in the U.S. or Canada who were Alaska residents on or prior to June 19, 1935, or were descendants of such residents of Indian blood. Each of the participating Tlingit and Haida communities adopted rules for election of delegates, constitutions, and bylaws as local community councils of the Central Council.

During the 1960s, Central Council membership was adjusted somewhat to reflect additional community groups as well as the amalgamation of others. Metlakatla was added, Douglas became affiliated with the Juneau group, and Haines had representation within the more active Klukwan group. Two out-of-state groups (Washington and California) were also formed. Ketchikan, Petersburg, and Wrangell were regular members throughout the decade. In 1971, a resolution to approve Haines as an independent Tlingit and Haida community was passed at the annual convention. Later Anchorage and Pelican were also approved for membership.

The 1968 Tlingit and Haida Land Claims Valuation of Indian Land Lost

On January 19, 1968, the U.S. Court of Claims decided that the Tlingit and Haida Indians were entitled to recover $7,546,053.80 for the loss of their land. In this case, the court established standards of valuation for the Indian title lands and determined the acreage to which such values applied. The court valued fishing rights, townsites, mineral lands and timber lands in areas of Indian title land taken by the United States. The court disallowed compensation for the Indians' lost fishing rights, valued at $8,388,315.

Of interest here is the recognition of Indian title lands in townsites that were established by white settlers. The decision identified those communities that, as of the date of the passage of the jurisdictional act in 1935, were owned according to principles of aboriginal title at the time the white settlers established townsites. The court held that, "Indian title land patented by the United States as townsites without the consent of and without compensation to the Indian owners, is taken as of the date the townsites were patented, and the value for the purposes of compensation should be established as of that date" [(U.S. Court of Claims (182 Ct. Cl.) 1968:130)].

The Tlingit and Haida Indians received compensation for townsite and settlement land in the following communities:

Douglas
Haines
Juneau
Ketchikan
Petersburg
Sitka
Skagway
Wrangell

The Tlingit and Haida Indians also received compensation for land in the town of Metlakatla, which was established on the federal Annette Island Reserve, set apart by Congress in 1891 for use of Tsimshian Indians. In the valuations, the court provided compensation for specified townsite lands, homesteads, and settlements on adjoining lands, including mineral leases and salmon canneries, that were in or near the modern communities. The total townsite value was $778,434 (not including Metlakatla, which was valued at $14,500). Table 3.2 provides a comparison of the communities identified in the Tlingit and Haida decisions and those recognized in ANCSA.

Table 3.2. Comparison of Southeast Communities Listed in Tlingit and Haida Decision and in ANCSA

COMMUNITIES LISTED IN T & H COURT DECISIONS	COMMUNITIES LISTED IN ANCSA
Angoon	Angoon
	Craig
Douglas	
Haines	
Hoonah	Hoonah
Hydaburg	Hydaburg
Juneau	Juneau
Kake	Kake
	Kasaan
Ketchikan	
Klawock	Klawock
Klukwan	Klukwan
Petersburg	
Saxman	Saxman
Sitka	Sitka
Skagway	
Wrangell	
Yakutat	Yakutat
Total: 16	**12**

The Tlingit and Haida Central Council and ANCSA

As the Central Council grew and developed, it assumed more governmental functions on behalf of its enrollees. It also actively expanded as a political organization in the state. The Central Council was very energetic in the pursuit of land claims leading to the passage of ANCSA. The member communities were represented in these efforts by the officers and executive committee, who during the year carried out the will and desire of Central Council delegates who only met annually in convention. The council developed effective relationships with the Alaska Federation of Natives (AFN) and cooperated in statewide efforts in support of the claims. The leadership also pursued legislative lobbying activities on behalf of the Southeast region and local communities.

The Tlingit and Haida settlement established aboriginal Indian title to nearly all of Southeast Alaska, and determined that the land had not been abandoned at the time of taking. Although the Southeast Indians received compensation for the national forest, national park, townsite, and other lands that were taken from them, this area did not constitute all the Southeast region. There were 2,628, 207 acres still held by abori-ginal Indian title by the Tlingit and Haida Indians, according to the court findings. The Central Council participated in the efforts to settle statewide land claims for these areas, with claims that were still outstanding. In 1967, for example, the Central Council was approached by the state to participate in a state-sponsored Land Claims Task Force to draft a bill that would be jointly proposed by the state and the Native people.

The Central Council lobbied Congress for inclusion of all of its constituent communities in draft ANCSA legislation. It took the position that all of its member communities are entitled to full benefits under the act, which included Haines, Ketchikan, Petersburg, and Wrangell. In 1969, for example, the President of the Central Council participated in cooperative lobbying activity with the Alaska Federation of Natives (AFN) in Washington, D.C. President Borbridge reported, "We [Emil Notti of AFN and John Borbridge of the Central Council] have advanced our aspirations for ... our urban and rural people" (Borbridge 1969). In 1970, Borbridge reported, "The position of the Central Council of the Tlingit and Haida Indians of Alaska has been to include all of our Tlingit and Haida communities in the list of villages that would receive land in a land claims settlement. Thus Juneau, Sitka, and Petersburg are included in such a list. We have made inroads to the extent that the 'Hickel Bill' and the Senate in S. 1830 recognize ten of our communities" (Borbridge 1970).

This letter also expressed Central Council concerns over the issue of processing state land selections from the Tongass National Forest near modern communities. The Central Council opposed efforts by the state commissioner of natural resources, who was pushing the Bureau of Land Management (BLM) to process such selections, since those selections would affect the availability of land to the villages under the impending settlement. Specific reference was made to Ketchikan, Petersburg, Wrangell, and Sitka on this issue. The Central Council also engaged in discussions with its attorneys about filing suit over this issue.

Summary

Before 1950, all Tlingit and Haida communities participated in the land claims movement through meetings that occurred in association with annual conventions of the Alaska Native Brotherhood, as well as in key organizational meetings of the Central Council, such as that in 1941. Tenakee and Haines became less active after about 1950, but in this regard they match similar changes in activity in Kasaan and Douglas. After the Central Council was re-organized as a representative tribal organization for all of Tlingit and Haida Indians in the 1960s, following the favorable decision in the case, there was active participation of Ketchikan, Petersburg and Wrangell as local chapters of the organization (joining with 15 other Tlingit and Haida communities in Alaska, Washington, and California).

The treatment of "community" is instructive with regard to the question of community recognition under ANCSA, since in the Tlingit and Haida case it was changed through legislative action. The discussion about that change involved four of the five communities that are the topic of this study. In the 1960s, it was necessary to modify the original terms of the 1935 enabling legislation in order to acknowledge modern Tlingit and Haida communities which otherwise would have been eliminated from benefits.

In 1971, following adoption of a resolution at the annual convention to approve Haines as an independent Tlingit and Haida community, there were nineteen Tlingit and Haida communities. Haines, Ketchikan, Petersburg, and Wrangell were recognized, along with 13 other communities in southeast Alaska (Angoon, Craig, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, Yakutat), and two out-of-state chapters (Seattle, Washington, and Oakland, California). The 17 southeastern Tlingit and Haida communities included the 12 ANCSA communities (10 "villages" and two "modern and urban" communities), Metlakatla (which opted to maintain its reservation status under ANCSA), and four of the five unrecognized southeast communities (Haines, Ketchikan, Petersburg, and Wrangell). These four communities elected delegates and had full participation in all of the meetings, committees, actions and initiatives of the Central Council.

References Cited

References cited in this chapter appear at the end of Chapter 5.

Chapter 4. Southeast Alaska Community Populations

BY LEE GORSUCH

Introduction

This chapter examines the 1970 populations and the ANCSA enrollments of communities in Southeast Alaska. It compares the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to those Southeast Alaska communities that were certified under ANCSA as Alaska Native villages, or were conferred special status as urban places.

The 1971 Alaska Native Claims Settlement Act (ANCSA) defined a "Native village" as:

> "...any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives." Sec. 3(c)

The only communities of Southeast Alaska referenced in the act were the ten listed in Section 16, all of which were subsequently certified by the Secretary as Native villages under the definitions of the act. None of the five study communities were expressly mentioned in the act. However, in addition to listing and defining Native villages, ANCSA, under Section 14(h)(3), authorized the Secretary of the Interior to withdraw and convey lands to Natives residing in the four urban communities of Sitka, Juneau, Kodiak, and Kenai, if they incorporated under the laws of Alaska (as did all other Native villages in order to receive the benefits of the settlement). Two of these urban communities, Sitka and Juneau, are in Southeast Alaska and became eligible to receive benefits under the act.

The central questions of this chapter thus become: how are the populations of the study communities of Ketchikan, Petersburg, and Wrangell—which are urban in character—similar to or different from the populations of Juneau and Sitka; and how are the populations of the smaller study communities of Haines and Tenakee similar to or different from those of the ten Southeast communities listed in the act and certified as Native villages?

Southeast Community Populations in 1970

Given ANCSA's specific reference to the 1970 census of population, the first point of reference in this chapter is to present and compare data on the 1970 community populations by size and by race as reported by the U.S. Bureau of the Census. Table 4.1 displays the 1970 community populations by Native and non-Native residents. It also reports the percentage of the total community population enumerated and recorded as Native.

How do the five study communities compare in size to the other recognized communities in Southeast Alaska? Table 4.1 shows that one of the study communities, Ketchikan, had a 1970 population in excess of 2,500 residents and was classified as an urban community along with Juneau and Sitka. (The population numbers reported are of the cities proper, not of their greater metropolitan areas.) Even though the two study communities of Petersburg and Wrangell were not classified as urban, they had populations of over 2,000 and were comparable in size to Sitka. Similarly, the population of Haines was in the mid-range of the medium-sized communities certified as Native villages, and Tenakee was between the size of the two Native villages of Saxman and Kasaan. In summary, the five study communities were comparable in size to the other Southeast communities recognized by the settlement act.

How was the Native composition of the study communities similar to or different from the Native composition of the recognized Southeast villages? The 1970 census reported that 15 percent of Ketchikan's population was Native, compared to Juneau's 20 percent and Sitka's 23 percent. In Petersburg and Wrangell, Natives comprised 12 percent and 19 percent of the local populations. Thus, the Native populations of both Ketchikan and Wrangell were comparable to those of Juneau and Sitka, whereas Petersburg's Native population was somewhat smaller.

Among the smaller Southeast Alaska communities which became certified Native villages under ANCSA, the Native proportions of the community populations ranged from 94 percent in Angoon to 27 percent in Kasaan and Saxman. Haines, with 24 percent of its 1990 population Native, was comparable to Kasaan and Saxman. However, on average, the census data indicates that the two study communities of Haines and Tenakee had significantly smaller proportions of their populations which were Native than did those Southeast communities that became recognized Native villages. The study community of Tenakee, where in 1970 only 7 percent of the population was Native, had a much smaller share of Natives than did Kasaan and Saxman—populations of both those ANCSA villages were 27 percent Native.

Table 4.1. 1970 Population of Southeast Alaska Communities

URBAN PLACES	TOTAL	NON-NATIVE	NATIVE	% NATIVE
Juneau	6,050	4,819	1,231	20%
Ketchikan	6,994	5,930	1,064	15%
Sitka	3,370	2,608	762	23%
LARGE VILLAGES				
Petersburg	2,042	1,800	242	12%
Wrangell	2,029	1,649	380	19%
MEDIUM VILLAGES				
Angoon	400	23	377	94%
Craig	272	119	153	56%
Haines	463	354	109	24%
Hoonah	748	214	534	71%
Hydaburg	214	25	189	88%
Kake	448	47	401	90%
Klawock	213	19	194	91%
SMALL VILLAGES				
Kasaan	30	22	8	27%
Klukwan	103	11	92	89%
Tenakee	86	80	6	7%
Saxman	135	36	99	27%
Yakutat	190	34	156	82%

Source: 1970 Census and 2(c) Report

Study communities; not certified under ANCSA

Other Sources of Native Population Data

In a state as large, sparsely settled, and diverse as Alaska, it is quite possible that the census may have undercounted some communities. It is even more likely that it may have undercounted the Native population. The census enumerates an individual's race or ethnic status based on the respondent's own assessment. Thus, some Natives, particularly those with less than a majority of Native blood or those who, for other reasons, may not have thought of themselves as Native, may have enumerated themselves as white or other in 1970. To illustrate this likely undercounting, the census reported a total statewide Native population of 50,654 for 1970, while the Alaska Native roll—drawn up after ANCSA was enacted—contained the names of 59,771 Natives who were born on or before December 17, 1971 and resided in Alaska. Even though the census enumeration took place in 1969, and the Native roll counted all Natives born on or before December of 1971 (the enrollment process occurred during 1972-74), the differences in the numbers cannot be explained by the expected net natural increases and migration that would likely have occurred between the two reporting periods.

This likely phenomenon of underreporting becomes more evident when one turns to Table 4.2, to compare the census's Native populations for Southeast communities with those of the Bureau of Indian Affairs' official ANCSA roll of Natives, reported by Native enrollee's physical residence at the time of enrollment.

How does 1970 census data on Native populations by community compare to Native enrollments by the enrollee's place of residence? And, does Native enrollment data differentiate the five study communities from the other Southeast communities in ways in which the census did not?

Table 4.2 reports the census's Native population count by community and also shows the number of Natives enrolled under ANCSA who were living in those communities at the time they enrolled. In the implementation of the settlement act, the Secretary of the Interior defined a Native's residence as his or her permanent residence, the place considered home, irrespective of where he or she was actually living at the time. Therefore, Table 4.2 shows Native enrollment in several ways: total Natives living in a community but not necessarily regarding it as their permanent residence; the total number of Natives enrolled to each community and regarding it as their permanent residence, even though they may not have been living there at the time; and the total enrolled to a community but living elsewhere. (See Chapter 6 for a more complete discussion of the definition of Native residence for Native enrollment purposes.)

Table 4.2 reveals, for example, that the Native roll reported more than twice as many Natives living in Sitka at the time of enrollment than the census reported as residents in 1970. Both Juneau and Ketchikan had about 76 percent more enrolled Native residents than the 1970 census of Native residents showed. A similar pattern was also true for Petersburg and Wrangell. Hence, the larger and urban study communities were similar in this regard to both Sitka and Juneau.

The differences between the two data sources for the medium-sized communities were modest, with the exception of Haines, where the Native roll reported three times as many Natives living in Haines as did the census. In the smaller communities, the Native roll reported no Natives living in Tenakee and only a third as many Natives living in Klukwan as did the census. Whereas the 1970 U.S. Census reported six Natives living in Tenakee on the enumeration date (March 1969), the Alaska Native roll compiled in 1972-73 reported no Natives living in Tenakee.

Table 4.2. Comparison of 1970 Census Population to 1974 ANCSA Enrollments and Residency

PLACES	1970 CENSUS NATIVE POP (1)	ENROLLED NATIVES, 1974				SEALASKA CORPS SE VILLAGE CORP POTENTIAL ENROLLMENT (6)
		BY CURRENT RESIDENCE (2)	BY PLACE ENROLLED TO			
			TOTAL (3)	RESIDING WHERE ENROLLED (4)	RESIDING ELSEWHERE (5)	
URBAN						
Juneau	1,231	2,167	2,640	1,758	882	2,722
Ketchikan	1,064	1,781	1,831	1,174	657	1,862
Sitka	762	1,694	1,804	1,396	408	
LARGE VILLAGES						
Petersburg	242	324	417	302	115	428
Wrangell	380	526	737	476	261	747
MEDIUM VILLAGES						
Angoon	377	398	620	386	234	629
Craig	153	185	317	167	150	317
Haines	109	334	314	160	154	321
Hoonah	534	589	868	547	321	876
Hydaburg	189	236	570	230	340	565
Kake	401	453	552	437	115	558
Klawock	194	242	507	233	274	508
SMALL VILLAGES						
Kasaan	8	6	121	47	73	120
Klukwan	92	36	251	35	216	253
Tenakee	6	0	61	0	61	64
Saxman	135	147	191	109	82	196
Yakutat	156	245	334	234	100	342

Source: 1970 Census of Population and 2(c) Report

Study communities; not certified under ANCSA

Column 3 of Table 4.2 reports the total number of Natives who enrolled to each community (as their permanent residence). Column 4 shows how many of those who declared each community to be their permanent residence also lived there at the time they enrolled, and column 5 shows the number who enrolled in the community but lived elsewhere. The last column reports the Native roll for Southeast villages as of December 31, 1985. (The numbers in the last column vary from those in column 3 because of an opportunity for Natives who were originally left off the roll to be put on later or for those who may have been enrolled to a place incorrectly to correct their place of enrollment. Chapter 6 further discusses the enrollment process.)

To facilitate comparisons of the study communities (shown in shaded areas on the tables) to other Native villages and recognized urban places, Table 4.3 shows what percentage of a community's total Native enrollment was comprised of Natives who physically resided in that community at the time of enrolling (column 1). The data reveal that in all three of the urban places and in the two large communities the percent of enrolled Natives who lived in those communities at the time they enrolled varied from a low of 64 percent in both Ketchikan and Wrangell to a high of 77 percent in Sitka. Thus, in the three large study communities and the two urban communities recognized in the settlement act, there were no significant differences in the share of Native enrollees who also lived in the enrollment community. The data, expressed as percentages, imply that the balance of any community's enrollment came from Natives residing elsewhere.

Table 4.3. A Comparison of ANCSA Enrollments to Residence in Southeast Alaska Communities, 1974

	% OF TOTAL COMMUNITY ENROLLMENT WHO RESIDED IN COMMUNITY	% OF TOTAL NATIVE RESIDENTS OF COMMUNITY WHO ENROLLED ELSEWHERE
URBAN PLACES		
Juneau	67	19
Ketchikan	64	34
Sitka	77	18
LARGE COMMUNITIES		
Petersburg	72	7
Wrangell	64	10
MEDIUM COMMUNITIES		
Angoon	62	3
Craig	53	10
Haines	51	52
Hoonah	63	7
Hydaburg	40	3
Kake	79	4
Klawock	46	4
SMALL COMMUNITIES		
Kasaan	39	NA
Klukwan	14	3
Tenakee	0	0
Saxman	57	26
Yakutat	70	4

Source: 2(c) Report

Study communities; not certified under ANCSA

In reviewing the smaller communities' percentages of Native enrollees who were also physically residing there at the time they enrolled, with the exception of Tenakee, which had none of its enrollees living there when they enrolled, the percentages ranged from a low of 14 percent in Klukwan to a high of 79 percent for Kake. This means that 86 percent of Klukwan's enrollment was comprised of Natives who did not reside in Klukwan at the time of enrollment. The study community of Haines was in the middle of this range, with 51 percent of its enrollment comprised of Natives who also physically resided there when they enrolled.

The second column of Table 4.3 shows the percentage of a community's Native population which elected not to enroll in the community in which they were residing but rather to enroll to another place they regarded as their permanent residence. Petersburg had only 7 percent and Wrangell had 10 percent of their Native resident populations enroll elsewhere, whereas Juneau and Sitka had 19 and 18 percent of their Native populations enroll elsewhere. Ketchikan had 34 percent of its Native residents enroll elsewhere. Thus, the three study communities are distinct from the two recognized urban communities in that two of them, Petersburg and Wrangell, had only half as many of their residents enroll elsewhere as did Juneau and Sitka, while twice as many Natives living in Ketchikan enrolled elsewhere.

Among the medium-sized communities, 10 percent or less of the Native residents enrolled elsewhere except for Haines, one of the study communities, in which 52 percent of the Natives residing in Haines enrolled elsewhere. The pattern among the smaller communities varied significantly, ranging from Klukwan, in which only 3 percent of it Native resident population enrolled elsewhere, to Saxman where 26 percent enrolled to another place. Tenakee had no resident Native population at the time, and data on Kasaan was not available.

The general pattern of the data suggests similarities among the larger communities, some differences between Haines and the other medium-sized communities, and a significant difference between Tenakee and the other small communities which became certified as Native villages.

Chapter 5. Comparison of Historical Native Use and Occupancy in the Study Communities and in Other Southeast Communities

BY CHARLES W. SMYTHE

This chapter compares Native historical use and occupancy in the five study communities and in the twelve Southeast communities that were recognized under ANCSA. It uses a number of specific criteria—from the character of traditional Native settlements to presence of Native cemeteries, graves, and totem poles—to assess similarities and differences between the study communities and the recognized communities.

The comparison is based on histories prepared for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell. Summaries of those histories are presented in this chapter; the entire histories are presented in Appendix A. The histories examine Native use and occupancy of the five communities from before the time of the arrival of white settlers up to about 1970. However, because there was substantially more information available for the period prior to the 1950s in regard to ethnicity, the discussions place a greater emphasis on earlier periods. We used many sources to compile these histories, including archival sources, published and unpublished materials, and personal interviews with selected community historians and representatives.

Archival sources consulted and searched included letters and annual school reports of the Bureau of Education's Indian schools, townsite records of Indian possession lands, census records, administrative records of executive land orders, Bureau of Fisheries reports, field notes and unpublished manuscripts of anthropologists, historical files at the Alaska State Historical Library, records of selected legal cases, and affidavits. Materials collected as available were from special collections such as the Curry-Weissbrodt Papers and the William Paul papers and also from community Native organizations, local historical museums, and churches. Finally, community residents generously provided us with much useful archival information.

Published sources consulted included works of anthropologists, archaeologists, explorers, historians, economists, missionaries, government officials, and church authorities.

The third principal source of information was 70 interviews and discussions with community historians, elders, tribal leaders, long-term residents, and local experts in each of the five communities. Material from those interviews appears in quotations throughout the community histories in Appendix A, informing and elucidating the discussions. However, to maintain the confidentiality of sources, individual discussants in the histories are not identified. A list of persons interviewed for this study appears in Appendix B.

Below we first present a broad overview of historical Native use and occupancy of the Southeast region and then outline our specific criteria for comparing the study communities and the ANCSA communities in Southeast. Then we profile the study communities before making our analytic comparisons.

Regional Overview

At the time of the arrival of white settlers, the Tlingit Indians were divided into fourteen tribal subdivisions, or kwan. From the north, these divisions are the Yakutat, Chilkat/Chilkoot, Hoonah, Auk, Taku, Sumdum, Hutsnuwu, Sitka, Kake, Kuiu, Stikine, Henya, Sanya and Tongass. Together with the Kaigani Haida, who pushed their way into the southern Tlingit area in the eighteenth century, these kwans used and occupied all of the southeastern region, with the exception of the steeper mountain slopes and tops, at the time of first contacts with whites. The aboriginal possession of the lands and waters of Southeast Alaska, including trade routes into the interior across the Canadian border, were recognized by the U.S. Court of Claims (discussed in Chapter 3) and mapped in a federal investigation of the possessory rights of southeastern Indians (Goldschmidt and Haas 1946).

The Tlingit kwan are geographical groupings of smaller political divisions, or clans, which lived together in a common area. Under formal Tlingit property law, the places used and occupied by the Indians were owned by the respective clans. Traditionally, members of the kwan would congregate in larger communities for the winter season. Each kwan is associated with one or more principal villages that contained large clan houses constructed of hand-hewn wooden planks. During the spring, summer and fall, community members would disperse to smaller villages and fish camps depending upon the availability of resources and clan relationships. The Indians would harvest and preserve a variety of wild and renewable resources and other materials for their consumption in other seasons and for trade and ceremonial exchanges.

Throughout the period of administration by the Russian-American Company, the Russian traders followed a policy of non-intervention in the internal political affairs of the Tlingit and Haida Indians. This practice was favorable to their trading relationships with the aboriginal inhabitants, and in consequence the Russians had little or no impact on the political control and autonomy exercised by the Indians throughout Southeast Alaska. Following the acquisition of the Alaskan territory by the United States in 1867, the military administration erected stockades at Sitka, Wrangell, and Tongass, but these were abandoned within a few years. Several instances of bombardment of Indian villages at Wrangell, Kake, and Angoon impressed upon the Indian residents the power of the military to enforce its imposition of civil authority in specific cases. But the period of military administration has been referred to as an 'era of neglect' which, at least in the first ten years after the purchase, had negligible impact on the Tlingit and Haida Indians' use and possession of Southeastern Alaska (U.S. Court of Claims 1959; Emmons 1905; Gruening 1954).

Beginning in Wrangell in the mid-1870s, the influx of white settlers into the region substantially altered the political landscape and settlement patterns by which the Indians had lived for centuries. The principal cause of this migration was economic: the availability of gold and other minerals, rich salmon stocks, and extensive timber stands brought thousands of whites into Southeastern Alaska. They established new towns and industrial sites at many locations. The rush for gold in Canada up the Stikine River brought more than a thousand miners, traders, merchants, and laborers through Wrangell in the mid-1770s, as described below. The first gold camp was established in Alaska in 1878, and in the same year, the first salmon canneries at Klawock and Sitka (Rogers 1960: 198). Two years later, the discovery of gold at Juneau resulted in the founding of the town of that name, and another discovery in 1887 across the channel led to the establishment of the city of Douglas.

The small community at Haines, which was started as a trading post and mission to the Chilkat and Chilkoot Indians in 1881, shifted among several canneries which operated in the area after 1884, and it was not until the Klondike stampede in 1897 that the town became more established. Skagway also traces its beginning to this gold rush. The white town of Ketchikan places its start with a succession of salteries and canneries that began operation at the mouth of Ketchikan Creek in 1886. The incipient town of Petersburg was constructed as a fish cannery and sawmill which opened for operation in 1900. The town of Craig was similarly initiated as the site of a commercial saltery and cannery in about 1910-11.

Although located in or near the site of Indian settlements, the towns that grew up at these locations were essentially white towns. The first land laws that applied to Alaska (acts of 1884 and 1900) provided for the protection of areas used and occupied by Native Alaskans, but did not entail the issuance of deeds of ownership to the aboriginal residents, who were not acknowledged with citizenship rights at this time. Nor did these provisions actually protect Indian-occupied areas from conveyance to non-Natives. Non-Natives were able to file for town and industrial sites and acquire ownership deeds to lands used for exploiting the mineral, fish, and timber resources, or settled as villages and towns in service to these industries. These towns were later organized formally with townsites and municipal governments, with little or no political participation by the local Indian residents.

Rogers (1960) has described these modern communities as new "non-indigenous" towns which, after their formation between 1480 and 1910, became the principal towns and cities of the region, associated with the massive growth of the non-Native population of the region. He analyzes census data to show the reorientation of Tlingit kwan to these communities from traditional villages and seasonal settlements: the Sitka Indians becoming citizens of the white town of Sitka, the Stikine moving to Wrangell, the residents of Auk settlements moving to Juneau, Taku people to Douglas, the Tongass people to Ketchikan and the Chilkat dividing themselves between Klukwan and Haines (ibid.:205-7). He does not detail historical Tlingit settlement at these places; instead he emphasizes the formation and development of larger, modern towns dominated by the non-indigenous population. During this period, traditional villages continued at Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock and Kasaan.

Some of the new communities were Indian settlements formed at the urging of missionaries and school authorities. In 1887, the Tsimshians moved under the direction of the missionary William Duncan in a large group (800 strong) to Annette Island from Old Metlakatla in British Columbia, and in 1891 this land was set aside by Congress as a reservation. Saxman was a new community formed through the encouragement of the Presbyterian church and territorial school authorities in 1897; it was settled initially by the Cape Fox (Sanya) kwan. The first missionary was a Tsimshian minister and discontented former adherent of William Duncan. There was a consolidation of Haida communities into the new communities at Craig, Hydaburg, and Ketchikan and a movement from Old to New Kasaan. Hydaburg was a new settlement organized specifically for the former Prince of Wales Island communities of Howkan and Klinquan by educational authorities; it was established by the Bureau of Education by 1911.

The initial movements into the new communities took place as group movements. They occurred principally for economic reasons, although in some cases they were the result of the force of missionary and school personalities and the desire to escape the constraints of tradition. There was continued population movement to the new white towns at a more gradual rate in subsequent years, but there was an acceleration of migration after 1950, prompted by the crash in the fish stocks, which many Indians depended on. Rogers (1960) considered that the future economic well-being of the Native population would be tied up with employment opportunities in the new pulp timber industry that developed in some of these towns in the 1950s. What is overlooked in Rogers and other accounts is the history of social cohesion and cultural vitality within the Indian communities in these towns.

Criteria For Comparison

The following criteria served as a basis for comparisons between the study communities and the recognized Southeast ANCSA communities:

- Traditional Native settlements (villages or camps) at sites of modern communities, before the arrival of whites
- Indian occupancy of identifiable areas in the early towns
- Indian land reservations or exclusions from the Tongass National Forest
- Indian possessions and Native townsite lands
- Federal schools for Indians
- Churches or missions serving Natives
- Alaska Native Brotherhood and Sisterhood local camps
- IRA (Indian Reorganization Act) organizations
- Central Council of the Tlingit and Haida Indians of Alaska Community Council
- Native cemeteries, graves, and totem poles

Information about each of these topics helps provide a picture of Native use and occupancy of the study areas before white settlement and in the modern communities that developed later. The discussion is concerned principally with the historic period—that is, after the appearance of non-Natives. There is little reference to extensive prehistoric and archaeological resources that exist in the areas surrounding the communities.

In most of the study communities, white businesses in the early days depended heavily on the Native trade for their livelihood. Another feature of the early economy in most of these communities was the fishing industry's reliance on Indian labor. Also apparent in the histories of these communities is the widespread discrimination against Natives that existed. Natives we interviewed reported that discrimination was a facet of everyday life and that it had a strong influence on their lives.

The activities of the Alaska Native Brotherhood, Alaska Native Sisterhood, and the Central Council are significant because they document Native institutions that formed in the five study communities and, in most cases, have been active throughout the historical period since the 1920s. The brotherhood and sisterhood developed particularly as a response to the discrimination Natives experienced in Southeast Alaska. Churches in the study communities often indicate the presence of a living Native institution. In most of these communities, one or more churches were at some time devoted principally to the local Native community and had mostly Native members.

Native cemeteries, graves, and totem poles are discussed briefly as further evidence of Native use and occupation in the communities. Native cemeteries and graves largely date from the historic period since Indian customs for disposing of the dead involved cremation (with the exception of shaman's graves). Burial of the dead started after Christian churches came into the communities. Totem poles were in use in Wrangell and Ketchikan but not in other study communities; the northern Tlingit did not adopt that custom.

Profiles of Study Communities

Haines

The Tlingit of Haines are largely Chilkoot and Chilkat Indians who trace their families back to several communities that existed in the area before the arrival of white settlers. The modern community of Haines—the site of which was selected with the approval of the Tlingit owners—began as a trading post, school, and mission established for Natives in 1881. A large village was formerly located on that site. The region's economy underwent a rapid transformation, particularly during and after the Klondike gold rush of 1897-98, and Chilkoot and Chilkat people moved into Haines from the outlying areas. The Native people came into town partly because they wanted education and jobs, but also because diseases and natural disasters had affected outlying Native communities. The Native community at Haines has been a stable component throughout the history of the modern town of Haines.

Haines Traditional Native Settlement

The principal Chilkoot village was along both banks of the Chilkoot River close to its outlet from Chilkoot Lake. The existence of a large prehistoric village, as well as historic houses, fishing platforms, fish weirs, smokehouses, cemeteries, grave sites, shamans' burials, and caves with pictographs have been documented in the area. Another large village was located on the Chilkat River about three miles from the center of the modern town of Haines. About equal numbers of Chilkoot and Chilkat Indians lived there. A third village was occupied on Chilkoot Inlet where the tank farm was later constructed in modern Haines.

Identifiable Native Area in Early Haines

The main Native community at Haines was known as "the village" and was located along the shore in Portage Cove just north of Main Street. Historical photographs from the turn of the century show a line of small, modern houses in a row, with smokehouses in front across the path of the beach. Another area of Native occupation was on mission land along Main Street. But by the 1920s, Natives had also moved to other areas of town.

Haines Indian Land Reservation or Exclusion

Between 1913 and 1918 four reservations for the use of Haines and Klukwan Indians were created under executive orders of the President. Those included land around the Klukwan village and areas along the banks of the Chilkat River, used by Natives from both communities. One of these, the Yendistucky Reserve, was three miles from Haines and covered 144 acres. The executive order establishing the Yendistucky Reserve said, "A large part of the area is secured by the claim of the Natives by long occupation for use for their subsistence. . . . Other parts contain a large number of graves of their ancestors and kindred. . . ." (Executive Order No. 2388, May 25, 1916, U.S. Survey 908).

Indian Possessions in Haines Townsite

On the original 1918 plat of the Haines townsite, there were four "Native" and three "Indian possession" tracts. Much of this land was not deeded until the 1950s.

Haines Churches or Missions Serving Natives

In 1881 the Presbyterian Church started as a mission to the Chilkoot and Chilkat Indians. It opened and closed twice between 1882 and 1891, but in 1893 the Haines Presbyterian Church was formally organized. Church records show regular addition of new Native members through 1970, although local residents report that in the 1930s the church began turning away from its former close relationship with the Native community, segregating church services and establishing a separate Sunday school for Natives.

The Salvation Army Church came to Haines after 1912. Many Native residents became members of the Haines Native Army band. The Salvation Army still serves the Native community in Haines today.

Haines Government Schools for Natives

One of the first three government schools for Natives in Alaska was established in Haines in 1883, and it remained in operation until 1948. The school went only through the sixth grade, and for many years Natives who finished the sixth grade got no more education or had to leave home for boarding schools. Beginning in the 1920s, the Alaska Native Brotherhood in Haines was able to gain admission to the local public schools for a few Natives, but there was opposition in the community.

Alaska Native Brotherhood and Sisterhood in Haines

The Haines Progressive Club, a forerunner to the Haines Alaska Native Brotherhood and Sisterhood, was organized in 1916. The brotherhood was established in the early 1920s. A former officer of the brotherhood said in an interview that the goals of the organization were to obtain equal rights for Natives in Haines, end discrimination in the schools and in the work place, gain the right to vote, and otherwise promote development of the Native community. In 1934, the brotherhood organized Native voters and a Native mayor was elected. The 1929 convention at which the Alaska Native Brotherhood decided to file land claims against the federal government was held in Haines, and the Haines brotherhood and sisterhood took part in meetings and other activities associated with the land claims in later years.

Haines IRA Council

In 1941 Natives in Haines formed the Chilkoot Indian Association—a council set up under terms of the federal Indian Reorganization Act (IRA). The association attempted to have a reservation set aside for the Haines Indian village and submitted a petition to the Department of the Interior. The department had held hearings in Klukwan for a possible reservation and acknowledged that the Klukwan and Haines Natives "still use much of the territory in common" (Warne 1948), but no Haines village reservation was established.

Tlingit and Haida Central Council in Haines

In the 1960s Haines Natives participated in activities of the Tlingit and Haida Central Council through its association with the Klukwan delegation. Concerns over a proposal for a river crossing of a new highway in the Yendistucky Reserve prompted the Haines community to organize its own chapter of the council in 1971, and the Haines community council has remained active since then.

Haines Native Cemeteries and Grave Sites

Eight historical Native cemeteries and two shamans' burials are in the Haines area.

Ketchikan

A Native village was located in an area on both sides of Ketchikan Creek before white settlers arrived. The mouth of Ketchikan Creek was a summer village for Tlingit families who put up fish from the huge runs of pink salmon that returned to the creek each year. Those large salmon runs also attracted the first white settlers, who built a saltery and cannery by the village in the 1880s. The Native school and mission erected on Indian land in the 1890s were the first such institutions established in the small town. The development of the salmon fishing industry, together with logging, milling, and merchant businesses, helped establish Ketchikan as a commercial center after the turn of the century.

Economic growth attracted a large number of Tsimshians, and smaller numbers of Tlingit and Haida, to Ketchikan. The Tsimshians have remained the largest group in the Ketchikan Native community. A large area south of the commercial district became known as Indian town. The decline of salmon stocks in some areas of Southeast Alaska and the construction of a large pulp mill at mid-century attracted a second wave of Native migration to Ketchikan. This time the new arrivals were from Tlingit and Haida communities on Prince of Wales Island. Today Ketchikan is home to the third largest Native community in Southeast Alaska.

Ketchikan Traditional Native Settlement

Before the arrival of white settlers, the mouth of Ketchikan Creek was a summer village to which Indian family groups regularly came to dry fish. They built large smokehouses which also served as their summer homes. The creek and the land around its mouth was owned by members of the Ganaxadi clan of the Tongass Kwan.

Ketchikan Indian Land Reservation or Exclusion

In the early 1900s the area on both sides of the mouth of Ketchikan Creek was occupied mainly by Natives, and they used the tidelands in front of the village for storing boats and gear and for access to the water. In 1905 the Department of the Interior reserved the tide flats on either side of Ketchikan Creek "for the use of the Natives of Alaska for landing places for canoes and other craft used by such Natives." The reserve was ineffective in stopping commercial development along the shore and on adjacent tidelands. The DOI took some action to stop encroachment on the tidelands, but by 1932 it held that DOI's statutory authority to reserve tidelands had been clouded by recent federal legislation that called for tidelands to be held in trust for a future state government.

Early Ketchikan Native Community

Originally Native homes in Ketchikan were clustered around the mouth of Ketchikan Creek. In the 1890s and early 1900s Native people began building small frame houses and cabins to replace the large smokehouses that had doubled as houses in the early days. After the turn of the century the Native population grew and began building houses on a hill along the creek and across on the opposite shoreline, down the beach. This area became known as Indian Town. Later the Tsimshians settled on the knoll overlooking Thomas Basin. In the 1920 and 1930s more Natives moved to Ketchikan and the Native community expanded inland above the knoll, into the area known as Mahoney Heights.

Ketchikan Indian Possessions and Native Townsite Lands

When the survey of the Ketchikan townsite was approved in 1913, the townsite trustee issued deeds to all white occupants and to some persons of mixed Native-white blood. The remaining lots were not deeded, and in the subsequent administration of the townsite, the Government Land Office (GLO) treated undeeded lands as Native possessions. Later, in the late 1920s, the GLO investigated the status of Native-occupied lots, including areas near the mouth of Ketchikan Creek and lots south of the creek that were not included in the original townsite. The lots were surveyed, but no deeds had been issued to Natives as of 1939, when a new townsite trustee called for another investigation because "there is interest to dispose of remaining lots within the townsite, including Native possessions. Many of the lots involved are very valuable . . ." (Parks 1939). The Department of the Interior investigated the ownership of 33 lots in the Native possessions and in 1941 reported that about half remained in Native ownership and the rest had passed to whites. There is no further record of actions on Native possessions until 1957, when DOI began issuing deeds for another 38 lots in the Native possessions. That activity continued through the late 1960s, but by that time much of the land was no longer occupied by Natives.

Ketchikan Churches or Missions Serving Natives

Five churches—two Episcopal churches, the Presbyterian Church, the Salvation Army Church, and the Catholic Church—were established roughly between 1900 and 1920 and served the Native community in Ketchikan. The Episcopal mission opened the first church and school in Ketchikan in 1898 in the Indian community, on the shore adjacent to the Native village. Later, when the Indian members experienced segregation in church activities, the largely Tsimshian congregation formed a separate institution and built St. Elizabeth's Church in 1927. The Presbyterian Church in Ketchikan has its roots in Saxman, which was initiated as a Presbyterian mission in 1897. The church was later relocated to Ketchikan, because much of Saxman's early population moved there. It was formally organized in 1925. The Salvation Army mission was established in Ketchikan by the 1920s. That church was formed partly because the Native community was being exposed to conditions in Ketchikan's red light district, and partly because some Native members felt they were being excluded from participation in Ketchikan's older churches.

Ketchikan Government Schools for Natives

The Bureau of Education opened an Indian school in Ketchikan in 1923. The government school went only through the eighth grade, and Native students who wanted to go to high school largely attended boarding schools in Sitka and later Wrangell. The local public schools in Ketchikan were essentially closed to Natives until around 1930, when attorney William Paul won a court decision that essentially allowed Natives to attend the local public schools if they chose. However, Ketchikan residents interviewed for this report said it was not until the 1940s and 1950s that Natives began to feel better accepted in the public schools.

Alaska Native Brotherhood and Sisterhood in Ketchikan

As in most Southeast communities, the Alaska Native Brotherhood and Sisterhood in Ketchikan operated informally until the 1920s. Equal opportunity for Natives, particularly in education and employment, were long-standing goals of ANB activity in Ketchikan. The Ketchikan camp supported attorney William Paul in his 1929 court case that won Natives the right to attend Ketchikan's public schools.

Representatives of the Ketchikan camp also attended the historic 1929 ANB convention in Haines, when the ANB decided to sue the federal government over land claims. The local membership of the Ketchikan ANB declined in the 1930s and 1940s, when the ANB decided to pursue Tlingit and Haida land claims to the exclusion of the Tsimshians. The Ketchikan camp was invigorated in the 1950s by new members who had moved to Ketchikan from Prince of Wales Island.

Ketchikan IRA Government

The Native community in Ketchikan organized a government under terms of the Indian Reorganization Act (IRA) in the 1930s. The constitution for the Ketchikan Indian Corporation was ratified in 1940. In the late 1930s and early 1940s the IRA helped members get loans to buy commercial fishing boats. It was inactive for a period, but was reactivated by new members in the 1950s, when more Natives moved to Ketchikan from Tlingit and Haida communities on Prince of Wales Island.

Tlingit and Haida Central Council in Ketchikan

Ketchikan representatives attended the 1929 meeting in Haines when the ANB decided to file a court suit over land claims, and Ketchikan Natives also took part in organizational meetings of the Tlingit and Haida Indians of Alaska. After the U.S. Court of Claims decision in 1959, Ketchikan was actively involved in meetings and organizational proceedings of the Central Council. Ketchikan Natives were among the organizing officers of the Central Council and served on the council's executive committee, planning committee, and rules of elections committee in the 1960s.

Ketchikan Totem Poles and Grave Sites

Ketchikan has two principal totem poles—the Kyan and the Chief Johnson poles—dating from the turn of the century. There are also large collections of nineteenth century totem poles and grave carvings that were transferred from abandoned Tlingit and Haida villages on Tongass, Cat, Prince of Wales, and other islands. The Ketchikan Totem Heritage Center houses 39 poles, the Saxman Totem Park 25 poles, and Mud Bight Village 13 poles.

A large Native cemetery and burial site are located on Pennock Island.

Petersburg

Petersburg was a Native family fishing settlement when white settlers arrived at the turn of the century. Two homesteads acquired by the first white settler, Peter Buschmann, were located on either side of the Native fish camp on Hammer Slough. Other Native fish camps were south of town, in the Wrangell Narrows. The site of a former village was across the narrows at the mouth of Petersburg Creek. Local Natives held jobs as fishermen and cannery workers for the cannery that opened at Petersburg around 1900. More Natives moved to Petersburg in the 1920s and later, when the town began to grow and prosper as a modern fishing community with a population dominated by people of Norwegian ancestry. Today the Native community in Petersburg includes many descendants of the early Indian migrants to Petersburg.

Petersburg Traditional Native Settlement

Two villages were once located in the immediate vicinity of Petersburg, but residents of those villages had amalgamated with people in the Wrangell community before white settlers came to the area. One village was at the mouth of Petersburg Creek and another across Frederick Sound in Thomas Bay. By the time white settlers arrived, Natives occupied seasonal camps that they had long used for drying fish, hunting, trapping, and gardening.

Indian Occupancy of an Identifiable Area in the Early Petersburg

Early in the century a cannery was opened at Petersburg. In 1902, 24 Indians fished for the cannery, and Natives continued to fish and work in the cannery in subsequent years. The early Native residents of Petersburg came from small settlements in the area and from Kake and Wrangell. Natives lived and moored their boats in an area of small cabins next to the cannery and on the north side of Hammer Slough, up the hill behind the waterfront. That latter area became the center of the Native community in Petersburg, and was known as "Indian Street" or "Indian Bridge."

Petersburg Indian Possessions and Native Townsite Lands

The Petersburg townsite survey was approved in 1919 and included three lots in Indian possessions and a Native allotment. The city of Petersburg gained ownership of two of the Indian possession lots, and a descendant of the original Indian owner deeded the third to the Petersburg Moose Club.

Churches or Missions to Serve Natives

The first organized church in Petersburg was the Salvation Army, which started activity in the Native community in 1909. A prominent Indian from Wrangell took charge of the church in 1913 and was responsible for organizing the construction—with Indian labor—of the Salvation Army Hall, which stood on Indian Street. The Salvation Army has been active continuously in Petersburg since its inception, and it has maintained its emphasis on the lower-income and Native populations.

The Petersburg Tlingit Presbyterian Church was established at the request of the Indian community in 1924. It was organized with a Tlingit governing body and congregation, and it retained that ethnic character through the 1950s. In the 1940s, when the church was without a minister, a leader of the Tlingit community was instrumental in convincing the state church to station another minister in the town. The name of the church was changed to the First Presbyterian Church in 1947, a change that reflected the church's shifting orientation to a wider segment of Petersburg's population.

Alaska Native Brotherhood and Sisterhood in Petersburg

The Petersburg camps of the Alaska Native Brotherhood and Sisterhood were formally organized in the early 1920s—about the same time as in other Southeast communities. A long-time resident interviewed for this report said that in the 1930s the Petersburg camp worked for equal access to schools and other facilities and for land claims. Petersburg was represented at the 1929 ANB meeting in Haines when the ANB decided to file suit against the federal government over land claims. A very prominent leader of the Petersburg ANS in the 1940s and 1950s was Amy Hallingstad, who was elected camp president seven times and worked for land claims, integration of the local schools, union organization of cannery workers, and the abolition of fish traps. In 1955 and in 1970 the ANB annual conventions were held in Petersburg.

Petersburg Government Schools for Natives

A government school (through eighth grade) for Natives was open in Petersburg for most of the period from 1904 to 1937. Students who wanted to attend high schools first went to boarding schools as far away as Oregon and Washington, but later to Sheldon Jackson School in Sitka and the Wrangell Institute in Wrangell. In 1937, Native students won the right to attend local public schools in Petersburg.

IRA Organization in Petersburg

The Petersburg IRA, named the Petersburg Indian Association, was organized and approved in 1948. Initially the organization mainly helped Natives get loans to buy fishing boats.

Tlingit and Haida Central Council in Petersburg

The Petersburg Indian community participated in meetings of Tlingit and Haida Indians in the early years of the land claims action, but later (in the 1950s) it supported the land claims mainly through the Petersburg camp of the Alaska Native Sisterhood. After the 1959 decision of the U.S. Court of Claims, Petersburg formed a Tlingit and Haida community council and took part in formation of the Central Council. In 1967 Petersburg delegates were elected to the executive committee of the Central Council, and Petersburg remains a listed community of the central committee.

Petersburg Native Cemeteries and Grave Sites

A cemetery with Native graves dating from 1911 to about 1930 is across the narrows from Petersburg, behind Sasby Island. The site is included as a Native cemetery site in Sealaska regional corporation's compilation of Native historical and cemetery sites in Southeast Alaska.

Tenakee

A Tlingit village was located at the Tenakee hot springs when white settlers arrived around 1900. The village and the surrounding area, including Tenakee Inlet, were owned and occupied by members of the Wooshkeetan clan. The development of a small commercial fishing industry at Tenakee attracted more Tlingit families to the area in the 1920s and 1930s.

Early in the century the federal government had established the Tongass National Forest throughout much of Southeast Alaska, including the area around Tenakee. In 1935, the federal government issued an executive land order that recognized the Native community at Tenakee as "an Indian settlement" and excluded it from the national forest. The Native population at Tenakee declined in the 1940s and 1950s with the decline in the commercial fisheries. Some Natives also moved to other places where their children could have a chance to go to high school.

Tenakee Traditional Native Settlement

The village of Tenakee, or Tenakee Springs, is situated at a hot springs that was the location of a Tlingit village before the whites arrived. The Tlingit village at that location was recognized in the 1891 U.S. Coast Pilot, which reported "a small Native village" and said that Tenakee Inlet was "constantly used by

the Indians in their journeys from Chatham Strait to Port Frederick." The village was also reported by the operator of a saltery in the area in 1901. The operator described the actions of the local clan leader, who asserted ownership of fishing sites in Tenakee Inlet.

Occupancy of Identifiable Area in Early Tenakee

Several Tlingit families lived in Tenakee at the turn of the century. Some lived in the area known as Indian village, which was near the modern boat harbor, and some remained in the original location near the hot springs. In the 1920s and 1930s the Native population grew as more Natives moved in from nearby communities to take advantage of jobs with the two canneries at Tenakee. Some of those new Native residents moved into the Indian village.

Tenakee Indian Land Reservation or Exclusion

The Indian village at Tenakee was recognized as an "Indian settlement" in an executive order of President Franklin Roosevelt in 1935. That order excluded the village from the Tongass National Forest. Native rights to the village tract were reaffirmed in 1965, when the BLM turned down a non-Native application for a trade and manufacturing site there, noting that "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years" (Peters 1965).

Tenakee Churches or Missions Serving Natives

Native residents built their own church in Tenakee in the 1920s or 1930s. Local residents credit Charlie Walters, an old-time Native resident, with starting the church by donating land for a building and urging local residents to build a church. Community members began meeting in the hall, which later became a Salvation Army Hall. Nearly all Native families in Tenakee belonged to the Salvation Army Church in the 1940s and the church was active there until 1950, when the Salvation Army Hall burned. It did not reopen because about that time the local economy went into decline and Natives began moving to other communities.

Alaska Native Brotherhood and Sisterhood in Tenakee

Tenakee had an active ANB camp from the 1920s to about 1950. Tenakee ANB members attended the 1929 meeting in Haines, where the ANB decided to sue the federal government over land claims, and the 1941 meeting of the Tlingit and Haida Indians in Wrangell, at which the group approved a contract with attorneys to pursue the land claims case. After the 1940s ANB membership declined as residents left Tenakee to look for jobs elsewhere. Lawyers pursuing the land claims case included Tenakee on their mailing list through the early 1950s.

Tenakee Native Cemeteries and Grave Sites

Opposite the Indian village at Tenakee is a small island the Native community uses as its principal burial area. A second, smaller cemetery is near the town of Tenakee on Chichagof Island. There is another burial site across the inlet on a small island north of Kadashan Bay.

Wrangell

Before white settlers and traders came to the area, Wrangell was the site of a summer village of the Stikine kwan, the largest and most powerful of the southern Tlingit tribal groups. In the 1830s and 1840s, when the first white settlement was established at Wrangell, the Tlingit population was estimated to be several thousand. Except for Sitka, Wrangell has the longest history of contact with non-Natives in Southeast Alaska. In the nineteenth century, Wrangell was an important trading center for Natives from Alaska and Canada and a transit point to gold fields in the interior. Over the years, Wrangell developed as a predominantly white town. Natives from other Tlingit and Haida communities in the region moved to Wrangell to take advantage of jobs and schools there. As a result, the Native community in Wrangell today has diverse origins.

Wrangell Traditional Village Site

In the nineteenth century the Stikine Tlingit occupied many villages and camps in a large area around what is now Wrangell. Wrangell was a summer village owned and occupied by the Naanyaa.aayi clan of the Stikine Kwan. A leading member of the clan gave the Russian permission to establish the first trading post in Wrangell.

Occupancy of Identifiable Area in Early Wrangell

The ten Stikine clans lived in separate areas along the south shore surrounding the modern-day harbor in Wrangell. This large village area was described by the early American military authorities and missionaries in the 1860s and 1870s. The 1906 subdivisional survey of the Wrangell townsite identified Indian possessions in this area. Another expanse of Indian occupation has existed since the 1870s. Located north of town and separated from the Stikine settlements by the white settlement, this was the home of numerous Indian migrants to Wrangell. It became known in the local Indian community as the "foreign" town, and was the locus of trade and settlement for members of other kwan who came to Wrangell. Native people from Craig, Klawock, Hydaburg, Kake, Ketchikan, Sitka, Haines, and other villages—and from cannery sites in the area—established residence in Wrangell.

Wrangell Indian Possessions and Native Townsite Lands

The map of the original Wrangell townsite from 1906 identifies Native possessions in twelve townsite blocks, including areas around Wrangell Harbor, on the northern and southern peninsulas of the harbor, all of Shakes Island, and extending northward along Front Street. In 1926 the Wrangell townsite trustee was authorized to subdivide the Indian Village and issue deeds to Native occupants. The village was subdivided into 104 lots. In 1931, the trustee issued 23 deeds to Natives, eight deeds to others who were not local Natives, and decided that whites had gained legal possession of 20 lots. The remaining lots were held in trust for future settlement by Natives. By 1958, townsite records indicate that Indians held about 53 percent of the Native possession lots, non-Natives another 44 percent, and 3 percent remained undeeded.

Wrangell Churches or Missions Serving Natives

The Presbyterians organized the first church and school in Wrangell in 1877, with its primary mission to the Native community. Later, after some white residents asked for segregated services, some Native members left that church and built their own. That church ultimately became St. Elizabeth's Episcopal Church. It provided activities for Native youth and started a high school for Native boys. Church records

indicate the congregation was largely Native through the 1950s. Native residents also organized a corps of the Salvation Army in Wrangell before the turn of the century, and Wrangell was the army's headquarters for Alaska, the Yukon, and part of British Columbia until 1939.

Wrangell Government Schools for Natives

The Bureau of Education (BOE) opened Wrangell's first public school in 1885. At first mostly Native but also some non-Native children attended; the BOE opened a separate school for white children in 1901. The BOE and its successor, the Bureau of Indian Affairs, operated an elementary school for Natives in Wrangell until 1932. The BIA opened the Wrangell Institute in 1932. The institute was a boarding high school for Native students and operated until 1975.

Alaska Native Brotherhood and Sisterhood in Wrangell

Wrangell Natives began organizing a camp of the Alaska Native Brotherhood in 1913, and Wrangell was formally recognized as an ANB camp in 1921. In 1922, the Wrangell ANB and ANS took up a collection to support attorney William Paul in a test case for Native voting rights. Paul was representing a Wrangell Native who had been denied the right to vote and who had been arrested when he challenged authorities at the polls. Paul's client was found not guilty, and the right of Indians to vote in Alaska was accepted in practice. The ANB hall became the social center for the Indian community in Wrangell. In 1935, Wrangell hosted the organizational meeting of delegates establishing the Tlingit and Haida Central Council, which was formed to help advance the land claims suit against the federal government.

IRA Organization in Wrangell

Wrangell formed an IRA organization, the Wrangell Cooperative Association, in 1948. The organization helped Native fishermen get loans to buy boats, and at least one Native received a loan to finance a shop.

Tlingit and Haida Central Council in Wrangell

Wrangell participated in all the meetings involving tribal communities and representatives involved in the Tlingit and Haida land claims suit against the federal government. As noted above, it hosted the organizational meeting of delegates establishing the Tlingit and Haida Central Council in 1935, and in 1941 it hosted the meeting at which the Tlingit and Haida Indians approved a contract with attorneys pursuing the land claims. After the favorable decision in the case in 1959, two competing groups in Wrangell established community councils to represent Wrangell in the Tlingit and Haida Indians of Alaska; after several years one group prevailed.

Wrangell Totem Poles, Indian Cemeteries, and Grave Sites

The use of totem poles was well established among the Stikine Tlingit by the early nineteenth century, and many important poles originated in Wrangell. These include the Shakes totems, associated with the Shakes family (including a succession of Chief Shakes); the Kadashan poles (in honor of a prominent Haida peacemaker from Wrangell); the Kiksadi pole (commissioned in memory of a Kiksadi chief in Wrangell); and the Shustak pole (originally erected on Shustak Point to honor a dead chief).

One large and several smaller burial and cemetery sites in Wrangell attest to Tlingit occupancy of the area, and to the influence of the missionaries, from the 1880s. The largest is south of the old village.

Comparison of Communities

We now turn to a comparison of the five study communities described above and the Southeast communities that were recognized under the Alaska Native Claims Settlement Act (ANCSA). Section 16 of ANCSA listed ten Southeastern villages that had participated in the Tlingit and Haida claims settlement and that were also considered eligible to form village corporations: Angoon, Craig, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Saxman, and Yakutat. Section 14(h)3 provided special consideration for two more Southeastern communities, Juneau and Sitka, that were classified as "modern and urban" communities. Juneau and Sitka were also entitled to form corporations and select land under the act, but their benefits differed from those of village corporations.

For this comparison of the recognized communities and the study communities we present comparative information for communities of similar size, ethnicity, and history. For the most part, we compare the five study communities with four recognized ANCSA communities: Juneau, Sitka, Craig, and Kasaan. We compare Haines, Ketchikan, and Wrangell principally with Juneau and Sitka. Petersburg can be contrasted with Craig, and to a lesser extent with Juneau and Sitka. Tenakee can be assessed relative to Kasaan. Where significant and useful differences exist between the study communities and other recognized ANCSA communities in Southeast, we note those differences.

The aim of this discussion is to present salient facts indicating similarities and differences among communities, based on the criteria listed earlier. We do not attempt to reach a conclusion for each topic or category of information presented. Instead, we consider the picture that emerges from all the criteria taken together. These comparisons indicate significant historical similarities between the five study communities and various other Southeast communities, based on the above described criteria of historical use and occupancy.

Indian Settlements At Sites of Modern Communities

All five of the study communities are located on sites of Tlingit settlements that were present before white settlers came to the area. Three were summer villages and fish camps, while two (Haines and Tenakee) were winter villages.

The recognized communities of Juneau, Sitka, Craig, and Kasaan had similar settlement patterns before the arrival of non-Natives. Sitka was the site of a principal village of the Sitka kwan when the Russians erected a fort next to the Tlingit village in 1801. The Russians settled there with the permission of the Tlingit owners, according to one report (Krause 1956:30). The Sitkans destroyed the fort later in the year, but the Russians returned with gunships and re-established the settlement in a new location nearby in 1804. The Sitka Native community has had the longest continuous contact with non-Natives in Southeast Alaska.

The town of Juneau was established on the site of a fish camp owned by a clan of the Auk kwan at the mouth of "Flounder Creek," which today is known as Gold Creek. The "discovery" of Juneau was described by the late Austin Hammond, a tribal leader of the Chilkoot Lukaax̲.adi clan. He said the area was rich in natural resources, which is why Native people lived there. Two white men arrived, looking for gold. They were hungry and asked for food, and they were fed by the Auk Indians living at the mouth of Flounder Creek. While they were in the Indians' house, they noticed a box containing some gold and learned that

it was from the river (Flounder Creek). They prospected in the river and soon made a strike. Juneau thus began as a gold rush town in 1880. It grew rapidly and soon replaced Sitka as the seat of the territorial government. The Tlingit name for Juneau is Tsa'ntik!i-hin (Swanton 1908:397).

The Haida community at Craig was founded in about 1910 when a white man named Craig Millar built a saltery and cold storage plant there. By 1912, a cannery had been erected on the site, which is named "Shaan-Seet" in Tlingit (Langdon 1977:152). The new town was established directly across from a small former village on Fish Egg Island, and it was called by that name ("Fish Egg") in the early school reports. Located six miles from Klawock, the community was first settled by Haida and Tlingit from nearby communities, and it has been associated with the Haida tribe since its beginning. Natives were in the minority in the early years.

Kasaan was one of the first Haida communities to be established in Alaska and was perhaps the second largest Haida village—after Howkan—in the immediate pre-contact period (Langdon 1977:119-20). The only Haida village on the eastern coast of Prince of Wales Island, Kasaan appears in early historical photographs that show houses of traditional and modern construction styles, as well as totem poles. In 1901, the manager of a mining company encouraged residents of the village to move about five miles to the site of a new village. The manager offered to help lay out a new village, provide permanent annual employment, and construct a school and a church. He also said he would prevent saloons from locating in the vicinity (Jackson 1908). After conferring with Bureau of Education officials and the territorial governor, who promised to establish a school there, villagers moved to the place which was originally known as "New Kasaan," but is now referred to as Kasaan.

What is common to all these communities—the study communities and the recognized Southeast communities—is that modern communities were established directly on, or in close proximity to, areas and sites in use as Native settlements and camps. Non-Natives were drawn to these places by minerals, fish, timber, and other resources. Indian settlement patterns were characterized by seasonal population dispersal and aggregation. The comparative information indicates that the actual sites of Southeastern villages and larger towns were often determined by the location of non-Native commercial activities or because of the active encouragement of school and church authorities, or both.[1]

A notable example is the ANCSA-recognized community of Hydaburg, which was established in 1911 through the substantial influence and involvement of the Bureau of Education (BOE). This community, modeled on the Christian community at Metlakatla, came into being through BOE's efforts to consolidate the traditional communities of Howkan and Klinquan on western Prince of Wales Island, and to provide opportunities to the younger residents there to adopt western ways unencumbered by opposition from elders and traditionalists. In return for leaving their traditional communities, the BOE provided new residents with assistance in moving and constructing the new village, with efforts to establish a reservation, and with financial assistance for the development of commercial enterprises (a cannery and sawmill).

[1] The influence of these factors on village location is not limited to the Southeastern region. Similar outcomes occurred in all regions of the state.

Indian Occupancy of Identifiable Areas in the Early Towns

In all five of the study communities, there were one or more areas local residents considered to be "Indian villages" or "Indian towns." Often these places corresponded with actual or proposed reservations, and with the locations of Indian possessions in the townsite.

In Juneau and Sitka, the Indian community was similarly identified with geographic areas of town. Tlingits occupied a large area on the beach in front of the early town of Juneau. Within a year of the gold strike in Juneau, a large influx of miners and prospectors and an even larger influx of Natives took place. In 1881 there were already 150 whites and 450 Indians in Juneau. (See Smythe 1989b for more information on the early history of Juneau.)

The area around Gold Creek, or "Flounder Creek" as it was known to the Tlingits, was associated with the Indian community and particularly with the Auk kwan throughout the history of Juneau. Although most residents of the "Auk village" district, now largely a business and office district close to downtown, have been displaced by subsequent developments, the area is still associated with the Auk kwan. Indian families live there today.

In Sitka, two areas were occupied by Indians. The "Indian village" was the original Sitka kwan settlement, a large area along the beach. In 1914, Judge Wickersham wrote that "This Indian village has existed where it now stands for more than a century. It was laid out under the eye of Baranof, the first Russian Governor of Alaska, and has been kept up and occupied by the Sitka Indians and their children from that day to the present."

The other area of Native occupancy in Sitka was known as "the Cottages." It was associated with the Sheldon Jackson School. Graduates were given plots of land, encouraged to erect single-family structures and to live apart from the traditional influence of "the village." The mission school authorities taught that smaller, modern-style houses were free from disease and more progressive than the "communal" homes that were common in the village. The missionaries believed the communal houses had a "back-pulling influence" on the young graduates (Annual School Reports, 1917-18).

The villages of Craig and Kasaan had more dispersed and mixed settlement patterns. Initially (1920), Natives were in the in the minority in Craig, but they became the majority by 1930 and Craig has remained predominantly Native through subsequent years. There were Native homes throughout the community. Native residents in Kasaan were likewise dispersed throughout the village. This more integrated residence pattern contrasted with that in the larger towns, in which the early Native communities were geographically—as well as economically, socially, and culturally—segregated from the non-Native areas.

Land Reservation or Exclusion from the Tongass National Forest

In the early decades of the century the Bureau of Education began establishing land reservations for Natives. These reservations were to protect the Indian communities from encroachment on and appropriation of Indian-owned land by non-Natives and to provide Natives an opportunity to develop businesses free from competition with whites, who were more experienced in business. Federal land reservations were made by Executive Order in the study communities of Haines and Ketchikan, as described earlier. Additional land reservations were made in the ANCSA-recognized villages of Hydaburg (1912), Klawock (1914) and Klukwan (1915).

The tidelands reserve to protect Ketchikan Natives' use of and access to the tidelands was described earlier. There were similar concerns over the protection of tidelands in front of the Auk Village in Juneau, although a reserve was not created there. In 1916, for example, some of the Indian residents protested against encroachments on their waterfront. A local attorney wrote the Secretary of the Department of the Interior (DOI) about their concerns: the electric company had built a pipeline on pilings which ran out in front of the village; white residents had put up houses on pilings which went over onto village tidelands; and a road had been built on pilings in front of the village, creating an obstacle to the beach and preventing all but small boats from reaching the shore. The attorney wrote, "The beach and waterfront has been the landing place and harbor for the Indians for more than thirty years" (Folsom 1916).

The matter of tidelands protection was referred to the attorney general. In 1918 he replied that the regional attorney general had established two lines at either end of the village, extending out to deep water, and ordered that no obstructions or structures be erected between them (Kearful 1918). The tidelands in the Juneau Indian village were still under federal protection in 1960, according to George W. Abbott, a DOI solicitor. He issued an opinion pertaining to proposed development of the area, and found that title to the ten acres of tidelands in the village "must be retained by the federal government" instead of being transferred to the state under the statehood act, as had been expected (*Alaska Daily Empire* 12/29/60).

As described earlier, the Indian village in the study community of Tenakee was excluded from the Tongass National Forest under a federal land order in 1935. This exclusion prevented outsiders from subsequently entering on the land and using it for commercial or other purposes that were allowed in the national forest. The Indian village at the ANCSA-recognized community of Kasaan was likewise eliminated from the national forest in the 1930s because it was a Haida community dating from the turn of the century. However, the original parcel was patented to the miner who acquired the tract as a trade and manufacturing site. The ANCSA-recognized town of Craig was at first included within the Tongass National Forest, but in 1922 the townsite was eliminated from the national forest to enable townspeople to apply for ownership deeds. Previously, residents had leased their lots from the Forest Service (Langdon 1977:156).

School reserves for government Indian schools were also made in most communities in Southeast Alaska, including the study communities of Petersburg, Wrangell, and Haines, as well as Sitka, Juneau, Douglas, Kake, Chilkat, Killisnoo, Tee Harbor, Klukwan, Shakan, Klawock, Kasaan, Saxman, Klinquan, and Howkan (Warne 1948b).

Indian Possessions and Native Townsite Lands

The study communities of Haines, Ketchikan, Petersburg, and Wrangell had Indian possession lands identified when the townsites were first established. Haines, Ketchikan, and Wrangell had the largest areas that were defined in this way, while Petersburg had only a few lots. There is no record of Indian possessions in the Tenakee townsite, but an area outside the townsite was excluded from the Tongass National Forest because it was occupied as an Indian village.

In comparison, the original townsite of the ANCSA-recognized community of Juneau had no areas recognized as Indian possessions, while Sitka had only three such tracts totaling less that one acre. This is explained by the fact that the Indian villages were located outside the original townsite surveys. In both communities, later surveys subdivided the Indian villages and awarded deeds to the Native owners.

The Sitka Indian village was first surveyed in 1941, but the survey was not completed until 1957, when a supplemental survey of areas left out of the initial survey was approved. Deeds were still being issued in the 1960s, in both restricted and unrestricted form. In Juneau, a special act of Congress (P.L. 88-34) passed on May 29, 1963 (77 Stat. 52) authorized the survey and establishment of a townsite for the Juneau Indian village, which was partially located on filled-in tidelands. The village, which covered 3.5 acres, was surveyed in 1963 or 1964, and deeds were awarded beginning in 1965.

Under the laws and regulations governing the administration of townsite lands occupied by Natives, there was no difference between the study communities of Haines, Ketchikan, Petersburg and Wrangell, on the one hand, and Sitka, Juneau, or any village that was classified as an Indian townsite, such as Kasaan. With regard to the administration of Indian possessions, in this case in Ketchikan, BLM officials repeatedly stated that the administrative procedures of Native townsites were held to "automatically apply" (Parks 1939; Stegner 1958; Gustafson 1972). "The Natives of Ketchikan are considered the same as any 'normal' townsite such as the Natives of Sitka, Juneau or Barrow. The same rules and regulations apply" (Gustafson 1972).

However, the townsites of Haines, Ketchikan, Petersburg, and Wrangell were established by non-Natives and patented before the 1926 Native townsite law was enacted and before citizenship (and voting) rights were granted to Natives in 1924.[2] Townsite trustees sometimes (as described in the community histories) transferred Indian possession lands within the townsites to non-Natives, and local governments sometimes seized Indian possession lands for tax delinquency.[3] In Juneau and Sitka, as well as in the study community of Tenakee, the Indian villages were afforded better protection because they were outside the townsites.

Craig was very similar to Petersburg in the recognition of Indian possessions in the original townsite. The town of Craig was incorporated in 1922 by the mostly white residents, and by 1931 all townsite lots had been disposed of. The administrative records of the townsite make no mention of Indian residents, nor are any Indian possessions identified. Similarly, in Petersburg there were only three lots identified as Indian possessions, and there was no Native participation in incorporation. In Craig, Petersburg, and Wrangell, all unclaimed lots were treated according to procedures followed in non-Native towns: public sale of unclaimed lots and subsequent transfer to the municipality of any that remained. In describing the early development of Craig, Langdon (1977:158) made the point that "Craig's founding and early settlement clearly made it a white man's town." The subsequent history of Craig differed from that of Petersburg, however, since the Native population of Craig became the majority, while Petersburg continued to be a "white man's town."

[2] In this period, Indians did not have the right to vote unless they had a certificate of citizenship. (This remedy was available if the Native met the requirements of a 1915 territorial act which provided a mechanism to acquire citizenship).

[3] DOI regulations in 1908 provided that Indian or Native Alaskan possessions shall not be assessed or conveyed by the trustee pending future legislation contemplated for this purpose in the Organic Act of 1891 (which authorized the establishment of townsites). Hence, Native tracts within townsites were designated as Indian possessions and were excluded from patent to the townsite trustee, with title remaining with the government. The authority to convey title to such land was provided in the Act of 1926, which ordered the survey and disposal of Indian or Eskimo possessions (and the issuing of a patent to the townsite trustee for the Native townsite if not already in place). Indian possessions in Southeastern communities were deeded under this legislation, as long as a chain of occupancy back to the date of the survey could be demonstrated.

Like the Indian village in Tenakee, the Kasaan Indian Village was eliminated from the Tongass National Forest (U.S. Survey 1896, accepted in 1939). By this time, the economic mainstay of Kasaan was fishing. Townsite records show that the Pacific American Fisheries operated a cannery in Kasaan on the trade and manufacturing site that was originally awarded to the Kasaan Mining Company in 1902. After 1939, the Kasaan Indian village (townsite) was subdivided into 5 blocks containing 45 lots.

That subdivision in the Kasaan Indian village took place shortly after the Tenakee village was eliminated from the national forest. However, elimination from the national forest by itself did not confer townsite status or provide a means for the owners to acquire formal title. Residents had to make further application to the BLM for the establishment and administration of a townsite. There is no information in the Tenakee townsite file which suggests that an addition was made—or that a separate application was filed—to include the Indian village elimination in the original Tenakee townsite. The area at Tenakee remained in use as an Indian village, with its land held by the federal government.

As occurred in Tenakee, the fishing economy in Kasaan declined in the early 1950s, and many Indian residents moved to other communities, particularly Ketchikan. According to an OEDP report, "With the closure of the cannery in 1953, the population dwindled to just a handful of people." But the inhabitants returned to Kasaan after it was recognized as a village in ANCSA. The report continues, "In 1971 Kasaan was declared a village under the Alaska Native Claims Settlement Act, eligible to receive benefits on behalf of its shareholders. With confidence restored in the community, people began moving back. The corporate headquarters of Kavilco, Inc., the village corporation for Kasaan, was located there in 1974. Then in February 1976 the community was organized under State law as a second-class city, electing seven council members, with the mayor elected by the council" (Kasaan 1977). Later (in 1981) the one remaining tract in the village townsite was subdivided into 26 lots.

Government Schools for Indians

There were Indian schools (run first by the Bureau of Education and later by the Bureau of Indian Affairs) in the study communities of Haines (1881-1948), Ketchikan (1923-48), Petersburg (1904-37), and Wrangell (1885-32) (Barnhardt 1985). Those federal agencies also operated Indian schools in all twelve of the Southeast communities recognized by ANCSA. In addition, the BOE and later the BIA operated Indian schools in thirteen other villages and towns in Southeast Alaska. Indian schools in ANCSA-recognized and in other communities included:

ANCSA Communities	Other Communities	
Angoon	Haines	Metlakatla
Craig	Ketchikan	Treadwell
Hoonah	Petersburg	Tee Harbor
Hydaburg	Wrangell	Shakan
Juneau	Chilkoot	Skagway
Kake	Douglas	
Kasaan	Dyea	
Klawock	Howkan	
Klukwan	Killisnoo	
Saxman	Klinquan	
Sitka	Loring	
Yakutat	Louden	

Tenakee Indians were served by a territorial school. Tenakee is similar to Craig in its school history. There was a BOE school in Craig for three years (1910-13), but it was also served by a territorial school from 1905-35. The school was transferred to the city school district after 1935 (ibid.).

The Wrangell Institute, a BIA boarding high school, operated in Wrangell from 1935 until 1975. There was one other boarding high school for Natives in Southeast Alaska—the Sheldon Jackson School in Sitka. However, that was a private institution operated by the Presbyterian Church. The Sheldon Jackson high school remained open until 1975; the institution continues today as a college.

Churches and Missions Serving Indians

In all of the five communities investigated in this study, the first church to organize in the town was a Native church, in the sense that the institution was either started as a mission to the Natives or established by the Natives themselves. In three of the communities, the church mission also established the first school in the emerging towns and those schools were specifically for Native children. In four of the five study communities, Natives contributed their own scarce cash and provided labor to help erect church buildings.

The establishment of the first American schools in Southeast Alaska is associated with missionary activity in the region. Sheldon Jackson was placed in charge of the Presbyterian efforts in Alaska in 1877, after which schools were opened. The first Protestant mission in Alaska was opened in Wrangell in 1877 by the Presbyterian Board of Home Missions. Its purpose was to serve the Native community, and a school was an integral part of the mission. The next school to open was in Sitka, also under the Presbyterians. In 1881, a school was opened in Haines by Mrs. Dickenson, an educated Tongass woman from the Wrangell mission, who taught there until a missionary (Mrs. Willard) relieved her. Another school was established in 1881 in Hoonah, also by the Presbyterian Board of Home Missions. By 1882, there were six Presbyterian mission schools and one of another denomination in the Southeast region (Drucker 1958:12-3).

The Presbyterian mission activity was modeled on the Metlakatla community, which combined Christian teaching with education, put a value on individual effort, and directly opposed Native language and customs. "In the gestation period of Presbyterian missions, from 1877 to 1885, Jackson and his lieutenants often identified Duncan's success as a model of what Americans might likewise achieve north of 54 40" (Hinckley 1961:198). In 1885, when he was appointed federal General Agent for Education in Alaska, Jackson opened government schools in Juneau, Sitka, Wrangell, Howkan, Hoonah, and Haines, and continued with the subsequent BOE efforts described above. The Jackson orientation toward a Christian education is evident in annual reports of school teachers from many communities well into this century.

Other denominations also started schools for Natives as a component of their missionary activity. The first school in Ketchikan was opened by the Episcopalians and later, in the 1920s, the church started a high school for Native boys in Wrangell. The Russian Orthodox church also established early schools for Natives in Juneau, Sitka, and Yakutat. In Yakutat, an American school was started by the Swedish Evangelical Church, which later contracted for the BOE school. In at least eight Southeastern communities, then, the first schools were those operated by church missionary organizations for the benefit of the Native community. Some of these denominations, as well as others, established themselves in communities but were not associated with schools.

The presence of the Salvation Army Church was also felt in Southeast communities. This church depended almost completely on the local parishioners for its economic support in the community, and often the ministry was comprised of Native preachers. In many communities, the Salvation Army was identified closely with the Native community, in part because its activity was focused on the lower socioeconomic segment of the population. The encouragement of music as an expression of Christian sentiment met with an enthusiastic response in the Native community, and local Native residents joined the Salvation Army bands in significant numbers in the early years of this century. The first Salvation Army church in Alaska derived from the Klondike area in about 1897 or 1899, when it spread to Skagway. Active Salvation Army posts were subsequently established in each of the five study communities, as well as in Juneau, Sitka, Kake, Angoon, and other villages.

The Alaska Native Brotherhood and Sisterhood

The Alaska Native Brotherhood (ANB) was formed in 1912 by Tlingit and Tsimshian Indians from Sitka, Juneau, Wrangell, Angoon, and Klawock. The Bureau of Education encouraged its inception, and the first organizational meeting was held in Juneau in the office of the Alaska BOE superintendent, W.G. Beattie (formerly superintendent of the Sheldon Jackson School). The founders were strongly influenced by the Presbyterian missionaries at the Sheldon Jackson School and the Russian Orthodox priests from the Russian orphanage for Indian children in Sitka (Hope III 1975). The ANB's original purposes were to encourage the assimilation of the Alaska Native into the "cultivated" society represented by the missionaries and school authorities, to oppose discrimination and racial prejudice, and to assist in the development of Alaska. Shortly after the establishment of the ANB, a parallel organization, the Alaska Native Sisterhood, formed among Native women as an auxiliary organization which assisted substantially with fund-raising and other efforts.

After 1920, under the influence of William and Louis Paul, the objectives of the organization changed to be more principally concerned with ending discrimination, including the abolition of the dual school system, recognition of citizenship and voting rights, and pursuit of property rights in land and fisheries. ANB brought test cases to court on these issues, funded by donations from the local community ANB camps. William L. Paul, Sr., a Tlingit attorney practicing in Wrangell and later in Ketchikan, was active in the early actions. Several of the foremost cases originated from the five study communities. As described above, Paul brought a voting rights case out of Wrangell in 1922, and subsequently pursued the right to an equal opportunity for local education in white schools in a case in Ketchikan. He was also instrumental in persuading delegates at the 1929 ANB annual convention in Haines to pursue land claims against the federal government.

Sitka, Juneau, and Douglas were the first communities to form local ANB chapters, called camps. Other communities joined slowly at first, but by the early 1920s nearly every Indian community in Southeast Alaska had local camps of both the men's and women's organizations (Drucker 1958:21; see Drucker for a more extended discussion of the ANB and its formation). All five of the communities in this study were members and attended the historical 1929 convention in Haines, as described above. In his speech encouraging the assembly to take action on land claims, Judge Wickersham named the following communities: Angoon, Douglas, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Klukwan, Petersburg, Sitka, Wrangell, and Yakutat.

By the 1950s, nearly all the local camps had their own meeting halls in the communities. Attorneys pursuing the Tlingit-Haida land claims included all five study communities on their mailing list. The complete mailing list of Southeast ANB/ANS communities in the early 1950s, which is the best available information on community membership in the organization, is the following:

Angoon	Klawock
Craig	Klukwan
Douglas	Metlakatla
Haines	Petersburg
Hoonah	Saxman
Hydaburg	Sitka
Juneau	Tenakee
Kake	Wrangell
Kasaan	Yakutat
Ketchikan	

IRA Government Organization

Nearly all Southeast Indian communities formed IRA organizations, including IRA village councils and corporations, after the Indian Reorganization Act provisions were extended to Alaska in 1936. Adequate employment and income among local Indian residents was a major concern in this period, and communities were interested in taking advantage of opportunities under the legislation to obtain loans for Native owned and operated businesses. Such loans were not available to them from conventional sources. The BIA encouraged the formation of chartered corporations which were entitled to receive such loans on behalf of the Indian membership. In many communities, the interest in the local government functions of the IRA did not develop until later.

Among the five study communities, Tenakee did not organize under the IRA, but the remaining four did. The following Indian communities formed IRA government and corporation organizations (the date of BIA approval of government constitution and corporate charter is also indicated):

Angoon	(1939)	Ketchikan	(1940)
Craig	(1938)	Klawock	(1938)
Douglas	(1941)	Klukwan	(1941)
Haines	(1941)	Metlakatla	(1944)
Hoonah	(1939)	Petersburg	(1948)
Hydaburg	(1938)	Saxman	(1941)
Kake	(1948)	Sitka	(1938)
Kasaan	(1938)	Wrangell	(1947)

Summary Comparisons

Table 5.1 shows a summary comparison, under the criteria discussed throughout this chapter, of the five study communities and the Southeast communities recognized under ANCSA.

Table 5.1. Summary Comparisons of Study Communities and ANCSA Communities

	Haines	Ketchikan	Wrangell	Juneau	Sitka	Petersburg	Craig	Tenakee	Kasaan
Settled Prior to Arrival of Whites	X	X	X	X	X	X	X	X	X
Occupancy of Area in Early Town	X	X	X	X	X	X	X	X	X
Land Reservation or Exclusion	X	X					X	X	X
Indian Possessions in Townsite	X	X	X		X	X			
BOE Government Indian School	X	X	X	X	X	X	X		X
Church or Mission Serving Natives	X	X	X	X	X	X		X	
Alaska Native Brotherhood/Sisterhood	X	X	X	X	X	X	X	X	X
IRA Government Organization	X	X	X	X	X	X	X		X
Tlingit and Haida Central Council Chapter	X	X	X	X	X	X	X		X
Native Cemeteries, Graves or Totems	X	X	X	X	X	X	X	X	X
Identified in Tlingit and Haida Settlement	X	X	X	X	X	X			
Identified in ANCSA				X	X		X		X

Study communities; not recognized under ANCSA

Tlingit and Haida Central Council Community Council

Communities of Tlingit and Haida Indians participate in the Central Council by forming local community councils and electing delegates to the annual conventions. The opportunity to form a community council and elect delegates is open to any group of Tlingit and Haida Indians living in a community that decides to organize. This membership structure operated informally during the years leading up to the favorable decision in the Tlingit and Haida settlement. Following the amendments to the 1935 jurisdictional act, they were codified in a constitution and rules for election by which the Central Council was formally organized and reconstituted as a representative tribal organization.

The participation of the five study communities in the Tlingit and Haida Central Council since its formal organization in 1941 was described earlier. At that time, the participation of communities was identical to that of the ANB and ANS organizations (see above). During the 1950s, Haines, Tenakee, and Kasaan became inactive as individual communities. Members of those communities participated through other communities. In the early 1960s, after the favorable claims decision and when the Central Council began to take steps to reorganize itself, the list of Tlingit and Haida communities was adjusted slightly. In 1964, for example, Douglas was no longer identified separately, while Kasaan, Metlakatla, Oakland, California and Seattle, Washington were added.

Events concerning the Yendistucky Reservation, and other developments within the community of Haines, led that community to seek approval to form a Tlingit and Haida Community Council in 1971. As of 1971, nineteen communities of Tlingit and Haida Indians belonged to the Central Council. They were the following:

Angoon
Craig
Haines
Hoonah
Hydaburg
Juneau
Kake
Kasaan
Ketchikan
Klawock
Klukwan
Metlakatla
Oakland
Petersburg
Saxman
Seattle
Sitka
Wrangell
Yakutat

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Chapter 6. Enrollment

BY CHARLES W. SMYTHE

This chapter describes the Alaska Native Claims Settlement Act (ANCSA) enrollment process as it was applied to the five study communities and identifies the cumulative enrollments for the communities during both the original and a subsequent open enrollment period. The study communities were not listed in ANCSA and were not certified as being eligible to form village corporations and receive land entitlements. But Natives from these communities enrolled under terms of ANCSA and became at-large shareholders of Sealaska regional corporation.

The enrollment figures for the five communities provide an estimate of potential enrollment, should they be certified to form village corporations. Based on interviews with individuals involved in the enrollment process, the author found that the enrollment policies and procedures were the same for the five study communities as for the twelve Southeast communities that were recognized. However, respondents reported that the unlisted status of the five communities was a factor in decisions of some shareholders during the enrollment process, and probably resulted in lower overall enrollment figures for the unlisted communities. Also, provisions of the 1976 amendments to ANCSA—which allowed for re-determining the place of enrollment for Natives who originally enrolled to places that were later found to be ineligible—were denied to members of the five study communities under a 1983 opinion issued by the Solicitor of the Department of the Interior. Therefore, the original enrollment certifications of Natives to the five study communities are the only certain basis for projecting potential enrollments, if those communities were authorized to form village corporations.

Overview of Procedures

The Alaska Native Claims Settlement Act (P.L. 93-203), enacted on December 18, 1971, required that persons eligible to receive benefits under the act enroll within two years. On March 27, 1972, the Department of the Interior (DOI) issued regulations governing application for enrollment and preparation of the Alaska Native Roll. Enrollment was opened from April 1, 1972, until March 30, 1973. ANCSA assigned responsibility for preparing the roll to the DOI, which delegated this function to the Bureau of Indian Affairs (BIA). The BIA established an enrollment coordinating office in Anchorage, but due to a hiring freeze and a shortage of funds, the agency decided to contract enrollment to regional Native organizations (ESG 1984; GAO 1974).

In Southeast Alaska, the BIA contracted with the Central Council of the Tlingit and Haida Indians to conduct the enrollment. The central council hired an enrollment coordinator for the region and hired and trained enumerators in all Southeastern communities. The number of enumerators in each community varied according to population. Haines and Petersburg each had one enumerator, for example, while Wrangell had at least two, and Ketchikan had six to eight. Enumerators received training at three-day workshops conducted in Juneau by the BIA enrollment coordinator and the Southeast enrollment coordinator.

The enumerators helped local residents complete enrollment applications, which were in the form of a survey questionnaire. The form requested such information as the applicant's name, address, date and place of birth, names of parents, degree of Native ancestry, permanent residence as of April 1, 1970, and family tree. The BIA enrollment coordinator determined the region and village of enrollment based on the set of residence questions in the application. The BIA allowed applicants to change their applications, including the place of their permanent residence, until May 9, 1973. Decisions about granting changes rested with the Alaska regional solicitor of the Department of the Interior. An appeal process for enrollment decisions was established through the regional solicitor, and it was in force through August 15, 1973 (GAO 1974; ESG 1984:III-7).

Changes in the declared place of permanent residence became an issue in the enrollment process. Because questions of village eligibility or village land entitlements were based on the number of Native residents, DOI allowed changes in the places to which Natives enrolled. In part that provision was to enable applicants to make more informed choices based on final village eligibility determinations, which were not scheduled to be finalized until after the issuance of land selection regulations. ANCSA set June 18, 1974, as the deadline for DOI village eligibility determinations, but not all determinations had been made by that date (ESG 1984:III-14). Controversy over the complications and delays which resulted was one reason enrollment was re-opened in 1976. Native enrollees of the five unlisted Southeast communities were ultimately determined to be ineligible to apply for changes in their places of enrollment.

Amendments to ANCSA enacted on January 2, 1976 reopened enrollment for one year. Concern over the number of Natives (estimated to be 2,000 worldwide) who were effectively excluded from the Native roll because they had not been informed in sufficient time, or did not fully understand the enrollment process, was a principal consideration in this action (ibid.: III-7). The amendments also afforded Natives an opportunity to change their enrollment applications under two special circumstances. One such circumstance of interest here was that DOI was authorized to redetermine the place of residence for those Natives who had enrolled as residents of places which had been accepted as eligible Native villages or groups during enrollment, but which were subsequently determined ineligible "on grounds which include a lack of sufficient number of residents..."

Pursuant to the amendments, more Natives applied for enrollment to the five Southeast communities, and some who had already enrolled requested redetermination of their places of residence. However, the only adjustment DOI made in the rolls of the five communities was to add newly recognized ANCSA beneficiaries. These new enrollments are reported in Table 6.1. Although the language in the amended bill led Sealaska regional corporation and residents of some of the five Southeast communities to believe that their places of enrollment could be changed, a 1983 opinion of a DOI solicitor held that the provision for redetermination of residence did not apply to the five unlisted Southeast communities. As a consequence, the BIA denied requests from enrollees in the five study communities to redetermine their places of enrollment under this provision.

Proposed Enrollment to the Five Southeast Communities

Based on 1985 enrollment data acquired from the BIA, we found that 3,342 Natives enrolled to the five unlisted communities during the initial application period ending March 30, 1973. That constituted 22 percent of the region's total enrollment. Following the addition of new enrollees at the close of the re-opened enrollment period in January of 1977, an additional 80 enrollees were added to the total, comprising a final enrollment of 3,422 Sealaska shareholders for the five communities. A listing of the potential enrollment for the five communities, together with a complete listing of the enrollments from the two periods in the Sealaska region, is provided in Table 6.1.

The data in the table show the number of Alaska Natives enrolled pursuant to both the original act and the 1976 amendments. These are the official numbers of Natives in the Alaska Native Enrollment certified and maintained by the BIA. They provide a useful estimate for proposed enrollment to the five communities. Since they are based on *original* numbers of shareholders, there is direct comparability with other village and community corporations' enrollments and with Sealaska's total enrollment.

Table 6.1. Community Enrollments in the Sealaska Region

Sealaska Corporation—Region 12 By Village/Corporation Name	Public Law 92-203	Public Law 92-204	Totals As Of 12-31-85
020 Angoon — Kootznoowoo, Inc.	628	1	629
108 Craig — Shaan-Seet, Inc.	317	0	317
128 Douglas	19	0	19
186 Haines	319	2	321
198 Hoonah — Huna Totem Corporation	867	9	876
211 Hydaburg — Haida Corporation	552	13	565
212 Hyder	1	0	1
228 Juneau — Goldbelt, Inc.	2,655	67	2,722
229 Kake —Kake Tribal Corporation	551	7	558
238 Kasaan — Kavilco, Inc.	120	0	120
248 Ketchikan	1,801	61	1,862
257 Klawock — Klawock Heenya Corporation	507	1	508
259 Klukwan — Klukwan, Inc.	251	2	253
311 Metlakatla — Annette	17	16	33
377 Pelican	56	2	58
380 Petersburg	423	5	428
393 Port Alexander	5	0	5
427 Saxman — Cape Fox Corporation	196	0	196
442 Sitka — Shee-Atika, Inc.	1,809	54	1,863
443 Skagway	15	0	15
481 Tenakee	62	2	64
532 Wrangell	737	10	747
533 Yakutat —Yak-Tat Kwaan, Inc.	340	2	342
537 Kuiu Island	6	0	6
538 Thorne Bay	3	0	3
539 Auke Bay	10	2	12
551 At Large — Sealaska	3,020	183	3,203
552 M I Point	1	0	1
559 Washington Bay	1	0	1
596 Hidden Inlet	23	0	23
617 Loring	1	0	1
619 Funter Bay	1	0	1
621 Excursion Inlet	10	0	10
639 Dotys Cove	1	0	1
642 Klinkwan	1	0	1
645 Halibut Bay	6	0	6
648 Portland Canal	1	0	1
661 Dyea	3	0	3
800 Knight Island	0	7	7
9** Region 12 — Totals	15,336	446	15,782

Study communities; not certified under ANCSA

These figures do not show the current distribution of Sealaska shares. Initially, each enrollee received 100 shares of stock of a regional corporation and an additional 100 shares of stock in a village corporation, or—for those enrolled to villages that were not certified to form village corporations—100 shares of stock as at-large shareholders of a regional corporation. However, over the years since the initial distribution, the actual numbers of shareholders have become larger than the initial enrollments, because the original blocks of stock have been divided among more persons through inheritance and other transfers. So the number of shareholders has increased while the average number of shares held by each shareholder has declined. Estimating actual numbers of shareholders, and accounting for individual differences in the numbers of shares held, would introduce a level of complexity beyond the scope of this study.

Using the original enrollment figures as measures of potential enrollment requires assuming that those who enrolled to the five study communities were not influenced by ANCSA's failure to recognize those communities. It also assumes that the enrollment process for the five study communities proceeded in the same way as it did in communities that were ultimately certified.

Because these assumptions about enrollment are so important, we interviewed seven persons who had been involved in the enumeration process in the Southeast region. Six of the persons we interviewed had been community enumerators (in Klukwan, Haines, Ketchikan, Wrangell, and Sitka), and one had been the regional enrollment coordinator. We also held several discussions with individual shareholders about how they made decisions during enrollment.

The enumerators reported that in the five study communities some applicants were aware that their communities were not eligible for certification, and that knowledge influenced where they enrolled. Others were aware of the issue, but chose to ignore it. For yet another group of shareholders, community eligibility was not an issue, largely because they did not know anything about it. Based on the limited number of interviews we conducted, those who were unaware of the community eligibility issue appear to have been the largest group. The enumerators told us that many enrollees did not understand the nature of the settlement and its future results—that corporations would be formed, land selections made, and money distributed. The enumerators we interviewed said they believed that many enrollees did not appreciate the significance of enrolling to an unlisted community until after the enrollment process had been completed.

According to the region's enrollment coordinator, the application process entailed a lot of discussion and explanation about the complexity of the settlement and particularly about corporations, because most applicants were unfamiliar with corporations. "We tried to be as up front as possible, saying you know if you registered to a village corporation they have assets and they have timber. The question would come up, well, if we have the timber why don't we own the land, how come Sealaska owns the subsurface rights? I mean there was a lot of that, and there was a lot of anger over that. And then while we have the biggest, richest region why should we have to share it with those Eskimos up there? And you try to answer that question. There were a lot of things. There were so many things...." Another enumerator put it succinctly, "People had no idea they were going to get a corporation, money, or land."

The regional enrollment coordinator was from Wrangell, and his description of the questions and concerns about enrollment in that community illustrates the potential effects on enrollment to villages not recognized under ANCSA. He said Wrangell residents had questions about the procedure for enrolling through the local community. "Well, there was a lot of hesitation. I mean, they didn't fully understand what the impact would be." He said many people in Wrangell asked him whether they should enroll in Wrangell

or in a recognized village. In reply, he would tell them, "If you have relatives in the village, it is your choice," and then try to explain the advantages and disadvantages of either course of action. The coordinator said that some people chose to enroll back to a village, believing that the recognized villages would receive more money at the start.

Others considered enrolling back to a village, but rejected that option, the regional coordinator remembered. "So a lot of them took their chances with the regional corporation, rather than the village corporation, because they didn't know whether the villages had people that were trained to handle it. And in a lot of cases there weren't, there weren't people there." Some others saw that they would get larger cash distributions from Sealaska as at-large shareholders and took that option, and in so doing took a chance on future distributions which were uncertain.

The coordinator believes that enrollment was lower in Wrangell than it would have been, had it been an eligible community. He reported that some local residents who would have enrolled to Wrangell enrolled to recognized ANCSA villages instead, believing that it would be more advantageous to be shareholders in village corporations. (However, Table 4.2 in Chapter 4 shows that only 10 percent of the enrolled Natives living in Wrangell chose to enroll elsewhere. Twice the percentage of Natives living in Juneau and Sitka chose to enroll elsewhere.) The coordinator also believes that Natives living in other communities, who might have enrolled back to Wrangell, did not. "But that question came up all over, [in] villages and in Ketchikan. There was people in Ketchikan that would have registered back here, if it was a village corporation, but couldn't. But that question was asked quite often, and it was very difficult to explain, the money part of it. Because we didn't know how much money the villages were going to hold back, no one knew that."

In contrast to the coordinator's view, two of the enumerators from Wrangell said that enrollment to Wrangell was not considered different from enrollment to any other community. Village eligibility had not been brought up in their training, and they had not been aware of a list of eligible villages. While one enumerator confirmed that there were always some enrollees who knew about the issue of village eligibility, she also said that people in her circle, the people she was associated with, "did not ever talk about it." She also said they did not care, believing the issue had already been decided for them: "They don't want you to have it, so they don't want you to have it."

Interviews in other communities confirmed that, as in Wrangell, there were people in Haines, Ketchikan, Petersburg, and Tenakee who saw the significance of communities being unlisted, and there were representatives from Haines, Petersburg, and Tenakee who actively encouraged Natives to enroll to those villages. In some cases, this was a deliberate effort to attain a sufficient number of enrollees for the unlisted villages to gain recognition. Others believed that participation through ancestral villages was outmoded, and that it was better to enroll as at-large shareholders.

Those who did not know of or understand the significance of village eligibility at the time are illustrated by a Petersburg enrollee who stated, "It was never explained what a difference it would make, whether I was signed up to Kake or Petersburg." Ketchikan residents were not aware of being unlisted until later, after enrollment closed, according to a local enumerator. "It wasn't brought to our attention that they [Ketchikan] would be at-large, not receive land. Even as an enumerator I didn't know. ... It was quite some time after that they began to have meetings in Ketchikan. That was when my husband and I found out they did not receive land; they were at-large." In Haines, some residents did not ask about Haines' eligibility, because

they did not believe it was in doubt. This was expressed by a relative of an enrollee, who said, "No one really understood: [my husband] just took it for granted Haines was a village—it always was. There was an Indian school, Haines ANB—always."

Enumerators interviewed pointed out that enrollment was a process that not all residents accepted right away. For example, in some communities enumerators "couldn't get people to sit down and fill out the forms. They all wanted to be chief; they wanted someone to ask them to do it." This was a problem in Haines and Wrangell, according to one report. In the words of one enumerator, "A lot of people didn't make it in the first enrollment because they didn't take it seriously, didn't think it would amount to anything."

In the larger communities where Natives were in the minority—including Sitka, Juneau, Haines, Ketchikan, Petersburg, and Wrangell—there was an additional difficulty that grew out of the history of prejudice and discrimination against Natives. Enumerators interviewed reported that some Natives who previously had identified themselves as non-Natives were afraid of coming forward and openly filing their applications. As one enumerator put it, "My phone rang off the hook with non-Natives who wanted to be Native. They were afraid because they always had identified themselves as non-Native. They were members of the Moose and Elk and all. They didn't want to come down to the office, in case they might be seen, or be seen with the application forms. ... In Sitka, some people didn't want to be seen coming into my office to pick up an application form. My office was across from the Pioneer Bar. These people were in social circles that they didn't want to know they were Native. I kept a list of who sent their kids down to pick up the forms. All I required was that they sign it in front of me."

There was a similar report from an enumerator in Juneau: "And I had people come in like 10 o'clock at night. I thought we were going to clean out the Elk's Club at Juneau, you know, they'd come sneaking down there at 10 o'clock at night and register their kids and stuff, you know. There were a lot of things like that ...."

The Natives' long experience of racism and discrimination—as well as of assimilation—was combined with strong and overt opposition to ANCSA among many non-Native interests and businesses in most of these larger communities. This combination of forces influenced the enrollment process in at least four of the five study communities, according to persons we interviewed, and made it different from that in the villages. These experiences contributed to potential applicants' initial reluctance to enroll and to their lack of concern about community eligibility. Some people also wanted to turn away from the village solution and embrace the "modern" vehicle of settlement embodied in the regional corporation. In Petersburg, for example, one respondent reported that an influential leader encouraged local residents to enroll at-large, "We were told not to enroll to our roots in Kake. Amy Hallingstad said this, so I enrolled to Petersburg. Those (Natives) married to Norwegians were like this."

Enumerators were also asked about any potential bias that might have been introduced into the application process because of policies or procedures that may have treated enrollment to the five communities differently from enrollment to recognized communities. Respondents reported there was no evidence of such bias, either in the training of enumerators or in the procedures they followed. The goal of the process was to accomplish the enrollment as fully and completely as possible within the allotted time. One enumerator said, "The door closed after a while; if you dragged your feet, you lost out." Another said, "The push was to get everybody signed up—that's all. The main objective was to get your name and family on this application in time. Congress mandated that this be done in a short time, and that was all there was to it."

The distinction between eligible and ineligible communities did not appear on the application form or on the accompanying instructions. Nor did the materials discuss the significance of community enrollment. The form included the following general explanatory language:

Purpose: To prepare a roll of Alaska Natives who are eligible for cash settlement under the conditions of the Alaska Native Claims Settlement Act.

Use: This application will be used to determine eligibility for cash settlement under the conditions of the Alaska Native Claims Settlement Act.

The BIA's procedure was to enroll Natives to where they resided on April 1, 1970. Applicants were asked to specify a permanent place of residence as of that date, and the form stated that the answer would be used to determine whether the applicant was a resident or non-resident of the state of Alaska. The instructions for this question declared that the answer would affect where the applicant may be enrolled, but said no more about enrollment.

Applicants were also given a copy of regulations that defined "permanent residence" for the purpose of enrollment. A Native did not have to be physically living in his permanent residence on April 1, 1970, as long as he "continued to intend" to make his home at that place:

> "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of the applicant on April 1, 1970, even though he was not actually living there on that date, if he continued to intend that place to be his home (25 CFR 43h. 1(k)).

The application also included a series of questions about previous residence and ancestral ties. The form did not make reference to any place or site in these questions; it was left to the applicant to fill in the blanks.

When asked about their training, enumerators reported they were handed the application form and given instructions about how to fill it out. They were expected to follow the form as if it were a survey, asking the questions and helping the applicants to complete it. Several enumerators pointed out that the application had multiple objectives. Among those were establishing that the applicant was of at least one-quarter Native ancestry and a resident of the state of Alaska, and providing sufficient identifying personal information. For example, one enumerator explained, "The purpose of the family tree was to show you were Native." It does not appear that residence questions were singled out for any kind of special treatment during training.

One enumerator described his job in this way: "We asked, where were you from, which village do you wish to be enrolled to, who are your parents, maybe grandparents." Regarding training, he said there was "...no influencing answers: they give us this form and told us how to fill it out." Another enumerator said, "T and H [Tlingit and Haida Central Council] had no policy regarding the five communities. T and H never raised the question or brought it to our attention. We weren't even aware of a list of eligible villages." A third reported that there was "no different treatment given to [those in the five communities], compared to others. In fact, no one was much aware of that issue—it was ignored in training. It didn't make any difference for the five communities. In signing up, all it was was your family history: your tribe, Indian blood, grandmother's name, etc.—like a survey."

Applicants were expected to fill out the forms according to their own choices and preferences, and enumerators were trained to communicate that freedom of choice and to aid the process. On the issue of residence, enumerators reported they were instructed to give applicants the opportunity to express their preference. Some enumerators believed that where an individual lived often determined where he enrolled, but they all said that applicants had a choice—usually between where they resided and where they came from.

Another indication that the five communities were not treated differently in enrollment procedures is that the communities were involved in reviewing and approving the community enrollments, as recognized communities did. People interviewed in Haines and Petersburg recalled that it was up to the village to approve or reject people for enrollment. "In Haines, we had to turn names in to the village." In Petersburg, the local Tlingit and Haida council did the approvals because the IRA council was not active in those years (1974 or 1975). About 11 Petersburg Tlingit and Haida members met to do the enrollment reviews. One who took part said, "Print-outs were sent here, and we spent 8 to 10 hours a day on the names. Sometimes we didn't know names, so we would ask who they were. Later, we found people who weren't on the list were enrolled." In villages and communities authorized to form corporations under the act, such review lists were sent to the local corporation.[1]

Although Sealaska regional corporation had no formal role in the enrollment process, toward the end of the enrollment period it initiated a public information campaign to explain enrollment to potential stockholders. In January 1973, it distributed a report that notified "future shareholders" of the application amendment process, gave a detailed explanation of enrollment procedures, and described the different outcomes from enrolling to the ten recognized villages, to Juneau and Sitka, to "cities such as Petersburg, Wrangell, Haines or Ketchikan," and to communities outside the region or the state. The report focused on enrollment options available to non-resident Natives interested in enrolling to the Southeast region, and included other announcements and information of relevance to the corporation (Sealaska Corporation 1973).

With regard to the five study communities, the Sealaska report clearly stated that for the four "cities" (Petersburg, Wrangell, Haines, and Ketchikan), no village or local corporation would be organized and no village or local land grants were provided for under ANCSA. Persons enrolled to these places "will for practical purposes be enrolled in the Southeast Region at large...the same as a non-resident Native who regards some place outside of Alaska as his real home..." Sealaska also explained that the ten villages and the two communities of Juneau and Sitka would presumably organize corporations, and it described the differences between the village corporations and the "community corporations" the act established for Juneau and Sitka.

Nothing in the report expressed a preference among the alternatives for enrollment in the region. Moreover, the specific description of the four communities (Haines, Ketchikan, Petersburg, and Wrangell) reflected Sealaska's acceptance of the ANCSA eligibility determinations. The principal concern of Sealaska at that time was the possible creation of a thirteenth regional corporation, since Sealaska stood to gain or lose shareholders depending on how Natives living outside the region or the state filed. Sealaska explained

[1] However, this process was not executed consistently in every community; according to one study, not all village corporations reported they were involved in the approval process (GAO 1974). Several enumerators spoken with in the course of this study did not recall the approval process in their own communities.

the advantages and disadvantages of being a stockholder in a thirteenth regional corporation and in Sealaska or one of the other regional corporations. In September 1973, Sealaska announced the appointment of an enrollment consultant to organize Sealaska's efforts to help prepare appeals for potential stockholders who had been rejected by the BIA's enrollment office.

Reopening of the Roll

After the initial enrollment process was completed, several issues arose before a final roll could be prepared. Approximately 1,000 applications were filed between the March 30, 1973, deadline and the final cut-off date of December 18, 1973—indicating that the enrollment period had not been sufficient. The BIA denied these "late" applications. The Department of the Interior (DOI) estimated that as many as 2,000 eligible persons had not filed by the March deadline. In 1975, DOI itself questioned the accuracy of the roll and proposed procedures to remove individuals.

The short time allowed for amending applications and appealing enrollment decisions—and the perceived incomplete information and misapprehensions about amending or appealing—together with the concerns of individuals who had enrolled to villages that were later determined ineligible constituted issues to be addressed before the roll could be finalized (ESG 1984:III-7).

In 1975, ANCSA amendments to rectify some of these problems were proposed. Sealaska was one of the sponsors of the legislation and testified in support of several amendments, including one that authorized enrollment for qualified Natives who had failed to submit applications by the March 30 deadline. In 1975 testimony, Sealaska's President Borbridge stated, "Most of the problems the Natives have experienced in connection with implementation of the act did not result from its provisions but from administrative actions and constructions that sometimes have been patently incompatible with the plain language of the law, not to mention its spirit" (Borbridge 1975). This was a position Sealaska was also to take later, in dealings with DOI over redetermining place of residence for those enrolled to the five study communities.

In an act referred to as the "Omnibus Bill," ANCSA was amended on January 2, 1976 (P.L. 94-204). The amendments addressed several issues, some of which are relevant to this study. They authorized re-opening of the Native roll for one year, to allow enrollment of those who had missed the March 1973 deadline. They allowed redetermination of the place of residence for Natives who had enrolled to villages or groups later found to be ineligible. They gave Natives who resided on the lands of—but were not members of—village corporations that had taken title to their former reserves a choice of enrolling to those corporations or being "at-large" stockholders of regional corporations.

The BIA carried out the second enrollment through its enrollment office, which still operated in Anchorage. It contracted with a private consulting firm, Kish Tu, Inc., to publicize the second enrollment period. Publicity efforts included sending advertisements to 500 newspapers and magazines, radio spots to 226 radio stations, and video tape dubs to approximately 185 television stations. Kish Tu also mailed 6,000 posters, issued monthly news releases, and arranged speaking engagements for Alaska Native leaders (Ruddy and Rowan 1976).

Sealaska notified its shareholders of the renewed opportunity to enroll, informed them about other amendments, and explained that they must apply to the BIA, not to Sealaska, for enrollment (Sealaska Corporation 1976). According to one former Sealaska official, the re-enrollment was successful, but still

did not result in a complete enrollment. "There were people who didn't sign up [originally] because they wanted no part in it—then after seeing the benefits of enrollment, they signed up in the re-enrollment period. Some people didn't even do it then."

The BIA received many more applications than were ultimately certified. Of 12,362 applications, 1,905 were determined eligible. The remaining were determined ineligible (6,036) or were duplicates (4,421). Within the Southeast region, 446 new shareholders were added; 80 (18 percent) of these were from the five study communities.

Redetermination of Place of Residence

The 1976 amendments also included a provision for redetermining residency for shareholders who originally enrolled to places later found to be ineligible in determinations of village or group eligibility. This amendment addressed differences between communities recognized for enrollment purposes and communities subsequently recognized in village eligibility determinations. Since enrollment was approved before village eligibility was determined, some enrolled Natives found themselves enrolled to places that did not meet the criteria for village or group eligibility as determined by the BIA or on appeal by ANCAB.[2]

When the amendments first passed, Sealaska regional corporation informed its shareholders that redetermination of residency would be available to Southeast communities. "The Omnibus Bill also directs the Secretary of Interior to identify the places of residence of Natives whose communities were declared ineligible as a Native village or group. Because of this, some of those enrolled to Haines or Tenakee may have an option to change their residence or enrollment" (Sealaska Corporation 1976:4). After Tenakee and Haines were denied recognition as eligible communities in 1978, a number of enrollees from both places requested that the BIA authorize a change in their community enrollment under the 1976 amendment. In 1979, Sealaska again notified shareholders from these communities about the applicability of the provision and referred them to the BIA's enrollment office, which was responsible for making the decisions in such cases.

The BIA did not act rapidly on this particular amendment. Unlike the provision re-opening enrollment, the provision for re-determining eligibility had no deadline attached. Significant village and group eligibility questions, which were decided in specific proceedings, still remained unresolved for some years after the ANCSA amendments were passed. The eligibility of Haines and Tenakee were among these. Following those eligibility determinations, Sealaska was informed that the BIA had not started to make residence re-determinations, but would begin the process in early 1979. In April 1979, a Haines enrollee wrote to Alaska's Senator Ted Stevens to ask for his help in initiating the process, since the BIA had still not taken any action. Sometime later, the BIA sent the files of all applicants under this provision to the Federal Records Center in Seattle for storage.

The Department of the Interior (DOI) began to act in 1982, when the Assistant Solicitor for Indian Affairs prepared a draft memorandum on the scope of the Secretary of the Interior's responsibility under the provision. DOI adopted an interpretation of the provision's language and intent such that it did

[2] In village eligibility determinations, other evidence such as testimony of witnesses, census and voter registration data were also considered, in addition to enrollment information. Decisions were based on a preponderance of the evidence (Vollmann 1983).

not apply to Haines, Tenakee, and the other study communities. An attorney for Sealaska and an attorney representing a Haines enrollee (Mr. Donnelly) submitted objections to that interpretation. The DOI's final opinion, issued on June 23, 1983, maintained the original interpretation (Vollmann 1983). As a consequence, enrollees to the five study communities were not eligible to have their places of residence redetermined, and the enrollment in these communities remained unchanged.

The Solicitor's opinion turned on the specific conditions under which the subsection of the redetermination amendment is activated. It states:

> In those instances where, on the roll prepared under section 5 of the Settlement Act, there were enrolled as residents of a place on April 1, 1970, a sufficient number of Natives required for a Native village or Native group, as the case may be, and it is subsequently and finally determined that such a place is not eligible for land benefits under the act *on grounds which include a lack of sufficient number of residents*, the Secretary shall, in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970, of each Native enrolled to such a place, ...(Subsection 1(c) of the Act of January 2, 1976, 89 Stat. 1145, 43 U.S.C. 1604; emphasis added).

In the Solicitor's opinion, which referred to the subsection's grammar and punctuation, the provision *mandated* that lack of sufficient numbers of residents be a condition of the final eligibility determination. That is, the provision limited the statute's application to those communities in which an insufficient number of residents was a cause for ineligibility. The Solicitor also cited Congressional intent as indicated by legislative history. That history referred to nine places in Koniag regional corporation's area where 25 Natives had enrolled but which during eligibility proceeding had been found to lack 25 Native residents. The Solicitor also noted that the amendment had been proposed by the president of Koniag regional corporation.

The attorneys for Sealaska and for Mr. Donnelly of Haines argued that the provision could also be read to signify that the lack of sufficient numbers of residents was one among several grounds for ineligibility, and that any one of those grounds would qualify enrollees for a residence redetermination under the amendment. In their view, people enrolled to communities that were disqualified for any reason—for example, because Natives were not in the majority, as was the case in Haines—should also receive the benefits of the amendment. Indeed, they claimed that Congress intentionally chose the broader language and further, indicated by example one type of situation to which this section was directed: "Congress intended that residents in all villages deemed ineligible have redetermination rights so that they may be able to protect their entitled benefits" to land selection. Under this argument, Haines and all similarly situated Southeast villages would fall within the scope of the amendment.

Mr. Donnelly's attorney, Richard B. Brown, also contended that Haines would qualify for redetermination even under DOI's interpretation of the amendment, since Haines' disqualification turned on a lack of sufficient number of residents. Haines had been found to be ineligible because it did not meet the condition that required the majority of the community's population to be Native. Thus, Brown argued, the finding of ineligibility was based on an insufficient number of Natives, and Haines was classified as "modern and urban in character." Brown argued that Haines enrollees qualified for a redetermination of residence because they had been "subjected to a disqualification based on a lack of sufficient number of residents" (Brown 1983:7).

In responding to commenters (the attorneys mentioned above were the only two), the Solicitor's opinion cited in support of its position a letter from DOI that was part of the legislative history of the provision. In the letter, DOI opposed the proposed ANCSA amendment before it was enacted and objected to *any* redetermination of residence. DOI held that the Natives affected by the provision "theoretically designated their residence properly," and it would not be fair to "authorize forum shopping to give these Natives a chance to circumvent the consequences of their original choice," which also would give them a disproportionate share of ANCSA benefits at the expense of those Natives "who enrolled properly in the beginning" (in Vollman 1983).

In listing reasons for opposition, the Solicitor wrote that the provision discriminated in favor of at-large shareholders enrolled to a place found to have an insufficient number of residents who "get a second chance, while those at-large shareholders who enrolled to a location found ineligible as a village on other grounds, do not. This result is inequitable." The letter also states that "section 1(c) is unclear as to whether the section applies only to those Natives enrolled to villages found ineligible because of insufficient number of residents, or to villages also found ineligible on other grounds" (ibid.:8).

Under DOI's implementation of the "redetermination" amendment, the nine Koniag region communities would have been eligible for redetermination. However, seven of these cases, as well as two others, were dealt with legislatively through provisions (subsection 1427 (e) and section 1432) of the 1980 Alaska National Interest Lands and Conservation Act. At the time the Solicitor's opinion was issued in 1983, final determinations of group eligibility had not been made. According to the current BIA administrator in charge of maintaining the roll, the 1983 opinion is still in effect, and no redeterminations have ever been carried out.

Summary

We can summarize several findings about the enrollment process in the study communities, based on source documents and interviews with seven persons who took part in the enrollment process. The policies and procedures for enrollment were uniformly applied to the study communities and to the ANCSA-certified communities in Southeast Alaska. However, perceptions of the persons we interviewed differed on how much enrollment to the study communities was affected by the fact that they were unlisted. A 1976 amendment to ANCSA offered some enrollees the opportunity to change their places of enrollment, but a 1983 opinion of the solicitor of the Department of the Interior held that the amendment did not apply to those enrolled to the five study communities. Attorneys for Sealaska and for a resident of Haines challenged that opinion, but it still stands.

References

References cited in this chapter are included in the References Cited Section at the end of Chapter 5.

Chapter 7. Financial Benefits Generated by Southeast Village Corporations

BY STEVE COLT

Introduction

This chapter reviews the actual financial benefits which shareholders of village and urban ANCSA corporations in Southeast Alaska received, but which at-large shareholders of the Sealaska regional corporation did not receive. Sealaska's at-large shareholders include all those who enrolled to the five study communities, as well as several thousand others, mostly living outside Alaska.

Out of necessity and the need for objectivity, the analysis that follows concentrates on financial benefits, including cash distributions and employment opportunities. At the outset, however, it is critical to recognize that the subsistence, social, cultural, and spiritual values derived from the ownership of one's ancestral lands are very real and quite substantial. Most economists would agree that these values should count in a complete assessment of economic benefits, because we take the term "economic benefit" to mean anything that increases a person's well-being. But most people would also agree that it would be pointless and perhaps insulting to attempt to place dollar figures on these values.

Most observers would also agree that the corporations have provided valuable economic and social benefits through their political power, skills, and ability to nurture leadership qualities among shareholders. It seems to be a political fact that land ownership and economic power increase political effectiveness. But, as with cultural and spiritual values, it is not the goal of this chapter to place dollar values on the political effectiveness of the village and urban corporations.

There are ten village corporations and two urban corporations certified under ANCSA in Southeast Alaska. Table 7.1 presents basic data on their size and landholdings. Southeast Alaska village corporations differ from village corporations throughout the rest of the state in two important ways. First, the Southeast corporations each received only one township (23,040 acres), while most other villages each received between three and six townships, depending on their populations. They received less land because of the earlier Tlingit-Haida cash payment, which ANCSA section 16(c) deemed to be "in lieu of the additional acreage" conveyed to other villages by ANCSA section 11. Second, much of the land selected by the Southeast corporations contained valuable standing timber resources. Very few other villages in Alaska found themselves surrounded by such an economically valuable resource.

Taken together, these two unique features fairly guaranteed that all twelve Southeast village corporations would become heavily involved in timber harvesting. As we discuss below, this involvement produced great economic benefits for many Southeast urban and village corporation shareholders. However, at-large shareholders did not share in these benefits, because they owned only a relatively small amount of timber per person, through Sealaska.

Table 7.1: Southeast Alaska Village and Urban Corporations

Corporation	Village or City	Number of share-holders	ANCSA Land Entitlement	Actual Land Conveyances (a) Before 1979	1979-1981	1980-1991	Total thru 1991
Cape Fox Corporation	Saxman	230	23,040	3,763	14,019	3,793	21,575
Haida Corporation (b)	Hydaburg	563	23,040		20,810	(5,204)	15,606
Huna Totem Corporation	Hoonah	876	23,040		21,326	1,269	22,594
Kake Tribal Corporation	Kake	551	23,040		21,711	794	22,505
Kavilco, Inc.	Kasaan	119	23,040		23,053	14	23,067
Klawock-Heenya Corporation	Klawock	508	23,040		19,792	2,539	22,331
Klukwan, Inc.	Klukwan	253	23,040	892	21,349	1,489	23,730
Kootznoowoo, Inc. (c)	Angoon	628	34,000		7,710	18,120	25,830
Shaan-Seet, Inc.	Craig	317	23,040		20,857	1,710	22,567
Yak-Tat-Kwaan, Inc.	Yakutat	392	23,040	1	20,103	2,901	23,005
Subtotal 10 Village Corporations		4,437	241,360	4,656	190,729	27,424	222,810
Shee-Atika, Inc. (d)	Sitka	1,853	26,070		26,263		26,356
Goldbelt, Inc. (d)	Juneau	2,722	31,316		30,736		30,881
Subtotal 2 Urban Corporations		4,575	57,386	0	56,999	0	57,237
Total Village and Urban Corporations (excludes Sealaska)		9,012	298,746	4,656	247,728	27,424	280,047
Percentage of Land Entitlement Conveyed				2%	83%	9%	94%

(a) Table shows conveyances of surface estate only.
(b) The Haida Exchange Act of 1986 resulted in a reduction in entitlement of about 5,000 acres.
(c) Section 506(a)(3-6), ANILCA granted additional acres to Kootznoowoo, some with restrictive covenants
(d) Shee Atika and Goldbelt were entitled to 23,040 acres through ANCSA; subsequent negotiations and land trades resulted in additional entitlements in exchange for giving up claims to Admiralty Island lands.
Source: U.S. Department of Agriculture, Forest Service, Region 10, Native Land Selections
Statistics as of July 19, 1991; Village Corporation Reports; Hoffman (1987)
File: VREPORTS.WK3

Some Economic Benefits Were and Are the Same for All Shareholders—Village, Urban, and At-Large

ANCSA required all eligible Alaska Natives to enroll in a regional corporation. In addition, every ANCSA enrollee is also a village corporation shareholder within that region *or* an urban corporation shareholder *or* an "at-large" shareholder—a shareholder (like all of those enrolled to the five study communities) who has no village or urban corporation.

There are two categories of financial benefits from ANCSA which village and urban shareholders and at-large shareholders received in equal amounts but in different ways. Payments from the Alaska Native Fund were disbursed on what was essentially an "equal payments per capita" basis. First of all, every ANCSA shareholder received about $1,000 in cash from the fund. These payments totalled about 8 percent of the total cash settlement. Next, regional corporations received about 46 percent of the total cash, allocated according to the number of shareholders enrolled to each region. On average, each regional corporation received about $6,000 per shareholder as start-up capital. The remaining 46 percent of the cash was distributed at the rate of about $6,000 per ANCSA enrollee among the village corporations and the urban and at-large shareholders.

The same general distribution scheme was mandated by ANCSA section 7(i) for the sharing of net natural resource revenues earned by regional corporations. Section 7(i) requires that 70 percent of all such resource revenues (from subsurface resources and timber) be put into a pool which is shared equally among all ANCSA shareholders. As with Alaska Native Fund payments, half of the pool is distributed to all twelve in-state regional corporations (including the corporation generating the revenues). The other half of the pool is distributed to village *corporations* and directly to urban and at-large *shareholders*. The payments are distributed as equal amounts per person.

The village corporations typically treat their 7(i) receipts as part of their general revenue stream, so the immediate disposition of these payments depends on how the corporations choose to distribute or invest the funds for their shareholders' benefit. It is likely that some corporations invested their ANCSA cash and 7(i) payments to earn higher returns than those received by at-large shareholders who got their cash directly. Some corporations may have squandered these payments on bad investments. We don't know because we can't trace individual dollars once they become general corporation revenues. In any event, we show below that both of these cash payment streams have proven to be of minor importance when compared with the financial benefits produced from timber harvesting on corporate lands.

In summary, then, *every* ANCSA shareholder had and still has an equal claim to both initial ANCSA cash payments and section 7(i) resource revenue payments. Regional corporations collect half of these payments. The other half is collected either by a village corporation *or* by the individual urban or at-large shareholder. Because of the way these Alaska Native Fund payments and section 7(i) resource revenue payments are equally distributed among all shareholders, regardless of status, we do not consider these payments further.

Land Selections of Southeast Village and Urban Corporations

Section 16(b) of ANCSA required village corporations to select lands that included the villages themselves. However, the land selection process in Southeast Alaska has been particularly complex and arduous and has resulted in five village selections a considerable distance from the villages. As Knapp (1991) notes:

> This is due in part to restrictions within ANCSA on where selections could take place and in part to later provision of alternative selection areas off of Admiralty Island to resolve disputes. In addition, several land trades have taken place between the Forest Service and Native village corporations after the original conveyances. (p. III-1)

The written record is poor on what criteria villages used in selecting lands. The limited evidence—and the final outcome—suggests that many lands were selected primarily for their timber values. Such a strategy would be economically rational, particularly if it was not possible to select lands surrounding the village. In these cases, there would be no conflict between local subsistence and aesthetic values and timber harvest goals.

The urban corporations, for their part, certainly could not select land containing the cities of Juneau and Sitka. They were required by the implementing regulations of ANCSA to propose four townships within 50 miles of their cities. Goldbelt, the Juneau corporation, was explicit about the economic basis for its selections:

> The basis for evaluation [of proposed withdrawals] were long-run net-dollar returns from the land with consideration given to the special needs and values of Native shareholders. (Goldbelt 1975 Annual Report).

Using these criteria, Goldbelt selected lands on western Admiralty Island. These selections, as well as Admiralty selections by Shee Atika (Sitka's urban corporation) and Kootznoowoo (Angoon's village corporation), caused a major dispute with environmental groups. The dispute was resolved through negotiated land trades, additional legislation in the 1980 Alaska National Interest Lands Conservation Act (ANILCA), and—in Shee Atika's case—through a protracted court battle. The end result was that land conveyances were delayed until 1981 and, for Shee Atika, logging was further delayed until 1986.

These outcomes are not atypical of the overall land selection process. As Table 7.1 shows, only two percent of Southeast's village and urban land entitlements were conveyed prior to 1979. With the exception of Kootznoowoo, the corporations received most of their land between 1979 and 1981. By 1991, about 94 percent of the total entitlement for Southeast corporations had been conveyed.

The Amount of Timberland Per Shareholder Varied Widely

Overall, the many constraints on the land selection process resulted in substantial disparities in the value of timberlands conveyed to the corporations. An additional—and perhaps more important—source of the difference between the amount of economic benefits received *per shareholder* by at-large, urban, and village shareholders is the simple fact that several fixed pools of the key economic resource—timber—were divided among widely varying numbers of people. Thus, although Goldbelt (an urban corporation) gained title to slightly more timberland than Klukwan (due to a land trade), Goldbelt had more than ten times the number of shareholders among which to divide the benefits of any timber harvest.

Of even greater significance is the difference between the amount of timberland "owned" by the average at-large Sealaska shareholder, and the average village or urban corporation shareholder. The data in Table 7.1 and in Knapp (1991, p. II-5) can be used to show that the average Sealaska shareholder "owns" about 17 acres of timberland conveyed to Sealaska. However, section 7(i) resource sharing obligations reduce the effective amount owned to only 8 acres per Sealaska shareholder.[1] This is all the timberland that is available to generate timber revenue for an at-large shareholder. However, the average urban corporation shareholder "owns" an additional 13 acres of land, for a total of 21 acres. The average village corporation shareholder "owns" an additional 54 acres of land, for a total of 62 acres. And a shareholder of Kavilco Corporation—Kasaan's village corporation, which has the smallest number of shareholders—owns an additional 194 acres, for a total of 202 acres per shareholder.

Finally, in considering these differences, it is important to remember that while ANCSA section 7(i) was designed to share the economic benefits of unequally distributed resources by requiring that *regional* corporations share 70 percent of their net revenues from natural resource development, the act required no such redistribution of village corporation timber revenues.

Direct Financial Benefits from Village Corporations

With this background established, we now consider the direct financial benefits which urban and village corporation shareholders received but at-large shareholders did not receive. Of course, financial benefits are only one type of benefit received by shareholders of the land-owning corporations. Nevertheless, they seem to be important to many shareholders, judging from the repeated calls made on corporate management for faster and greater cash distributions. In addition, the financial results are one of the few outcomes which can be measured objectively.

The financial data available for this study are limited to a fairly complete set of annual reports from five village corporations and both of the urban corporations.[2] Since it is not our goal to compare and contrast the financial performance of individual village corporations, we present the village data in composite form, as a weighted average of the five sets of village data. The result gives a sense of what the "average shareholder" of these five corporations received.

Legitimate concerns have been raised by reviewers regarding the extent to which the "sample" of five village corporations adequately represents the total population of ten village corporations. (This is not an issue for the two urban corporations, both of which provided data). The five villages for which we present data are a "non-random" sample because four of the five have more than 500 shareholders, while only five of the ten villages in the population have more than 500 shareholders. As a result, the average number of shareholders used to compute per capita figures for the sample is 563, while the average number of

[1] Section 7(i) receipts data compiled in Colt (1991) suggest that for every dollar of net resource revenue generated by Sealaska, 45 cents is ultimately retained within the Sealaska region by Sealaska, the village corporations, and the urban and at-large shareholders. 45 percent of 17 equals 8.

[2] We asked all twelve corporations for their annual reports, but the majority declined to provide them. We thus relied mainly on the publicly available data at the State of Alaska division of securities. These data cover only the corporations with more than 500 shareholders. Smaller corporations are not required to file the data.

shareholders for the population is only 444. This size bias means that, if the average corporate income generated by the five sample corporations is equal to the average for all ten, then the per capita figures reported below are an understatement of the average per capita figures for the entire population.

Since village corporations received essentially equal amounts of timberland, it seems reasonable to assume that large size is not correlated with higher cash profits. This assumption is supported by the fact that two of the smallest corporations (Kavilco and Klukwan) are widely recognized to be among the most profitable of all ten village corporations, while the two "large" urban corporations distributed substantially less cash than the five village corporations in our sample. Therefore, we can be fairly confident that per capita results presented here for five village corporations are a slight understatement of the population averages.

Finally, while the sample only covers five of ten village *corporations*, it covers almost two-thirds (64 percent) of the village *shareholders*. With 100 percent of the 4,575 urban shareholders covered, the data presented in this chapter reflects the actual benefits received by 82 percent of the affected village and urban shareholder population.

Table 7.2 presents a summary of the financial benefits received by the shareholders of the five corporations in our sample. The table focuses on three things: appraised timber value, cash distributions, and reported book equity in 1992. We report the data as totals and as amounts per shareholder. In addition to the weighted average values, we show the maximum and minimum values for each data item for each year. These minimum and maximum numbers are a mixture of data from various corporations, and *do not* represent the complete set of values from two particular corporations.

Appraised Value of Timberland

The table shows that these five village corporations received timberlands with a final appraised value that ranged from about $100 million to $300 million. These values translate into an appraised resource wealth which averaged over $330,000 per shareholder. These appraised value numbers do not, of course, equate to money in the bank for village corporations or their shareholders. There are two reasons for this. First, these final appraised values represent the result of several re-appraisals undertaken to establish the basis for computing taxable net operating losses (NOLs). The corporations had a strong incentive to maximize the value of these appraisals. Second, the appraised value was computed as of the time of conveyance, when timber prices were high (Knapp 1992, p. 23). In spite of these limitations, the data provide general support for the conclusion that the timber endowments of the village corporations were quite substantial when compared to any other available measure of ANCSA-related wealth.

Cash Distributions to Shareholders

Table 7.2 next presents the average, maximum, and minimum annual cash distributions to village shareholders. The maximum and minimum values are expressed only as dollars per shareholder. The table shows that there were minimal distributions before 1980. Average distributions increased steadily through the early 1980s, as the village corporations made money selling timber. There was a dramatic acceleration in 1987, when the first proceeds from the sales of net operating losses (NOLs) were received. The average distribution peaked at $10,040 per shareholder in 1989, at the height of the NOL sales wave. Since then, high distributions have been largely funded from the interest generated from invested NOL sales proceeds.

Table 7.2: Direct Financial Benefits from Five Southeast Village Corporations

	Average of 5 Village Corporations		Range of Values (1) Maximum	Minimum
Original Shareholders	563		876	253
Land Entitlement (acres)	25,232		34,000	23,040
Final estimate of value of timber at time of conveyance	Total ($000) 186,107	Dollars per Shareholder 330,446	Maximum Total Value 309,569	Minimum Total Value 107,730
Shareholder Distributions Fiscal Year	Total ($000)	Dollars per Shareholder	Maximum $ per Shareholder	Minimum $ per Shareholder
1977	0	0	0	0
1978	0	0	0	0
1979	71	126	700	0
1980	338	601	2,000	0
1981	1,453	2,580	9,100	175
1982	26	46	255	0
1983	234	416	1,058	0
1984	501	889	5,100	0
1984A (2)	536	952	10,600	0
1985	840	1,492	9,500	0
1986	781	1,387	10,000	0
1987	3,492	6,200	20,000	300
1988	5,081	9,021	19,010	1,200
1989	5,655	10,040	30,000	1,000
1990	5,015	8,904	36,000	1,200
1991	3,643	6,469	28,000	1,003
1992 (3)	4,713	8,368	34,364	0
Total Distributions (4):	32,379	57,491	195,964	7,446
Reported Book Equity, 1992 (includes some ANCSA land assets)	65,936	117,073	423,813	41,866

Notes:

(1) The range of values is calculated separately for each item or year. Therefore, each column is a mixture of values from different corporations, and the maximum value for Total Distributions is not equal to the sum of each year's maximum values, etc.

(2) Several corporations adjusted the start of their fiscal year during the 1980s. As a result, there are in some cases more data points than calendar years.

(3) Distribution Data for 1992 are incomplete. Average is computed from only 3 corporations.

(4) The maximum and minimum values for total distributions are reported here. These are not the same as the sum of the maximums or minimums for particula years. Therefore, the maximum and minimum totals do not equal the sum of the values in those columns.

The amount of cash distributed to village corporation shareholders largely speaks for itself. While not enough to render the shareholders millionaires, the distributions are very large compared to any other financial benefits received by shareholders of other ANCSA corporations around Alaska. For example, Cook Inlet Region, Inc. (CIRI) is the wealthiest regional corporation in the state, with substantial endowments of oil and gas resources. Through 1990, CIRI had paid cumulative total dividends of about $10,000 per shareholder (Colt, 1991) or only one sixth the average payments shown in Table 7.2.

Reported Book Equity at 1992

The final measure of financial benefit shown in Table 7.2 is the reported shareholder equity on the corporation's books as of 1992. Shareholder equity represents the portion of the corporation's assets which are owned "free and clear" by the shareholders. It is perhaps the best available objective indication of how much wealth the corporation currently holds on the shareholders' behalf. The use of book equity to describe the status of an ANCSA corporation is problematic for several reasons, all of which stem from the fact that the shares have never been available for selling or buying in the open market. But the practical effect of these problems is small for the Southeast village corporations. This is because the vast majority of the village corporations' assets are now in the form of financial securities—stocks and bonds—which do have market values.

Table 7.2 shows that the average book equity per shareholder was $117,000 for our sample of five village corporations. This can be compared to the highest level of regional corporation book equity in 1990—CIRI's $54,000 per shareholder. To make a truly fair comparison, however, one must remember that these equity numbers include the effect of the initial $6,000 per shareholder used as start-up monies by the corporations. If an at-large shareholder had invested the $6,000 which he or she received directly from the Alaska Native Fund in the stock market, that shareholder might have had a personal "equity" of perhaps $10,000 available by 1992.

Finally, it must be remembered that shareholder equity is not in and of itself a direct financial benefit to shareholders unless they can sell their stock at will. Such sales are currently prohibited. The level of equity can only be used to give a rough indication of the potential future earning power of the corporation. If the equity can be used to earn a "normal" three to five percent return over and above inflation, then the average equity level of $117,000 could support annual inflation-proofed distributions of between $3,500 and $5,800 per shareholder. The minimum equity amount, about $42,000, could support distributions of between $1,200 and $2,000 per shareholder.

Direct Financial Benefits from Urban Corporations

Table 7.3 presents the same financial data just discussed for the two urban corporations, Goldbelt and Shee Atika. All of the caveats mentioned above about interpreting the data also apply to these numbers.

There are three main messages from the data in Table 7.3. First, the total appraised timber values are well within the range of the village corporation values, but because of the large number of shareholders, they translate into lower levels of appraised timber wealth per shareholder—only about one quarter of the average village corporation level. Second, the total per capita distributions from the urban corporations has been far less than the total from the five village corporations reported in Table 7.2. The average total per capita distribution of $10,933 from the urban corporations is only about one quarter of the minimum

Table 7.3: Direct Financial Benefits from Two Southeast Urban Corporations

		Average of Two Urban Corporations		Goldbelt		Shee Atika	
Original Shareholders		2,288		2,722		1,853	
Land Entitlement (acres)		28,693		31,316		26,070	
Final estimate of value of timber at time of conveyance		Total ($000) 203,275	Dollars per Shareholder 88,864	Total ($000) 229,041	Dollars per Shareholder 84,144	Total ($000) 177,510	Dollars per Shareholder 95,796
Distributions to Shareholders	Fiscal Year	Total ($000)	Dollars per Shareholder	Total ($000)	Dollars per Shareholder	Total ($000)	Dollars per Shareholder
	1977	0	0	0	0	0	0
	1978	0	0	0	0	0	0
	1979	0	0	0	0	0	0
	1980	0	0	0	0	0	0
	1981	0	0	0	0	0	0
	1982	0	0	0	0	0	0
	1983	0	0	0	0	0	0
	1984	0	0	0	0	0	0
	1985	0	0	0	0	0	0
	1986	0	0	0	0	0	0
	1987	3,554	1,554	3,403	1,250	3,706	2,000
	1988	409	179	817	300	2	1
	1989	780	341	817	300	742	401
	1990	728	318	953	350	503	271
	1991	1,243	543	953	350	1,533	827
	1992	4,219	1,845	953	350	7,486	4,040
Total Distributions:		10,933	4,780	7,894	2,900	13,972	7,540
Reported Book Equity, 1992 (includes some ANCSA land assets)		72,820	31,834	96,921	35,607	48,719	26,292

Source: Corporation Annual Reports

amount in the village corporation sample. This is partly because land conveyances and logging were delayed for many years.

The third message is that because of their large numbers of shareholders, the urban corporations will not be able to maintain more than modest levels of future distributions, at least compared to the village corporations. This fact was recognized by Goldbelt's president as early as 1988:

> The past years have brought significant funds to Goldbelt, but they are not enough to make more than a small, one-time difference in the way of life for our shareholders... Goldbelt now has a solid economic basis to provide modest (as to real needs of our shareholders) cash dividends and to focus some of its energy on the legitimate concerns of our shareholders in such areas as education (Goldbelt 1988, p. 3).

In summary, the urban corporations have generated direct financial benefits on par with the most successful regional corporation and far in excess of those received by at-large shareholders of Sealaska. However, because of land conveyance delays, other business problems, and—most important—their larger number of shareholders, these two corporations have produced far less direct financial wealth than the village corporations, on a per-shareholder basis.

Sources and Uses of Financial Wealth

The data shown in Tables 7.2 and 7.3 conceal a rich and diverse history of the business operations and political struggles of the village and urban corporations. A detailed examination of that history is well beyond the scope of this study. However, it is important to be aware of the general features of this operating history.

Early Timber Harvests

In a nutshell, the village and urban corporations were largely dormant as large-scale business operators until they received conveyance of their timberlands. This occurred between 1979 and 1981 for most corporations. Timber prices at that time were at a historical high, but proceeded to slide rapidly during the next five years. Knapp reports:

> Prices for Alaska export logs were at historically high levels in 1980 when large-scale timber harvests were beginning on Native lands. By 1983, with world timber markets in a deep depression, export log prices had fallen sharply. In 1987 and 1988, export log prices rebounded, and by 1989 markets were at or above 1980 levels.
>
> Cape Fox Corporation (1983) reports that average timber prices received by the corporation declined from $750/MBF in 1980 to $375/MBF in 1982. With rising log production costs, the return to the corporation from trees sold dropped 45 percent in only a two-year span (Knapp, 1992, p. 23).

As indicated in the quotation above, the declines in the export price of timber are magnified when translated into the "netback" value of the timber itself. This occurs for two reasons. The first is that logging costs, which must be recovered out of export prices, do not drop when the export price drops. The full brunt of the export price decline is felt in the "residual" or "netback" price of the standing timber. The second reason is that when the export price drops, the quantity of timber which is economic to harvest at all drops—more trees must be left standing because they cost more to cut than they are worth.

For both these reasons, the value of standing timber and hence the return to logging operations declined sharply after 1980. Unfortunately, however, many corporations were trapped by heavy debt loads and forced to actually accelerate their harvests to meet these debt payments (Knapp, 1992, p. 32). As a result, several corporations made very little money from actually selling timber and logging during the 1980-1986 period, even when their ANCSA timber conveyances were treated as a free input to the business.

NOL Sales

In 1986, a provision of the Tax Reform Act made Alaska Native corporations the only legal sellers of accumulated tax net operating losses (NOLs). The legislation dramatically increased the corporations' bargaining power, and the village and urban corporations had significant accumulated losses to sell. The tax laws allowed them to compute losses as the difference between the value of a given log at the time of conveyance, and the value of that log when cut, sold, or written off as having no value. All seven of the corporations in our sample undertook at least one and in some cases several reappraisals of the value of their timber at the date of conveyance. These resulted in dramatic increases in the appraised value of timber for tax purposes.

Between 1986 and 1988, when Congress prohibited further sales, the seven corporations in our sample of Southeast village and urban corporations earned over $430 million by selling NOLs to other U.S. corporations. To do this, they claimed losses of about $1.2 billion. While some of these losses stemmed from timber which had already been cut or sold during the period 1981 through 1985, a significant number were generated in a flurry of last-minute transactions generated by the strong incentives of the tax law and the soundly-based fear that these opportunities might soon disappear.

As of 1992, much of the cash generated by NOL sales remained locked up in escrow accounts pending IRS audits of the transactions. The record to date suggests that, at least among other regional corporations, most of the NOL revenues for which examinations are complete have eventually been released. However, in the current proceedings related to timber transactions, the IRS has taken an aggressive posture, and it is clearly impossible to predict the outcomes. In the meantime, investment income from these funds generally belongs to the corporation.

Overall Financial Effect of Logging and NOL Sales

By 1991, almost all the village and urban corporation timber had been cut.[3] The overall financial effects of this decade of timber harvest and NOL sales are summarized in Tables 7.4 and 7.5. These tables provide a concise financial history of the five Southeast village corporations and two urban corporations in our sample for the period from inception through 1992. To focus on actual cash returns, the tables exclude the values assigned to ANCSA timber conveyances and the associated depletion expenses.

[3] The residual economic values of harvested lands could vary widely. Knapp (1991, p. IV-22) notes that such values could range from as high as several thousand dollars per acre to as low as $100 per acre depending primarily on access, property characteristics, and potential timber productivity. However, Knapp also notes that there is currently no stated interest by any village corporation in selling any of its harvested lands (p. I-2).

Table 7.4: Condensed Balance Sheet for 5 Southeast Village Corporations
(Average Values, Excluding Timber Valuations and Depletion Expenses)

Cumulative Flows of Wealth from 1973–1992	Average Total Amount ($ 000)	Average Dollars per Shareholder
Initial Cash from Alaska Native Fund	3,400	6,038
plus: Cumulative Cash Net Income Excluding NOL Sales	30,149	53,531
plus: Cumulative NOL Sales Income and interest thereon	54,496	96,761
equals: **Total Sources of Wealth**	88,045	156,329
less: Cumulative Distributions to Shareholders (1)	30,494	54,144
equals: 1992 Shareholder Equity (excluding valuations of ANCSA lands)	57,551	102,185
Total Uses of Wealth	88,045	156,329

Notes:
(1) Cumulative distributions differ slightly from those shown in Table 2, due to a different averaging process required for this balance sheet format.

Table 7.5: Condensed Balance Sheet for 2 Southeast Urban Corporations
(Average Values, Excluding Timber Valuations and Depletion Expenses)

Cumulative Flows of Wealth from 1973–1992	Average Total Amount ($ 000)	Average Dollars per Shareholder
Initial Cash from Alaska Native Fund	250	109
plus: Cumulative Cash Net Income Excluding NOL Sales	(6,937)	(3,032)
plus: Cumulative NOL Sales Income and interest thereon	79,019	34,544
equals: **Total Sources of Wealth**	72,332	31,620
less: Cumulative Distributions to Shareholders	10,933	4,780
equals: 1992 Shareholder Equity (excluding valuations of ANCSA lands)	61,399	26,841
Total Uses of Wealth	72,332	31,620

Sources for Tables 4 and 5: Calculated from Corporation Annual Reports

Table 7.4 shows the village corporation summary. It can be thought of as the condensed balance sheet for a "composite" village corporation created by averaging the results for the five corporations in our sample. On average, these corporations received initial start-up cash of $3.4 million. They earned an average of about $30 million in net income from all business operations, but the vast majority came from timber operations. (In fact, many of the non-timber ventures lost money, so this total may understate timber income). The village corporations earned an average of $54 million in NOL sales and the subsequent interest income from these invested funds.

From this total of $88 million in accumulated wealth, about $30 million was distributed to shareholders. The remaining $57 million is held by the corporations in the form of assets other than lands. Much of these assets are in the form of various restricted funds intended to provide long-term distributions to shareholders. At least one village corporation has even approved a highly restrictive settlement trust fund, as allowed by the 1987 amendments to ANCSA.

Table 7.5 shows broadly similar results for the two urban corporations. They received only a token $250,000 cash infusion for start-up costs. Excluding NOL sales, they had an average net loss of $7 million. This average reflects a small overall profit by Goldbelt and a large loss by Shee Atika, partly due to litigation costs and hotel construction costs. NOL sales proceeds averaged almost $89 million—cancelling the loss from other activities and bringing accumulated wealth up to $72 million. Total shareholder distributions averaging $11 million leave the urban corporations with an average $61 million in equity held as assets other than lands.

Other Economic Benefits of Village and Urban Corporations

Employment

Providing jobs to shareholders is clearly one of the most significant economic benefits from village and urban corporations. Only scattered data are available on employment, and it is not possible to calculate a defensible estimate of total employment by corporations over the past decade. Nonetheless, the available studies and anecdotal evidence clearly shows that the village and urban corporations have been a very important and effective source of jobs for shareholders. This evidence includes the following:

- A comprehensive study prepared for Sealaska estimated that the direct employment of all the village and regional corporations in 1985 was 633 persons. This total includes 450 people employed in the timber industry using Native lands (McDowell Group, 1986). Unfortunately, this study does not separate village corporations from Sealaska, does not break out shareholders, and is only available for a single year.
- One village corporation reported that during actual timber harvesting between 1982 and 1987, "up to 40 shareholders were employed by the logging contractor, up to 6 were employed in the [corporate] office..., and a full longshoring crew...were employed" (Personal communication, corporation name withheld by request, July 1993).

- Klukwan, one of the more financially successful village corporations during the 1980s, reported in 1983 that 29 shareholders were employed. By 1986 they reported "currently over 20 percent of the original [253] shareholders are employed by Klukwan, Inc., and subsidiaries" (Klukwan, Inc., 1986 and 1983 *Annual Reports*).
- Kake Tribal Corporation reported 1988 shareholder employment in their logging operations of more than 40 shareholders (KTC 1988 Annual Report). Kake Tribal recently re-opened its cold-storage fish facility, generating more than 45 jobs (*Tundra Times*, June 30, 1993, p. 8).

In evaluating this scattered evidence, it should be remembered that the data for both the years 1983 and 1985 reflect poor years for the timber industry, and thus are likely to understate the employment generated during the later part of the decade.

Scholarships and Charitable Giving

All the corporations in our sample of seven have established some form of scholarship program or charitable heritage foundation. These foundations have made substantial contributions to shareholders' educational needs. As one example, the Shee Atika foundation had by 1992 made over 395 grants totaling more than $234,000 (Shee Atika 1992 *Annual Report*).

Other Benefits

The village and regional corporations have provided other economic benefits which are undoubtedly important to individual shareholders. These include, for example, the provision of a group life insurance plan by Kake Tribal Corporation and a $1,500 death benefit for Shaan-Seet shareholders. Similar programs were under study by the Kootznoowoo board in 1987. But at least one corporation prefers to maintain a more narrow focus on profits, leaving the responsibility for social programs to the Bureau of Indian Affairs and other sources of public funding (Hoffman, 1987 p.15).

Possible Extrapolation of Results

It is clear that the Southeast Alaska village and urban corporations have been the most financially fortunate group of all ANCSA corporations on the basis of financial returns per shareholder to date. This comparison includes all the regional corporations. The data presented above show that there are two reasons for this financial performance. The first is the endowment of valuable timberlands conveyed to the corporations. The second was the opportunity to sell non-cash losses—NOLs from declines in the value of timber—for cash. Tables 7.4 and 7.5 above suggest that the NOL sales generated significantly more income than actual timber harvests for the village corporations as a group, and provided substantially all of the net income for the two urban corporations.

Does this mean that the financial fortune of these corporations is solely the result of the one-time ability to sell NOLs? The answer is a qualified no. Had there been no NOL sales opportunities, the corporations could have delayed their timber harvests until the late 1980s, when prices rebounded to 1980 levels.

If the financial results presented in this chapter are to be used for any sort of prediction of possible future performance, four important points must be kept in mind. First, the opportunity to generate large amounts of cash through NOL sales will not be available in the future. Second, the experience of several village corporations shows that is possible to generate large economic benefits for shareholders through timber harvesting alone, without depending on NOL sales. Third, the future income of any timber-based corporation will be based to a great extent on world market timber prices, which have proven to be quite volatile in the past.

Finally, the days of timber harvesting on their own lands are largely over for most of the village corporations.[4] They are entering a new era in which financial investments and diversified business operations will play the major role in determining their success.

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[4] The seven corporations in our sample had combined net timber assets of about $65 million in 1992. This is only 5 percent of their total appraised gross timber assets of $1.2 billion. While some of the difference between gross and net value is due to price changes, the vast majority of this accumulated depletions stems from actual harvest or sale of the trees.

**WRITTEN TESTIMONY OF THE
REPRESENTATIVES OF THE
SOUTHEAST ALASKA LANDLESS NATIVE COMMUNITIES**

prepared for the

**SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING**

regarding

S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act of 2020

December 2, 2020

Chairman Lee, Ranking Member Wyden, and Members of the Subcommittee:

We appreciate the opportunity to submit testimony regarding S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act of 2020, which was considered during the Subcommittee's November 18, 2020 legislative hearing on multiple bills.

Our testimony focuses on Section 7 of S. 4889, which redresses the omission of the Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell from the Alaska Native Claims Settlement Act of 1971 (ANCSA) by authorizing the Alaska Natives enrolled to those communities under ANCSA to form Urban Native Corporations and to receive certain settlement land pursuant to ANCSA. The omission of these Native communities is an inequity that has had long term, negative impacts on these communities and the Alaska Natives enrolled to these communities. This inequity will continue without an Act of Congress. For that reason, we humbly ask for your due consideration and support.

Executive Summary and Responses to Concerns Raised by Members of the Subcommittee

In ANCSA, Southeast Alaska Was Treated Differently Due to a Previous, Partial Settlement of Land Claims; As A Result, the Landless Communities Were Unable to Appeal Their Exclusion

As Congress developed ANCSA in the late 1960s, it recognized that it had previously authorized a partial settlement of aboriginal land claims for Alaska Native groups in Southeast Alaska. Specifically, in 1935, Congress had authorized the Tlingit and Haida Indians to sue the federal government for land that was taken without compensation, and in 1968, the U.S. Court of Claims authorized a payment of $7.5 million to settle Tlingit and Haida land claims.

In 1971, just three years after the Tlingit and Haida Settlement, Congress enacted ANCSA, authorizing almost $1 billion and 44 million acres to settle the aboriginal land claims of all Alaska

Natives. As Congress developed ANCSA, Congress determined that the Tlingit and Haida settlement had failed to cover all of the claims of the Tlingit and Haida Indians, and so the Southeast Alaska region was included in ANCSA.

Although Southeast Alaska was included in ANCSA, the settlement for the Southeast region was very limited. Each of 12 villages received only one township of land rather than—as in other regions of Alaska—multiple townships based on population size. ANCSA returned roughly 12 percent of the lands in Alaska to the Native peoples of the state; the Native people of Southeast Alaska, by comparison, received less than 3 percent of their original homelands under ANCSA. Remarkably, Alaska Natives in Southeast Alaska—who made up 22 percent of the Alaska Native population in 1971—received less than 1½ percent of the land settlement. This was our reward for having the audacity to be the first to pursue our aboriginal land claims.

To add insult to injury, Congress in Section 11 of ANCSA, which lists villages outside of the Southeast Alaska region, included a provision that allowed unlisted villages to appeal their status. Section 16 of ANCSA, which lists villages in the Southeast Alaska region, does not include similar appeal language. When ANCSA passed, five Alaska Native villages were left out of the settlement: Wrangell, Petersburg, Ketchikan, Tenakee and Haines. No reason was given for their exclusion although, as detailed below, opposition from the Forest Service and the non-Native timber industry appears to have played a dominant role. Three of the five communities appealed their status, but because Congress failed to establish a right of appeal for Southeast villages, their appeals were rejected outright. Thus, for almost 50 years, the five Landless villages have sought the equitable redress of their exclusion from the 1971 aboriginal land claims settlement.

The Five Landless Communities Did Not Meet the Technical Criteria for *Village* Corporations as A Direct Result of the influx of Non-Native Settlers into the Five Communities; However, Congress Included Similarly Situated Native Communities in ANCSA

During the November 18, 2020 hearing, **Senator Heinrich** asked whether the five Landless communities met "the legal qualifications of population" for villages listed in ANCSA in 1971. We appreciate Senator Heinrich's question because it raises important issues of law and equity that underlie this legislation.

The Tlingit and Haida people have been fighting to establish a legal right to own a fraction of their traditional homelands for more than a century. In the 1940s, the Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which ruled that Native lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). **The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. Instead, the Congress, in its sole discretion, would decide if there was to be any compensation**

whatsoever for lands stolen. And so, here we are. We start at a clear disadvantage. We have been told that we have no 5th Amendment rights to aboriginal property, and Congress, without explanation, excluded our communities from the 1971 settlement of land claims in ANCSA.

As a technical matter, like many other Native communities listed in ANCSA, the five Landless communities met most, but not all, of the nominal requirements set forth in ANCSA for *village* corporations; that is, in fact, why this legislation establishes five *urban* corporations. **As we detail below, the reason that the five Landless communities did not meet this technical requirement for *village* corporations was due to the influx of white settlers into the five Landless communities, an experience over which our people had no control.**

Villages in ANCSA generally were required to have a majority-Native population in order to establish village corporations. But unlike most regions of Alaska, a large population of white settlers had moved into the Southeast region by the early twentieth century to exploit the rich natural resources of what is now the Tongass National Forest—gold, timber, and salmon. It is our hope that our historical reality—the arrival of non-Native settlers in our region and their settlement in our communities—will not be held against us.

Fortunately, Congress *has* recognized and addressed this issue of non-Native settlement for other, similarly situated Native communities in Alaska. In ANCSA itself, the general criteria for villages—that a community must have a majority-Native population—did not prevent Congress from extending recognition to other traditional villages (in fact, *every* other traditional Alaska Native village of which we are aware) that technically did not meet the population criteria used to define villages under ANCSA, including at least two villages in Southeast Alaska (Saxman and Kasaan) in which village corporations were established and four urbanized villages (Kenai, Sitka, Juneau and Kodiak) in which urban corporations were established.

The fact that non-Natives made their homes in the five Landless Native communities in the early twentieth century should not be held against these communities; in fact, the opposite should be true. The five Landless communities have long, rich indigenous histories and our communities should have an opportunity to be recognized and to receive a sliver of our original homelands. Recognizing our five Landless communities would not open the door to similar efforts elsewhere in Alaska. We are not aware of even a single community elsewhere in the State of Alaska that finds itself in the same position. As detailed below, other Alaska Native communities like Nome also experienced a large influx of non-Natives in the early twentieth century yet were listed in ANCSA and were authorized to establish village or urban corporations. Southeast Alaska was different, and the inequities that resulted are redressed in this legislation.

<u>They're Going to Clear Cut the Tongass!</u>

In the late 1960s, the then-powerful non-Native timber industry held significant political sway within the Southeast Alaska region; a pulp mill and sawmills were located within four of the five communities. Congress did not explain why it chose to exclude *these* five communities, and we can only wonder whether it was politically expedient to be silent as to the true reason: timber.

Opponents of our land claims have always objected to our claims based on their own parochial views of natural resource development. For decades, the Forest Service and the timber industry

actively fought indigenous land claims in the Tongass over fears that Native peoples would *not* develop timber or support the timber industry. We document some of this history below. Some environmental groups today oppose our legislation over fears that we *would*, as owners of the land, have the *right* to develop timber resources. We are certain that you will find their testimony to this effect in the hearing record. Truly, we are damned if we do, and we are damned if we don't. **But ultimately, for our people, what these arguments really boil down to is this: "We don't trust those people to make responsible decisions about their land."** These sentiments are the epitome of degrading and paternalistic thoughts towards Native people that should no longer be tolerated.

In this context, some of the opponents of the Landless claims have raised the specter of the so-called "Sealaska land bill," which was enacted by Congress in 2014. The Sealaska land bill identified specific lands within the Tongass for conveyance to Sealaska Corporation, the regional Alaska Native corporation for Southeast Alaska, to complete its 1971 entitlement under ANCSA. Sealaska has harvested some timber on some of its lands over the course of several decades, and this was largely the basis (for some) for opposing that legislation. What these groups probably will not tell you is that Sealaska entered into one of the largest forest carbon-sequestration contracts in U.S. history after it received its final entitlement lands in 2014. The reality is that Sealaska and other Alaska Native corporations in Southeast Alaska are working with local communities and even conservation groups to build and support environmentally responsible businesses in the Tongass. In short, we no longer live in the 1970s, and it is unfair for those who opposed timber development in the Tongass during that era to continually deploy the specter of decades-old logging politics and practices as a reason to oppose indigenous rights.

The legislation before this Subcommittee would convey 115,200 acres in total to the five Landless communities (one township, or 23,040 acres each) in Southeast Alaska, a region that comprises 21.9 million acres of federal land (of 22.9 million acres total in the regional land base). This legislation returns ½ of 1 percent of that land to Native ownership.

One organization has submitted testimony articulating their concern that the legislation would convey 4,800 acres of the so-called TU-77 watersheds in Southeast Alaska to the new Native corporations. The TU-77 comprise 1.9 million acres of watersheds in the Tongass National Forest. It is remarkable, frankly, that our proposed selection overlaps just .25 percent of these massive TU-77 areas that have been earmarked for conservation in the Tongass. It is even more remarkable given the fact that 80 percent of the Tongass is already effectively set aside for conservation, over 6.6 million acres of which has been set aside into permanent conservation status through direct acts of Congress and 7 million additional acres insulated from development through administrative land planning. The fact that the Tongass is "public" does not mean that those who advocate to set aside more of it do not have their own parochial interests in its use. The reality is that our Native land selections must come from the "scraps" left over after every other stakeholder interest in the Forest has selected or set aside land to serve their own interests.

<u>The ISER Report to Congress—The Point of the Report Is the Truth of Our History</u>

In 1993, Congress instructed the Secretary of the Interior to investigate the exclusion of the Landless communities from ANCSA. In turn, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA) contracted with the University of

Alaska's Institute of Social Economic Research (ISER) to investigate why the Landless communities were excluded from ANCSA. This research materialized into a lengthy report titled, "A Study of Five Southeast Alaska Communities" ("ISER Report"), which was to be used by Congress to help determine "whether the exclusion of the five [Landless] study communities was intentional or inadvertent." The ISER Report provides a detailed overview of "how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were recognized under ANCSA."

The ISER Report does not draw any specific conclusions about the validity or invalidity of claims that the Landless communities met (or did not meet) the general criteria for inclusion in ANCSA. The ISER Report does demonstrate, however, that all five of the Landless communities share the same litany of cultural, historical, and social characteristics that define traditional Alaska Native villages. These characteristics are addressed in more detail below.

The Native Village of Tenakee

Somewhat remarkably, at least one individual has submitted testimony suggesting that the village of Tenakee "was never a Native village." As detailed by the ISER Report, Tenakee has a long history as a Native village. But the reality is that the Native population in Tenakee has largely been displaced by a non-Native population, and so our testimony must address this history.

During the period leading up to ANCSA, the federal government recognized Tenakee as a Native place. Tenakee was identified as an "Indian settlement" in a 1935 executive order *excluding Tenakee from the Tongass National Forest* and, in 1965, the federal government rejected a non-Native application for a trade and manufacturing site at the Indian village in Tenakee in recognition of the "possessory rights to this tract" and use and occupancy of the site by the Native people of Tenakee.

Unlike the four large Landless communities, the1970 Census showed that Tenakee had fewer than 25 Native residents in 1970. However, 64 Native individuals enrolled to Tenakee, and Tenakee in 1970 shared many similarities with the Southeast village of Kasaan, which, unlike Tenakee, was listed in ANCSA. Kasaan, which had only 8 Native residents according to the 1970 Census, was ultimately able to demonstrate that it *did in fact meet the requirements* for a listed village. This may reflect the fact, as acknowledged in the ISER Report, that the 1970 Census likely undercounted the Alaska Native population. The Census did not take into account Alaska Native movement between Native villages, which was common at the time. The residents of Tenakee did not have an opportunity to make the same showing that Kasaan was successfully able to make because Tenakee was not listed in ANCSA.

The similarities between Tenakee and Kasaan are compelling. Kasaan, like Tenakee, experienced an out-migration of Native residents due to impacts of unregulated, non-Native fishing. **But, as detailed in the ISER Report, Kasaan repopulated and revitalized as a Native community after it was given the opportunity to incorporate under ANCSA.**

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The Bottom Line: "Technicalities" Do Not Erase the Native-ness of Our Five Communities

In failing to list these communities, Congress precluded 4,400 Alaska Natives from five traditional Native communities in Southeast Alaska from forming Alaska Native corporations with land in and around their communities and pursuing the economic, social, and cultural benefits of operating an Alaska Native corporation in each of their respective communities.

As noted above, none of the five Landless communities met all the requirements under ANCSA to incorporate as village corporations. And, as discussed below, it is impossible to articulate whether the five Landless communities "met" the requirements for incorporation as urban corporations because, in fact, ANCSA did not establish any specific requirements for urban corporations; the point of the urban corporation model was to provide a solution for communities that did not meet ANCSA's definition of a village due to the size of the village's non-Native population. However, like the Alaska Native populations in the four towns that were authorized to incorporate urban corporations, the five Landless villages "originally were Native villages, but [came to be] ... composed predominantly of non-Natives."

As you review testimony submitted by a few of our detractors, you will note that most objections to legislation introduced on behalf of our communities focus not on the right of the Landless communities to establish Native corporations but instead arise from a generalized fear about what we might do with the land conveyed to our people. Specifically, you will see concerns about timber development. This may be unavoidable given the fact that our homeland is a forest. In any event, these fears are unfounded and inappropriate. First, given the modern timber economy in our region, the threat of mass timber harvesting is, as a practical matter, an empty fear. No one has engaged in large-scale timber harvesting in our region in decades, and we challenge anyone to demonstrate otherwise. Second, as noted above, we no longer live in the clear-cut-the-forest economy of the 1970s, and it is unfair for those who opposed timber development in the Tongass during that era to continually raise the specter of logging 40-50 years later. Third, the only federal land available for conveyance to the five Landless communities comes from the Tongass National Forest, and any perceived threat to the integrity of the Tongass tends to spur both local and national resistance. We understand that political reality, and we recognize that your constituents will raise these concerns. But the fact is that these lands were taken from our people; we do not recognize generalized fear about the capacity of Native landowners to make decisions for ourselves to be valid grounds for precluding Native ownership of aboriginal homelands, and neither should the Members of this Subcommittee.

Congress has significant discretion to settle aboriginal claims, and Native American claims have often been settled by Congress not only out of legal obligation but as a result of "moral and political persuasion." Congress acted both in ANCSA and—on numerous occasions—after ANCSA to extend the benefits of the Settlement to Alaska Native communities that had been impacted by non-Native settlement.

Congress in 1971 and in the years following took steps to extend the benefits of the settlement to identifiable Alaska Native groups where equity demanded it. In ANCSA itself, four "urban" communities were authorized to incorporate despite the fact that they did not meet ANCSA's definition of a Native village or group. Similarly, although the Governor of Alaska specifically objected to the establishment of a Native corporation for Nome, Congress authorized Nome to

incorporate as a village corporation. After ANCSA was enacted, in 1980, Congress authorized seven additional communities in the Koniag region to incorporate as villages under ANCSA.

Congress provided no reason to exclude the five Landless villages in 1971. Congress has taken steps to resolve other inequities under ANCSA, and the entire Alaska Native community recognizes that the Landless claims still need to be resolved. No other Native communities in Alaska find themselves in the same unique position. We believe it is clear that our villages were left out due to the political influence of the timber industry in the 1960s, and the notion that some groups would prefer to see us left out of ANCSA today out of fear that an Urban Corporation might harvest some amount of timber reeks of irony and paternalism.

Every other Native community in Alaska that experienced an influx of non-Native settlers, like the five Landless communities, was authorized by Congress to have a village or an urban corporation under ANCSA. This is the truth, and Congress should consider this truth when others throw technicalities in front of our pleas for justice. The five Landless villages should be allowed to fully participate in the United States' settlement of aboriginal land claims in Alaska.

Other Questions Raised by Members of the Subcommittee

During the November 18 hearing, Senator Heinrich asked whether the mineral rights associated with lands conveyed to the Urban Corporations would be retained by the Government or would be conveyed to Sealaska Corporation, the regional Native corporation for Southeast Alaska.

Under the terms of ANCSA, regional Alaska Native corporations receive the subsurface estate under the surface estate conveyed to a village or urban corporation, subject to valid existing rights, including valid mining claims. This legislation applies all of the usual rules and legal requirements of ANCSA to the proposed establishment of the five new Native corporations. Although Sealaska has not actually developed any subsurface minerals in Southeast Alaska over the last 49 years—other than some minor quarrying activity—it is worth noting that, under the terms of ANCSA, 70 percent of any revenues generated by a regional corporation from the development of subsurface revenues must be shared with the entire Alaska Native community through the other Regional Corporations. In any event, the fact that Sealaska would receive the subsurface estate only reflects a reality that the entire Native population of Southeast Alaska was given short shrift in the context of ANCSA as Sealaska's ownership in Southeast Alaska is minimal.

During the November 18 hearing, Senator Heinrich also asked whether any of the proposed Landless selections would be located within Misty Fjords National Monument. None of the proposed selections are located within National Monuments, National Parks, Wilderness Areas or so-called "LUD II" conservation areas, which are special conservation areas within the Tongass set aside by Congress. This is not to say, however, that Alaska's indigenous people do not have legitimate aboriginal ties to Misty Fjords. Conservation areas in Alaska—and for that matter, throughout the United States—were largely set aside without regard to indigenous rights.

Issues Raised by the U.S. Forest Service

The U.S. Forest Service (USFS) in testimony submitted to this Subcommittee identified a number of technical issues they would like to see resolved. We note that USFS did not propose solutions

to the technical issues raised in their testimony, and for this reason we commit to work with USFS to resolve issues to the greatest extent possible.

The USFS notes that, "although the total acreage proposed for transfer to new urban corporations is a small portion of the National Forest System lands within southeast Alaska, due to the high value of these lands for forest management activities and public use, the Forest Service anticipates that these selections could adversely impact the implementation and viability of the 2016 Forest Plan broadly across program areas."

The challenge we face is that—in the words of Senator Lisa Murkowski—every acre of the Tongass is precious to someone. In working to identify parcels of land for conveyance to the five Landless communities, we truly do find that every acre of land proposed for conveyance has been classified by the USFS or categorized by third party groups for one public use or another.

USFS notes that the "proposed selection acreage will decrease the Tongass National Forest land base suitable for timber by nearly 37,000 acres, or 10 percent." First, it is notable that only 370,000 acres of the 17 million-acre Forest is categorized as suitable for timber development, signifying that the vast majority of the Forest has been set aside for non-timber uses. Second, it is remarkable, frankly, that the 115,200 acres identified for selection by the Landless communities overlaps only 37,000 acres of the Tongass land base identified as suitable for timber. Clearly, we are under pressure to avoid selections in many other areas, including all conservation areas, that are *not* classified as suitable for timber development.

USFS notes that the Landless selections include about 40,500 acres of land designated by the 2016 Forest Plan as Old Growth Habitat, 21,200 acres of land designated as Scenic Viewshed, and 2,850 acres designated as Semi-Remote Recreation. It is important to note that this is acreage allocated to specific land use designations, or LUDs, in the Tongass Forest Plan. It is important to view these numbers in context. For example, 2,008,582 acres are set aside under the 2016 Forest Plan within the Semi-Remote Recreation LUD alone. About 5 million acres of the Tongass are considered "productive old-growth"—which is a subset of total old growth—of which 4.5 million acres are set aside in conservation areas.

The USFS also notes the following selections in roadless areas:

> The selections include nearly 9,000 acres that are subject to the 2020 Alaska Roadless Rule direction to modify the timber land suitability and become available for timber harvesting. These 9,000 acres may be considered a nearly 50 percent addition to the estimated 18,650 acres that were projected to be harvested in roadless areas under the Alaska Roadless Rule.

It is unclear whether the inclusion of these roadless areas are of concern to the USFS. As a matter of public policy, it seems reasonable to include both roadless and roaded areas of our homeland within the acreage designated for settlement of our land claims. The USFS notes that it recently identified certain roadless areas within the Tongass to be suitable for timber harvesting. This decision was the subject of public debate. However, the potential selection of roadless areas by the Landless communities does not suggest that the Landless communities will deem such areas to be suitable for timber harvest. The fact that Indian tribes and Alaska Native corporations have

an interest in economic development—among many other interests in the management of Native lands—does not mean that Indian tribes or Alaska Native corporations will deem resource development to be appropriate within a given area. We hope that is not the presumption here with regard to the five Landless communities. Moreover, the inclusion of this small amount of roadless acreage is entirely reasonable given that 9.6 million acres of the 16.8 million-acre Tongass are inventoried roadless.

The USFS also notes that the proposed selections would impact three timber harvest projects currently in planning, including 17 percent of the Central Tongass Project, 5.2 percent of the South Revilla Project and 2.5 percent of the Twin Mountain II Project. The USFS notes that these are "not large percentages of the overall projects," but suggests that "the inclusion of selections within the three project areas is likely to impact the Forest Service's ability to complete a timely review under the National Environmental Policy Act, issue decisions on schedule, and offer timber in fiscal years 2021 and 2022." It is unclear whether or how the Landless communities can possibly avoid impacting proposed project areas, with are sub-regional in scope. The Landless communities are effectively left to choose from the scraps to begin with—approximately 6 million acres of the Tongass is set aside within Wilderness LUDs, and approximately 7.5 million acres of the Tongass is within Natural Setting LUDs, leaving just 3.36 million acres within development LUDs (including scenic viewsheds). Municipalities have already selected much of the land near the Landless communities themselves. Focusing largely on selections within the development LUDs—as we have been pressed to do—the Landless communities generally have sought to identify large, contiguous blocks located within reasonable proximity to the Landless communities, which necessarily results in overlap with multiple land use designations and selections within timber harvest projects that span sub-regions of the Tongass.

Finally, the USFS indicates that it "anticipates the proposed conveyance of the lands will affect the Tongass National Forest's delivery of its recreation program," including "13 developed recreation sites (3 camping sites, 7 public use cabins, 1 picnic site, 1 shelter, 1 trailhead), 3.5 miles of hiking trail, 26.5 miles of designated Off Highway Vehicle trails, 90.9 miles of open roads, and an estimated 12 marine access facilities." USFS has also "identified that outfitter/guide activity is [currently] authorized under special use permits within or adjacent to more than half of the selected parcels."

We would like to work with the USFS to see if we can resolve issues involving specific recreational sites. However, with regard to roads and trails, and with regard to public access, the USFS is aware that any conveyances of land to the Urban Corporations "shall be" subject to the reservation of public easements under Section 17(b) of ANCSA. Under Section 17(b), the Bureau of Land Management (BLM) is required to "identify public easements across lands selected" by Alaska Native corporations, including lands which are reasonably necessary to guarantee "a full right of public use and access for recreation [including camping], hunting, transportation, utilities, docks, and such other public uses ..." BLM must "consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements." 17(b) easements are reserved and managed by the Federal Government. The rights are reserved when the BLM conveys land to an Alaska Native corporation under ANCSA.

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Further, this legislation, unlike ANCSA, preserves public access to all of the lands conveyed to the new Urban Corporations, guaranteeing in perpetuity that the land shall "remain open and available to subsistence uses, noncommercial recreational hunting and fishing, and other noncommercial recreational uses by the public." The legislation preserves all existing special use permits and provides for the issuance of an additional 10-year special use permit to each permit holder. The legislation also preserves the right of the USFS and its designees to continue to use the roads and other transportation facilities conveyed with the land to the Urban Corporations. By our count, *eight pages* of the legislation are devoted to preserving public access and access to roads, trails, and other facilities by the USFS and others.

Again, it is impossible for the Landless communities to pursue conveyances without overlapping areas currently in use by members of the public. It is *for this reason* that the legislation has been amended to guarantee public access on roads and trails, guarantee access to the land for recreational uses and subsistence hunting and fishing, and preserve and extend all existing special use permits. All of this is in addition to the existing process—under Section 17(b) of ANCSA—that provides for the reservation of public easements on the land. It is unclear why the USFS does not mention or discuss the several pages of language in the legislation detailing these guarantees of public access. In our view, the legislation could not be clearer that public access will be maintained. But we are willing to work with the USFS on these issues.

Background: The Tlingit and Haida Settlement, ANCSA, and the Landless Villages

In order to properly introduce the "Landless" legislation, we must first provide an overview of the Tlingit and Haida Settlement, the mechanics of ANCSA, and a brief historical description of the five Landless Alaska Native communities in Southeast Alaska.

The Tlingit and Haida Settlement

Congress has significant discretion to settle aboriginal claims, and Native American claims have often been settled by Congress not out of legal obligation but as a result of "moral and political persuasion."[1]

ANCSA was the second of two agreements to settle aboriginal land claims authorized by Congress for Alaska Natives. The first of the two major settlements was the Tlingit and Haida Settlement.[2] This settlement was achieved through a lawsuit brought by the communities of the Tlingit and Haida Indians against the federal government.[3] The lawsuit was made possible through the enactment of the Jurisdictional Act of June 19, 1935, which authorized Tlingit and Haida Indians to sue the federal government for land that was taken or used by the United States without providing compensation.[4] The Act also authorized a community settlement, which would have provided "'all persons of Tlingit or Haida blood, living in or belonging to any local community of these tribes' [] in Southeast Alaska" a share of the judgment.[5] Administration of a subsequent

[1] ISER Report at 1-2 (citing LUCY KRAMER COHEN, ET AL., COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3-7, 12-13 (1982)).
[2] ISER Report at 3.
[3] *Id.* at 25; *see also Tlingit and Haida Indians of Alaska v. United States*, 389 F.2d 778, 781 (Ct. Cl. 1968).
[4] ISER Report at 25; *see also* Jurisdictional Act of June 19, 1935, ch. 275, 49 Stat. 388 (1935).
[5] ISER Report at 25.

settlement was to be administered by the Tlingit and Haida Central Council ("Central Council"), which was recognized as the beneficiary entity of the settlement and the regional tribal organization.[6] The Central Council worked to create a roll of tribal membership through input from "tribal communities," which would be sent to the Secretary of the Interior for approval.[7]

The Tlingit and Haida lawsuit was not organized and filed until the 1950s. In 1959 the U.S. Court of Claims held that the Tlingit and Haida Indians established aboriginal title to the land in Southeast Alaska and were entitled to compensation from the United States.[8] In 1968, after almost a decade of litigation and work from the Central Council and communities, the Court of Claims valued the loss of Tlingit and Haida lands at $7,546,053.80 and held that the claimants were to receive compensation in that amount.[9] The payment was ultimately distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970.[10]

ANCSA

In 1971, just a few years after the Tlingit and Haida Settlement, Congress passed ANCSA[11] to settle the aboriginal claims of all Alaska Native groups that arose from the United States' acquisition of Alaska from Russia. ANCSA extinguished all Alaska Native aboriginal land claims and created a corporate structure for governing the assets awarded to the communities that were eligible for benefits under ANCSA.[12] In total, ANCSA awarded almost $1 billion and 44 million acres of land to Alaska Native communities.[13]

ANCSA dictated a very different structure for distributing the settlement award as compared to the payment associated with the Tlingit and Haida Settlement and the treaty and reservation structure common in the lower 48 states. Rather than dividing the land into reservations to be held "in trust" for Native communities by the federal government, or appointing a tribal council to divide a monetary award, Congress in ANCSA relied on modern business structures to manage settlement assets.[14] Specifically, ANCSA divided Alaska into twelve regions, directing Alaska Natives from each of those regions to establish regional corporations. A thirteenth regional corporation was established for Alaska Natives who had left Alaska before ANCSA's passage.

ANCSA also created village and group corporations as well as four urban corporations. These smaller, community-oriented corporations are organized under State law either as for-profit or nonprofit corporations "to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of" a Native village, Native group, or the Native residents of an urban community, respectively.[15]

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[6] *Id.* at 25, 31.
[7] *Id.* at 31.
[8] *Id.* at 25.
[9] *Id.* at 34.
[10] Pub. L. No. 91-355, 84 Stat. 431 (July 13, 1970).
[11] Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1629h (2018).
[12] ISER Report at 5.
[13] *Id.* at vii.
[14] *Id.* at 16.
[15] 43 U.S.C. §§ 1602(j), (n), (o).

Alaska Native individuals were to benefit from ANCSA by becoming shareholders in their respective regional corporation and the village, group, or urban corporation established for their community. **ANCSA established a process by which every Alaska Native individual would enroll to the community in which he or she resided on the date of the 1970 Census enumeration *or to the community where they or their families had traditionally lived.***[16]

In the decades that have passed since ANCSA was enacted, Congress has sought to significantly strengthen the role of Alaska Native corporations as Native-serving institutions. For example, ANCSA as enacted provided for the alienation of stock from Native ownership 20 years after enactment, a policy reflective of the United States' allotment era policies of distributing tribal assets to individual Indians, the ownership of which would become alienable within, in many cases, 20 years. But the Indian status of Alaska Native corporations was not frozen in time in 1971, just as the Indian status of tribes was not frozen in time during the allotment era or the termination era, or through the passage and implementation of ANCSA. In 1988, Congress enacted the so-called 1991 amendments, reversing course and establishing that Native corporation stock could not be alienated unless Alaska Native stockholders so choose.

Congress has amended ANCSA numerous times to grant Native corporations new rights, duties, and preferences, many of which overlap with rights, duties, and preferences granted to sovereign tribes. For example, though a non-Native can inherit stock from a Native spouse or parent, Congress required that only Alaska Natives have the power to vote as stockholders. Congress has exempted Native corporations from certain employment restrictions contained in Title VII of the Civil Rights Act to protect shareholder hiring. 43 U.S.C. § 1626(g). Congress has enacted laws protecting undeveloped ANCSA lands from taxation and involuntary alienation, 43 U.S.C. § 1636(d). Congress has required federal agencies to consult with Alaska Native Corporations "on the same basis as" federally-recognized Tribes. Pub. L. No. 108-447, 118 Stat. 2809, 3267 (2005) (amending Pub. L. No. 108-199, 118 Stat. 3, 452 (2005).). These are actions taken to ensure that the actions of Congress, though ANCSA and its amendments, serve the long-term interests of the Alaska Native owners of Native corporations because of their status as Indians. These actions reflect the fact that ANCSA, and the dozens of statutes that amend ANCSA, are part of the framework of "Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs."[17]

Village Corporations

For an Alaska Native community to incorporate as a village corporation, the community had to qualify as a "Native village," which ANCSA defined as a village listed in Sections 11 or 16 of ANCSA or any other village that met certain minimum requirements.[18] As discussed below, Section 11 of ANCSA included a provision that generally allowed any unlisted village an opportunity to demonstrate that it met the eligibility criteria for forming a village corporation.

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[16] ISER Report at xiii.

[17] Pub. L. 100–241, §2, 101 Stat. 1788 (1988).

[18] 43 U.S.C. § 1602(c) ("Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;").

For all regions of Alaska other than the Southeast Alaska region, villages presumed to be eligible to establish village corporations were listed in Section 11 of ANCSA.[19] Village corporations established for villages listed in Section 11 were authorized to receive up to seven townships of land based on the size of the village population.

Because the Tlingit and Haida Indians had received a partial settlement of aboriginal land claims in 1968, albeit only through a cash settlement and no land, Southeast Alaska was treated differently. Ten Native communities presumed to be eligible to establish village corporations were listed in Section 16 of ANCSA.[20] Village corporations established for villages listed in Section 16 were limited to selecting just one township of land each, despite the large Native populations of many of the Southeast villages.

Under ANCSA, in order for any listed or unlisted village to qualify to establish a village corporation, the Secretary of the Interior was required to make a determination that the village was "composed of" at least 25 Native individuals on the date of the 1970 Census.[21] No reason was given by Congress for establishing the minimum village Native population to be 25.[22] Additionally, the village could not be modern and urban in character, nor could a majority of residents be non-Native.[23] The BLM promulgated regulations to implement these criteria at 43 C.F.R. § 2651.2(b):

> (1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.
>
> (2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style, and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: Provided, That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.
>
> (3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:
>
> > (i) Population over 600.
> >
> > (ii) A centralized water system and sewage system that serves a majority of the residents.

[19] 43 U.S.C. § 1610(b)(1).
[20] 43 U.S.C. § 1615(a).
[21] 43 U.S.C. § 1610(b)(2).
[22] ISER Report at 11.
[23] 43 U.S.C. § 1610(b)(2)(B). Note that Alaska Natives made up just 27 percent of Saxman's population and 27 percent of Kasaan's population, so, clearly exceptions were made, at least in the case of Southeast Alaska. ISER Report at xii.

> (iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.
>
> (iv) Organized police and fire protection.
>
> (v) Resident medical and dental services, other than those provided by Indian Health Service.
>
> (vi) Improved streets and sidewalks maintained on a year-round basis.
>
> (4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in Sections 11 and 16 of the Act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to subparagraph (3) of this paragraph.

As noted above, ANCSA included a provision that gave unlisted villages a chance to demonstrate that they met the eligibility criteria for forming village corporations. Specifically, Section 11 of ANCSA, which lists villages outside of the Southeast Alaska region, included a provision that allowed any village not listed in Section 11 an opportunity to qualify as a Native village if the Secretary made a determination, within two and a half years, that the village met all of the criteria applicable to Native villages, as detailed above.[24]

Critically, however, Section 16 of ANCSA, which lists villages in the Southeast Alaska region, did not include language authorizing the Secretary to reconsider the status of unlisted villages in the Southeast region. Three of the Landless communities—Tenakee, Ketchikan, and Haines—appealed their unlisted status to the Alaska Native Claims Appeal Board ("ANCAB"). The ANCAB denied all three appeals, finding that Congress' failure to provide an explicit right of appeal to unlisted Southeast Alaska villages was apparently intentional (but unexplained) and foreclosed the opportunity to pursue such an appeal with the Secretary of the Interior.[25] In sum, no due process was provided to unlisted Alaska Native villages.

Group Corporations

Under ANCSA, a "Native group" is defined as "any tribe, band, clan, village, community or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality."[26] Native groups were authorized to incorporate group corporations,[27] and Native group corporations were entitled to receive up to 23,040 acres of land surrounding the group's locality.[28]

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[24] 43 U.S.C. § 1610(b)(3).
[25] *Id.* at xii (citing *In Re: Appeal of Ketchikan Indian Corp.*, 2 A.N.C.A.B. 169, 171 (Dec. 5, 1977)).
[26] 43 U.S.C. § 1602(d) (emphasis added).
[27] *Id.* § 1602(n).
[28] *Id.* § 1613(h)(2).

At least one early version of legislation that ultimately became ANCSA defined Native "groups" more expansively.[29] For example, Governor Wally Hickel established a Task Force—a committee comprised of State officials, representatives of the Alaska Federation of Natives, and other representative leaders of the Native community—to develop legislation that was eventually introduced in the U.S. Senate as S. 2906.[30] That bill called for the enrollment of every Native to one Native group, with each Native group to determine its own membership and enrollment. Alaska Natives under this model could have enrolled to the villages where they currently lived, or to the villages where they or their ancestors had come from. Native groups that failed to enroll at least 25 Natives would have their members enrolled to another group.[31] According to the ISER Report, nothing in the legislative history of S. 2906 indicates why the 25 person population figure was used, and the definition of Native group in S. 2906 did not include a population requirement.[32] The ISER Report explains:

> Natives did not need to constitute a majority of a Native village or exhibit current aboriginal use and occupancy of land under S. 2906 to participate in its proposed settlement. Two sections of the bill proposed exceptions that persist in subsequent settlement proposals. First, villages which were relatively new or which had relocated in recorded history could still file a claim based upon aboriginal use and occupancy during such period (S. 2906 § 504). Second, Native villages which had been abandoned involuntarily or which had been absorbed by non-Native communities could also file claims based on aboriginal use and occupancy before their involuntary abandonment or absorption (S. 2906 §505). These exceptions broke from an early tendency in the claims commission bills (e.g. 1964) to tie Native group land entitlements to present use by a Native community and a traditional use or need standard. The official Governor's Task Force commentary explains these exceptions:
>
> > Section 504. Claims of New Villages
> >
> > Native villages which have relocated or been reestablished during the last 100 years as a result of volcanic explosion, flood, loss of game, and other reasons. This section permits these villages to participate in the settlement.
> >
> > Section 505. Claims of Abandoned Villages
> >
> > This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In the latter case, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups (Alaska Native Land Claims: Hearings on 2906 at 108).

[29] ISER Report at 13.
[30] *Id.*
[31] *Id.*
[32] *Id.*

> Despite the disavowal of the requirement of present aboriginal use and occupancy and the need for a majority Native population, the exceptions tend to prove the rule—only current Native aboriginal land use (that is, subsistence lifestyles exhibited by a predominantly Native community) would assure an entitlement under the Governor's Task Force proposal. The exceptions (relocated villages and the original urban corporation provision) were tightened or eliminated in subsequent acts.[33]

The ISER Report provides little additional information about Congressional objectives in allowing the establishment of group corporations, and our own research indicates that relatively little information regarding the establishment in practice of group corporations is available.

While ANCSA itself says little about the creation of group corporations, the BLM promulgated regulations to facilitate the incorporation of and distribution of land to group corporations. The BLM defined "Native group" to mean "any tribe, band, clan, village, community or village association of Native composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska."[34] The regulations specify the eligibility requirements for Native group incorporation and the application process.[35] Additionally, the regulations specify that Native groups are allowed to select 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less.[36]

Urban Corporations

Four Alaska Native communities were incorporated as "urban" corporations: Juneau and Sitka in Southeast Alaska, and Kenai and Kodiak in Southcentral Alaska.[37] Section 14(h)(3) of ANCSA provided each corporation with an entitlement to 23,040 acres of land.[38] **Urban corporations do not have a specific population requirement for incorporation, as compared to Native villages, which had to be composed of 25 or more Alaska Native residents to incorporate a village corporation.** Also, although there were exceptions, Native villages generally were not able to incorporate a village corporation or a group corporation if the majority of the residents of the village were non-Native in 1970. Although we do not have data for Kenai and Kodiak, Sitka and Juneau both had large Alaska Native enrollment populations (at 1,863 and 2,722, respectively); however, the Native population did not comprise a majority of the residents of these communities (at 23 percent and 20 percent, respectively).[39]

The term "urban"—at least, in relation to the designation by Congress of four urban corporations—is not defined in ANCSA.[40] ANCSA describes the four communities that incorporated urban

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[33] *Id.* at 14.
[34] 43 C.F.R. § 2653.0-5 (2020).
[35] *Id.* § 2653.6(a).
[36] *Id.* § 2653.6(b).
[37] ISER Report at 17.
[38] 43 U.S.C. § 1613(h)(3).
[39] ISER Report at xiii.
[40] Congress did not define "urban community" in ANCSA, though it did define the term "urban corporation." *Id.* § 1602(o) ("'Urban Corporation' means an Alaska Native Urban Corporation organized under the laws of the State of

corporations as communities that were "originally Native villages, but [came to be] ... composed primarily of non-Natives."[41] Thus, the inclusion of the four urban corporations in ANCSA allowed for the inclusion of Native communities that did not meet the standard eligibility requirements for village or group corporations under ANCSA. However, the four communities authorized to form urban corporations were not the only Native communities that technically did not meet the eligibility requirements for village corporations under ANCSA. For example, Alaska Natives made up just 27 percent of Saxman's population and 27 percent of Kasaan's population, both of which were listed villages, bucking the general rule that Native villages were not able incorporate a village corporation or a group corporation if the majority of the residents of the village were non-Native in 1970. These exceptions to the general eligibility criteria enabled Congress to fulfill the equitable objectives of ANCSA as a settlement of aboriginal land claims. In fact, these exceptions appear to be the rule in ANCSA; we are not aware of any other traditional Alaska Native villages that became predominantly non-Native but were excluded by Congress from ANCSA, or later amendments to ANCSA. Only the Landless communities are left.

While there is no legislative definition of "urban community," the legislative history indicates that the term stemmed from an understanding that many Native people had to abandon their aboriginal village and relocate, or that their village may have been absorbed into a larger non-Native community.[42] The allowance for urban corporations evolved from the question of how to allow Native groups located in urban areas—meaning those not in small, rural Native villages—to participate in ANCSA.[43]

The Landless Communities and ANCSA

Alaska Natives residing in Alaska were to be enrolled by the BIA to their community of permanent residence as of April 1, 1970.[44] Applicants were asked to specify a permanent place of residence as of that date and were given a copy of regulations that defined "permanent residence" for the purpose of enrollment. **An Alaska Native individual did not have to be physically living in his or her permanent residence on April 1, 1970, as long as he or she "continued to intend" to make his or her home at that place.** The relevant regulations provided:

> "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of the applicant on April 1, 1970, even though he was not

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Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this chapter.").

[41] ISER Report at xi (quoting 43 U.S.C. § 1613(h)(3)).

[42] ISER Report at 18 (citing the Governor's Task Force commentary using Kenai as an example of a native village being absorbed).

[43] ISER Report at xi, 18.

[44] 25 C.F.R. § 43h.4(a) (1981) ("Permanent residents of Alaska: A Native permanently residing in Alaska on April 1, 1970, shall be enrolled in the region and village or other place in which he or she was a permanent resident on that date.")

> actually living there on that date, if he continued to intend that place to be his home.[45]

In Southeast Alaska, the BIA contracted with the Central Council to conduct the enrollment.[46] The Central Council hired an enrollment coordinator for the region and hired and trained enumerators throughout Southeast Alaska to help local residents complete enrollment applications.[47] The authors of the ISER Report interviewed seven individuals who were involved in the enumeration process, along with several individual shareholders.[48] The enumerators reported that some applicants from the Landless communities were aware that their communities were not eligible for certification, and others were not; however, based on these limited interviews, "those who were unaware of the community eligibility issue appear to have been the largest group."[49]

Nearly 3,500 Natives—or 22 percent of total enrollment in the Southeast Alaska region—enrolled to the five Landless communities.[50] The Landless and their descendants have now grown to a population of 4,400, although, unfortunately, approximately one half of the original Landless shareholder population has now passed away waiting for the resolution of their land claims.

After ANCSA passed, as discussed above, three of the Landless communities appealed their unlisted status to the ANCAB, only to be denied in 1974 and 1977 for lack of an appeals process for Southeast villages in Section 16 of ANCSA.[51]

In 1976, Congress amended ANCSA to reopen enrollment for one year, which appeared to provide an opportunity to those Landless enrollees who might wish to change their place of enrollment to do so.[52] In fact, when the amendment was first passed, Sealaska Corporation informed its shareholders that redetermination of residency would be available to Southeast communities, including the Landless communities.[53] However, seven years later, a 1983 opinion of the Solicitor of the Department of the Interior held that the amendment did not apply to those enrolled to the five Landless communities.[54] Attorneys were unsuccessful in challenging that opinion.[55] The Solicitor's opinion found that the legislative history demonstrated that Congress enacted the amendment to address nine places in the Koniag region where 25 or more Alaska Natives had enrolled, but for which during eligibility proceedings had been found to lack 25 Native residents. The Solicitor did not view the Landless communities as similarly situated. Importantly, Congress ultimately decided that seven of the nine Koniag communities, as well as two other Native communities, should be dealt with legislatively through provisions of the Alaska National Interest Lands and Conservation Act of 1980 (ANILCA); Congress directed that eight of the Native

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[45] 25 C.F.R. § 43h.1(k) (1981).
[46] ISER Report at 79.
[47] *Id.*
[48] *Id.* at 82.
[49] *Id.*
[50] *Id.* at xiv.
[51] *See id.* at 17 (citing *In Re: Village of Tenakee*, VE # 74-60, 2 AN CAB 173, 177, Sept. 9, 1974; identical opinion *In Re: Village of Haines*, VE # 7 4-85, Sept. 9, 197 4; acc'd, *In Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, Dec. 5, 1977).
[52] Pub. L. No. 94-204 § 1(c), 89 Stat. 1145-46 (1976).
[53] ISER Report at 88.
[54] *See* ISER Report at 89.
[55] *Id.*

communities were to be treated as Native villages (and were authorized to incorporate as village corporations), and the ninth was to be treated as a Native group.[56]

Thus, after more than a decade of legislation and subsequent amendments, confusion about enrollment and re-enrollment, and appeals to the Department of the Interior, residents of the five Landless communities were finally left with the reality that Congress had granted other similarly situated Alaska Native communities the right to incorporate under ANCSA, while the five Landless communities were left with no recourse but to turn to Congress.

The Landless communities have, since the 1970s, advocated first for an administrative solution and then, for a legislative solution that would allow Alaska Native enrollees to the Landless communities to receive the full benefits shared by other Alaska Native villages under ANCSA. This would include the right of each community to establish a Native corporation, the right to enroll Alaska Natives from each of the communities as shareholders of their respective corporations, and the right of each corporation to receive one township of land near their community. As a result of lobbying efforts that started in the 1980s, Congress in 1993 instructed the Secretary of the Interior to investigate the exclusion of the Landless communities from ANCSA.[57] The ISER Report, produced as a result of this directive, was to be used by Congress "to help determine whether the [Landless] study communities were intentionally or inadvertently denied recognition under ANCSA."[58]

History and Characteristics of the Five Landless Villages

In general, Southeast Alaska Native communities faced significant obstacles to participate in ANCSA.[59] By the time the Tongass National Forest was created, in 1907, the Tlingit and Haida people had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.[60] The Act of 1884, which created civil government in the territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. **Since Alaska Natives were not recognized as citizens, they did not have corresponding rights to protect their interests.**[61]

For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. **As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska.**[62]

In the 1940s, the Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which

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[56] *Id.* at 90.
[57] *Id.* at i.
[58] *Id.* at i.
[59] ISER Report at 16.
[60] Robert Baker, Charles Smythe and Henry Dethloff, A New Frontier: Managing the National Forests in Alaska, 1970-1995 17 (1995).
[61] *Id.* at 18.
[62] *Id.* At 31 (citations omitted).

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ruled that Native lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). **The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. Instead, the Congress, in its sole discretion, would decide if there was to be any compensation whatsoever for lands stolen.**

The Tlingit and Haida Settlement of 1968 injected additional uncertainty into the claims of the Tlingit, Haida and Tsimshian people, and an early ANCSA bill excluded Southeast Native communities entirely.[63] Once the case was made that the Tlingit and Haida Settlement had not extinguished all Native claims in Southeast Alaska, Congress decided to include the Southeast region in ANCSA.[64] Still, while ANCSA established a process through which Alaska Natives would ultimately take title to roughly 12 percent of their original homeland in Alaska, the Alaska Native communities in Southeast received less than 3 percent of their own homelands.

All four of the larger Landless communities share multiple characteristics that arguably made our communities good candidates to incorporate either village or urban corporations under ANCSA—namely the relatively large size of our Alaska Native populations, our participation in the land claims effort, and the strong history of each community as an Alaska Native community. The ISER Report considers a number of measures to compare the histories of Native use and occupancy in the Landless (unlisted) communities and the listed communities (those that incorporated village corporations or urban corporations) in Southeast Alaska:

- *Enrollment Populations:*
  - When comparing the three larger Landless communities (Ketchikan, Wrangell, and Petersburg) and the two Southeast urban communities listed in ANCSA (Juneau and Sitka), the percentage of Native enrollees who resided in the communities where they enrolled was similar.[65] The proportion of enrollees who lived in the communities varied from 64 to 77 percent.
  - Among the small and medium communities listed in ANCSA, between 14 and 79 percent of enrollees lived in the communities where they enrolled.[66] The Landless community of Haines fell into that range, with 51 percent of those who enrolled to Haines also living there.[67]

- *Native Population as a Percentage of Total Community Population:*
  - In the 1970 Census, Alaska Natives made up close to the same percentage of the total population in Ketchikan (15 percent) and Wrangell (19 percent) as in

[63] ISER Report at 16.
[64] *Id.*
[65] *Id.* at 43.
[66] *Id.*
[67] *Id.*

Juneau (20 percent), for which an urban corporation was established.[68] Petersburg's Native population (12 percent) was smaller.[69]
  - In the 1970 Census, Alaska Natives made up 24 percent of Haines's population, which was similar to Saxman (27 percent) and Kasaan (27 percent), for which village corporations were established.

- *Indian Settlements, Land Reserves, Land Possessions:*
  - One or more areas in all of the Landless communities were considered to be Indian villages or Indian towns; this was also true of Juneau, Sitka, and other smaller ANCSA communities.[70] Ketchikan and Petersburg were summer villages before white settlers arrived, while Haines and Tenakee were winter villages before white settlers arrived.[71] Wrangell was a summer village and then became the primary village of the Stikine kwan in 1836.[72] That was also true in the ANCSA-listed urban communities of Juneau and Sitka and in a number of smaller ANCSA-listed communities.[73]
  - Federal land reservations were set aside for Native communities at Haines and Ketchikan in the early 1900s, as well as for the ANCSA-listed communities of Hydaburg, Klawock, and Klukwan.[74]
  - Tenakee, Kasaan, and Craig were excluded from the Tongass National Forest.[75]
  - Haines, Ketchikan, Wrangell, and Petersburg had Indian possession lands identified when townsites were first established. In this respect, the Landless communities differed from Juneau (which had no Indian possession lands in the original townsite), Sitka (which had Indian possession lands totaling less than an acre), and Craig (which had no record of Indian possession lands in the original townsite).[76] There is no record of Indian possession lands in the Tenakee townsite, but an area outside the townsite was excluded from the Tongass National Forest because it was occupied as an Indian village.[77]
  - School reserves for federal Indian schools were also set aside in many Southeast communities, including the Landless communities of Petersburg, Wrangell, and Haines.[78]

- *Government Schools for Indians*
  - Federal Indian schools operated in Haines, Ketchikan, Petersburg, and Wrangell during the period between 1881 and 1948, and all twelve ANCSA-listed Southeast communities had federal government schools.[79]

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[68] *Id.* at 40.
[69] *Id.*
[70] *Id.* at xv-xvi, 62-64.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] ISER Report at xv-xvi, 62-64.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.* at xvi, 64-65.

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- *Churches and Missions Serving Indians:*
  - The first churches to organize in all five of the Landless communities were Native churches—that is, churches that were either started as missions for Alaska Natives, or churches that were established by the Alaska Native community. The establishment of Native churches was common among ANCSA-listed communities as well.[80]

- *Participation in Native Organizations*
  - All five of the Landless communities had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did the ANCSA-listed communities.[81]
  - Ketchikan, Petersburg, Wrangell, and Haines belonged to the Tlingit and Haida Central Council as of 1971, as did the ANCSA-listed communities, as well as Metlakatla; Seattle, Washington; and Oakland, California.
  - All four of the larger Landless communities formed Indian Reorganization Act (IRA) organizations in the 1930s and 1940s, as did the ANCSA-listed communities.[82]

Although the four larger Landless communities were majority non-Native, and therefore technically did not meet the population requirements to establish *village* corporations, we have noted above that Saxman and Kasaan, too, had populations that were majority non-Native.

As discussed above, all four of the larger Landless communities share multiple characteristics that arguably made our communities good candidates to incorporate village corporations under ANCSA. However, given the size and the predominately non-Native populations in these communities, one might reasonably argue—based solely on these statistics—that the four larger Landless communities were more appropriately situated to establish urban Native corporations. The four larger Landless communities are good examples of the Native communities identified by Governor Hickel's Task Force; i.e., communities that had been absorbed by the time of ANCSA, through no fault of their own, into larger, non-Native communities—a problem for which the establishment of urban corporations provided an equitable, if only partial, solution in ANCSA.

Like Ketchikan, Petersburg, Wrangell, and Haines, Tenakee shares many of the historical characteristics typical of Southeast Alaska Native communities that were listed in ANCSA.

First, the village of Tenakee is, without doubt, historically a Native village.[83] Located at the Tenakee hot springs, Tenakee was a winter village that existed before white settlers came to the area in 1900.[84] Tenakee is similar to the ANCSA-listed communities of Juneau, Sitka, Craig, and Kasaan in this regard.[85] In 1891, the U.S. Coast Pilot reported that Tenakee was a "small Native village . . . constantly used by the Indians in their journeys from Chatham Strait to Port

[80] ISER Report at xvi, 65-66.
[81] *Id.* at xvi, 66-67.
[82] *Id.*
[83] *Id.* at 55.
[84] *Id.* at 55, 59.
[85] *Id.* at 68.

Frederick."[86] In 1901, the historic use of the village was also accounted by the owner of a saltery in the area who reported that there was a local clan leader who asserted ownership of the fishing sites in Tenakee Inlet.[87] Tenakee's Native population grew in the 1920s and 1930s when Alaska Natives from nearby villages moved to take advantage of jobs at Tenakee's two canneries.[88] After ANCSA was enacted, 64 Alaska Native individuals enrolled to the village of Tenakee.[89]

For decades, Tenakee was recognized as a Native community by the federal government. The village was formally recognized in 1935 as an "Indian settlement" in an executive order by President Franklin Roosevelt that operated to exclude the Tenakee Indian village from the Tongass National Forest.[90] As late as 1965, the BLM rejected a non-Native application for a trade and manufacturing site at the Indian village.[91] In rejecting the application, the BLM noted that the "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."[92] The communities of Haines, Ketchikan, Craig, and Kasaan also had established land reservations or exclusions, like Tenakee.[93]

Second, all of our communities, including Tenakee, had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did other ANCSA-listed communities.[94]

Third, all of our communities had churches or missions serving Alaska Natives, and all had active Salvation Army posts similar to Juneau, Sitka, Kake, Angoon, and other villages.[95]

Fourth, all of our communities had Native cemeteries, graves, or totems, as did Juneau, Sitka, Craig, and Kasaan.[96]

Although all five of our communities were part of the Tlingit and Haida Central Council at some point, Tenakee did not belong to the Central Council when ANCSA was passed in 1971.[97] During the 1950s, Haines, Tenakee, and Kasaan all became inactive, at least for some time, as individual communities. The ISER Report notes that, "Members of those communities participated through other communities."[98]

At seven percent of the population (and just six individuals), according to the 1970 Census, Tenakee did not have a significant Native population—at least, on paper—when ANCSA passed, which distinguishes Tenakee from the four larger Landless communities.[99] However, the ISER report concedes that the 1970 Census may have undercounted the Native population in many

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[86] *Id.* at 55-56.
[87] ISER Report at 56.
[88] *Id.*
[89] *Id.* at 80.
[90] *Id.* at 56.
[91] *Id.* (emphasis added).
[92] *Id.*
[93] *Id.* at 61-62.
[94] ISER Report at 66.
[95] *Id.* at 65-66.
[96] *Id.* at 68.
[97] *Id.* at 69.
[98] *Id.*
[99] *Id.* at xii.

Alaska Native communities,[100] and Tenakee—like Kasaan, which was included in ANCSA—faced a unique socio-economic situation that deserves special attention.

The 1970 Census shows that, of the ANCSA-listed Native communities and the five Landless communities, the only communities that did not meet the minimum population threshold were Tenakee and Kasaan.[101] The 1970 Census reported that Tenakee had a total population of 86 people, of whom only six were Alaska Native.[102] However, 64 Alaska Native individuals enrolled to Tenakee. Kasaan, which was listed under ANCSA, had a population of 30 according to the 1970 Census, of whom only eight were Alaska Native. Kasaan, however, was able to overcome a challenge to its eligibility status. We discuss the case of Kasaan—and its relevance to Tenakee—in more detail below.

The equitable claim for Tenakee is straightforward. First, the Alaska Natives who enrolled to Tenakee qualify broadly as a distinct Alaska Native group that sought for decades to settle aboriginal land claims associated with the group's traditional occupation of the village.

Congress has previously authorized identifiable Native "groups" to pursue claims against the federal government, and Congress considered a similar approach in the context of Alaska Native land claims. As noted in the ISER Report:

> Senator Gruening of Alaska introduced one of the first Native claims bills on February 1, 1968. That bill authorized Alaska "native groups" to incorporate under state or federal law, select lands, and receive royalties derived from Outer Continental Shelf development as compensation for their claims, based on aboriginal use and occupancy of Alaska lands. . . . S. 2906 [legislation introduced by Governor Wally Hickel's Task Force, discussed above] borrowed elements of its definition for "native group" from S. 1964, the first bill prepared for the first session of the 90th Congress by the Secretary of the Interior. That bill provided jurisdiction in the Court of Claims to compensate Alaska Natives for losses of aboriginal or "Indian title" lands. . . . Congress had done the same for southern Indian tribes in the Indian Claims Commission Act (25 U.S.C. §§ 70 to 70v-2, 1983). The Indian Claims Commission provided groups not generally regarded as Indian tribes an opportunity to assert their claims against the federal government. The act allowed the commission to hear claims "on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States of Alaska" (25 U.S.C. § 70a; emphasis added). The commission later clarified its position noting that so long as a "group can be identified and it has a common claim, it is ... an 'identifiable group of American Indians'" (Loyal Creek Band or Group of Creek Indians, 1 Indian Cl. Comm'n 122, 129, 1949).[103]

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[100] *Id.* at 41.
[101] *Id.* at 40.
[102] ISER Report at 40. Of the four larger Landless communities, Haines had the smallest Alaska Native population with just over 100 residents. *Id.*
[103] ISER Report at 8.

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The 64 Alaska Native individuals who enrolled to Tenakee are, if anything, an "identifiable group" with a "common claim" to lands that were, for decades, recognized by the United States as lands "used and occupied" by the Tenakee people. A Tlingit village was located at the Tenakee hot springs when white settlers arrived around 1900. As the ISER Report notes:

> The village and the surrounding area, including Tenakee Inlet, were owned and occupied by members of the Wooshkeetan clan. . . . In 1935, the federal government issued an executive land order that recognized the Native community at Tenakee as "an Indian settlement" and excluded it from the national forest. . . . Native rights to the village tract were reaffirmed in 1965, when the BLM turned down a non-Native application for a trade and manufacturing site there, noting that "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."[104]

Second, given the clear, documented evidence that the Tenakee enrollees are an identifiable group with a common claim to land, Congress should treat this identifiable group of enrollees in an equitable manner, i.e., in a manner that reflects Congress' treatment of other identifiable Alaska Native groups under ANCSA and subsequent legislation.

Although ANCSA designated villages with 25 or more residents as the principal claimants and beneficiaries of ANCSA, Congress in 1971 and in the years following took steps to extend the benefits of the Settlement to other identifiable groups, including the four Alaska Native "urban" communities that were "originally Native villages, but [came to be] ... composed primarily of non-Natives," and—in the context of group corporations—smaller groups of between 3 and 25 individuals. Although Governor Hickel objected to the incorporation of Alaska Native communities in Kenai or Nome, Congress nevertheless authorized Kenai to incorporate as an urban corporation and Nome to incorporate as a village corporation.[105] As noted above, when it enacted ANILCA in 1980, Congress deemed seven additional communities in the Koniag region to be eligible villages under ANCSA, terminated an eligibility review for an eighth village, and authorized a ninth community to establish a Native group corporation. There is no reason Tenakee should not be treated equally.

Third, in the context of Congress' unique approach to Southeast Alaska, Congress should consider its own approach, in 1971, to the village of Kasaan, a Southeast Alaska village that was listed under ANCSA but had to confirm its eligibility to receive benefits.

Historically, Tenakee and Kasaan share important characteristics in that they both: (1) were settled prior to the arrival of whites; (2) occupied an area in the early towns; (3) were excluded from the Tongass National Forest, with land reserved for Native use; (4) had Alaska Native Brotherhood/Sisterhood organizations; and (5) had Native cemeteries, graves, or totems near their villages.[106]

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[104] *Id.* at 56.
[105] *Id.* at 15.
[106] *Id.* at 68.

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Kasaan, unlike Tenakee, was listed as a village by Congress in Section 16 of ANCSA. For villages listed in Section 11 or 16 of ANCSA, like Kasaan, a majority of the residents had to be Native only if the determination was made that the village was modern and urban in character.[107]

Kasaan's status as a Native village was nevertheless challenged by the U.S. Forest Service and at least two other groups. On appeal, Kasaan was able to demonstrate that it met the requirements for a listed village, including that at least 25 of the Alaska Native individuals who enrolled to Kasaan could be considered permanent residents of the community as of April 1, 1970, and that at least 13 persons who enrolled to Kasaan used the village during 1970 as a place where they actually lived for a period of time. In ruling for Kasaan, the ANCAB made these observations:

> In determining the "permanent residence" of a Native enrolled under the Act, it is necessary, as it is in determining "home" and "domicile," to consider the physical characteristics of the dwelling place, the time spent therein, the things done therein, the intention when absent to return to that place, other dwelling places of the individual, and similar factors concerning them. As demonstrated above, it is also necessary to recognize the mobility of the Native life style necessitated by economic and educational pressures. It is impossible to ignore the impact of the cash economy upon a traditional subsistence existence. The fact that education and employment can be acquired in many instances only without the village dictates the emphasis upon the intent to return to the Native home when absent from that place contained in the definition of "permanent residence."
>
> The majority of Natives enrolled to Kasaan who testified at the hearing were born and raised in Kasaan, moved to Ketchikan, and returned to Kasaan seasonally to live according to their Native family life style. The obvious lack of employment and educational opportunity in Kasaan has forced people away from the village. But a majority of Natives enrolled to Kasaan who testified at the hearing have indicated by word and by their frequent contact with the village a genuine and continuing intent to return to that place they consider home. These Natives have been forced to leave the village at some time in their lives. But they have always returned and lived in the village on a frequent and continuous basis. Such objective evidence of their intent must be given appropriate consideration. A majority of these individuals and those related to them must be considered "permanent residents" of the village of Kasaan.
>
> Based on the foregoing, the Board finds that the Native village of Kasaan did have 25 or more Native residents on April 1, 1970. Although the question of whether or not 13 Natives enrolled to Kasaan who were residents thereof used the village as a place where they actually lived for a period of time was not in issue in this appeal, the Board further finds that 13 Native residents of Kasaan did use the village during 1970 as a place where they actually lived for a period of time.[108]

Unfortunately for Tenakee, it was not listed in Section 16 of ANCSA, and it did not have the right to appeal its unlisted status (as discussed above).

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[107] 43 C.F.R. § 2651.2(b)(4) (2020).
[108] *U.S. Forest Serv. v. Village of Kasaan*, A.N.C.A.B. VE# 74-17, VE# 74-18 (June 14, 1974) (emphasis added).

If Tenakee had been listed, it would have had an opportunity to defend its status as a village pursuant to the same regulatory criteria that applied to Kasaan. With 64 enrollees, Tenakee more than met the requirement of 25 Alaska Natives enrollees. Tenakee was not modern or urban in character; therefore, Tenakee would not have had to establish that a majority of its residents were Native. Under 43 C.F.R. § 2651.2(b), Tenakee would have had to establish "an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style, and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time." We note that just eight individuals were identified as residents of Kasaan in the 1970 Census, and yet Kasaan was easily able to demonstrate that at least 13 persons who enrolled to Kasaan used the village during 1970 as a place where they actually lived for a period of time; Tenakee never had an opportunity to demonstrate that this standard was met. We do not have good population data for Tenakee in the years preceding 1970, but we do know that, as late as 1965, BLM rejected a non-Native application for a trade and manufacturing site at the Indian village of Tenakee on the basis that the "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."

Fourth, and finally, ANCSA's implementing regulations established that "[t]hat no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years."[109]

Tenakee, like Kasaan, saw its population decline starting in the 1950s due to the decline of commercial fisheries.[110] The ISER Report explains why this was so:

> There was continued population movement to the new white towns at a more gradual rate in subsequent years, but there was an acceleration of migration after 1950, prompted by the crash in the fish stocks, which many Indians depended on.[111]

In the 1950s, Alaska salmon runs were declared a federal disaster. According to the State of Alaska, several reasons were likely to blame:

> Lax federal management and a lack of basic research into salmon runs were surely factors. Federal law required half of all runs escape upriver to spawn the next generation, but nobody really counted. Wartime demand for protein resulted in an overharvest of Alaska's salmon runs which steepened the decline. Long-term fluctuations in climate, later known as the Pacific inter-Decadal Oscillation, also undoubtedly played a role.[112]

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[109] 43 C.F.R. § 2651.2(b)(2).
[110] ISER Report at 55, 64. The ISER Report indicates that there were only a "handful of people" remaining in Kasaan after its cannery closed in 1953.
[111] *Id.* at 47.
[112] Alaska Department of Fish and Game, Sustaining Alaska's Fisheries: Fifty Years of Statehood, Starbound (1949-1959) 1 (Jan. 2009).

Whether "an act of God" (i.e., the impact of climate fluctuations on the fisheries) or "an act [or lack thereof] of . . . government authority" (i.e., lax federal management and resultant overfishing, and the need to supply the wartime demand for protein), or both, Tenakee's Native residents appear to have left the village as a result of outside forces that began to impact Tenakee 20 years before ANCSA was enacted. We do not have specific population numbers for the Alaska Native residents of Tenakee during the period prior to the 1970 Census, so we do not know whether Tenakee would have been able to demonstrate that it met the threshold population requirement but became "temporarily unoccupied in 1970 *because of an act of God or government authority occurring within the preceding 10 years*." It certainly appears that this may have been the case.

ANCSA's implementing regulations, which appear to apply to situations like that faced by Tenakee; Congress's treatment of the village of Kasaan; and Congress's efforts to extend the benefits of ANCSA to multiple other Alaska Native groups, all reflect a broader effort on the part of the Federal Government to preserve the aboriginal rights of defined Alaska Native groups. The socio-economic pressures that forced Tenakee's Native residents to leave the village might have been truly temporary if the Native community had simply been afforded the same opportunity as Kasaan. In fact, the ISER Report points out that Kasaan *repopulated after it was listed* as a Native village under ANCSA because people's confidence was "restored in the community."[113]

Conclusions

It is impossible to demonstrate to this Subcommittee that the five Landless communities "met" the requirements of ANCSA for incorporation as urban corporations because ANCSA did not establish any requirements at all for urban corporations. However, like the Alaska Native populations in the four towns that did incorporate urban corporations, the five Landless villages all "originally were Native villages, but [came to be] ... composed predominantly of non-Natives."

All five of the Landless communities have well-documented histories as Native villages. Tenakee, certainly, was smaller, but like the four larger Landless communities, Tenakee has a long and well-documented history as a Native village. The federal government recognized Tenakee as a Native place, identifying Tenakee as an "Indian settlement" in a 1935 executive order excluding Tenakee from the Tongass National Forest and rejecting a non-Native application for a trade and manufacturing site at the Indian village in Tenakee in 1965 in recognition of the "possessory rights to this tract" and use and occupancy of the site by the Native people of Tenakee.[114] The 64 Alaska Native individuals who enrolled to Tenakee are in fact an "identifiable group" with a "common claim" to lands that were, for decades, recognized by the United States as lands "used an occupied" by this Native community.

Congress has significant discretion to settle aboriginal claims, and Congress has amended ANCSA on numerous occasions to extend the benefits of the Settlement to Native communities that were wrongly and unjustifiably excluded. The five Landless Alaska Native communities should be authorized to incorporate urban Alaska Native corporations based on the structure and objectives of ANCSA, and the inequitable and discriminatory history that resulted in their exclusion.

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[113] ISER Report at 64.
[114] *Id.* at 56.



Sealaska Logging- Cleveland Peninsula- Photo by Joe Sebastian

What So Called "Landless" Supporters and Media Don't Tell You*

A hyperlinked transcript of this commentary will be posted to the KFSK Commentary website

Because there has been a virtual news blackout on what's inside the Landless bill, I've unpacked it here in my five, short minutes. However, the public deserves a much deeper "hard look" at the bill's impacts.

The so-called "Landless" legislation[1], would privatize over 115 thousand Tongass acres in 61 cherry-picked selections and create five new Southeast Alaska Native corporations scattered across vast areas of the Tongass. This, where ten such

[1] S.1889 and it's companion H.B.4748 Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act

corporations already exist.[2] Over the decades, they have made their indelible scars on these landscapes in the form of tidewater to alpine clearcuts.

There's reason plenty for everyone who depends on and cherishes our beautiful, public wild places to be concerned. We are all in this together.

If enacted, the conservation gains realized by the recent reinstatement of the Roadless Rule on the Tongass will be largely erased—in a heartbeat. This is because nearly all the selections contain inventoried roadless acres amounting to 52% roadless.[3] That represents more than two decades of public hearings, rallies, and 500,000 public comments in support of the Roadless Rule-undone.

The Landless legislation is opposed by national, state, and regional environmental organizations. In that order and to name but three, this includes, Defenders of Wildlife, Alaska Wilderness League, and Alaska Rainforest Defenders.

"Landless" advocates refuse to write enforceable language into the bill to prohibit logging. Instead, they claim that logging in our region has waned and use vague, verbal assurances that it won't occur on their selections. In fact, landless

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[2] Cape Fox (village corp/Saxman); Huna Totem (village corp/ Hoonah); Haida INC (village Hydaburg); Goldbelt INC (Juneau urban corp); Kavilco INC (village corp Kasaan). Klukwan INC. (village corp Klukwan); Shee Atika INC (urban corp, Sitka); Sealaska INC. (Regional); Kake Tribal INC.(village corp.Kake); Kootznoowoo INC. (village corp,Angoon
**Cape Fox Corporation https://www.capefoxcorp.com/), village corporation for Saxman (https://en.wikipedia.org/wiki/Saxman,_Alaska); Huna Totem Corporation (https://en.wikipedia.org/wiki/Huna_Totem_Corporation), village corporation for Hoonah (https://en.wikipedia.org/wiki/Hoonah,_Alaska); Haida Corporation (http://www.haidacorporation.com/), village corporation for Hydaburg (https://en.wikipedia.org/wiki/Hydaburg,_Alaska); Goldbelt, Inc. (http://www.goldbelt.com/)
, urban corporation for Juneau (https://en.wikipedia.org/wiki/Juneau,_Alaska) Kavilco Incorporated (http://www.kavilco.com/)
, village corporation for Kasaan (https://en.wikipedia.org/wiki/Kasaan) Klukwan, Inc. (http://www.adn.com/article/20120810/klukwan-files-bankruptcy), village corporation for Klukwan (https://en.wikipedia.org/wiki/Klukwan) Shee Atika, Incorporated (http://www.sheeatika.com/), urban corporation for Sitka (https://en.wikipedia.org/wiki/Sitka,_Alaska) Sealaska Corporation (https://en.wikipedia.org/wiki/Sealaska_Corporation) (Regional); Kake Tribal Corporatio (https://www.kaketribalcorporation.com)
n; Kootznoowoo Inc (https://kootznoowoo.com/our-story/). for Angoon**

[3] Testimony of Jacqueline Emanuel, Associate Deputy Chief, UDSA Forest Service, Before the United States Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forest, and Mining, October 25, 2023 https://www.energy.senate.gov/hearings/2023/10/subcommittee-hearing-to-receive-testimony-on-pending-legislation

representatives have admitted "that nothing — including logging — would be off the table."[4] Legal Notices in the Petersburg Pilot confirm that export-in-the-round logging continues in SE Alaska—unabated.[5] To maximize profits, the industry prefers landscapes they can clearcut under lax State regulations—thus the privatization scheme.[6]

Other anticipated development includes mining and lodges at the head of popular bays and inlets. The lands proposed for selection are already fully utilized to their highest purpose and will displace current, fully occupied public uses;

The proposed legislation is not "Land Back" as it is cloaked. Beneficiaries of the bill will receive additional[7] corporate shares-not land. They were not "left out" [of ANCSA]. The legislation, backed by a half-million dollar campaign,[8] employs a greenwashed script using repeated marketing catch phrases, to dupe the public into accepting the legislation, no questions asked.

The bill will restrict access. Bill advocates claim that they have taken extraordinary measures to allow public access, but the bill's text confirms it includes "reasonable exceptions"— which are highly subject to interpretation. Moreover, the bill language allows only for access through "roadways, trails, and forest roads." It does not provide for shoreline access-the most popular way users get to uplands.

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[4] With $500,000 in support from Sealaska, landless Alaska Native communities continue push for their own village corporations September 6, 2019 by June Leffler, KSTK - Wrangell https://www.ktoo.org/2019/09/06/with-500000-in-support-from-sealaska-landless-alaska-native-communities-continue-push-for-their-own-village-corporations/

[5] For instance, Legal Notices. Petersburg Pilot: August 24 & 31/2023, Kaliki Cove Timber Sale; Whale Pass Timber Sale, Sept 22 & 29, 2022 (and many more in recent issues).

[6] Under the State of Alaska Forest Resources and Practices Act ("FRPA") vs. Federal regulations. For instance, there are no limits on the size of clearcuts, narrower fish stream buffers, no consideration of cumulative impacts, no enforceable considerations for wildlife habitat.

[7] This is in addition to their existing biannual Sealaska "At Large" shares granted under ANCSA. https://www.sealaska.com/shareholders/sealaska-announces-spring-2023-distribution/

[8] With $500,000 in support from Sealaska, landless Alaska Native communities continue push for their own village corporations September 6, 2019 by June Leffler, KSTK - Wrangell https://www.ktoo.org/2019/09/06/with-500000-in-support-from-sealaska-landless-alaska-native-communities-continue-push-for-their-own-village-corporations/

Landless advocates claim that they only want a "1% tiny sliver" of the Tongass. What they don't tell you is that two thirds of the Tongass is rocks, ice, muskeg and scrub timber. The remaining high-volume old growth stands, important to various species, are coveted by the timber industry but now represent only a fraction of the original on the Tongass. Those stands on Native corporation land, have been essentially extirpated.

No Congressional field hearings or other fact finding forums for this monumental legislation have been held throughout affected SE Alaska communities, despite the Delegation's frequent travel in the region.

Most troubling of all is that the bill is a Pandora's box. There are about 80 other similarly ineligible[9] Alaska communities as the five seeking corporate status, that will demand similar treatment if the bill is enacted.[10] This amounts to 1.8 million acres of new, privatized statewide land selections—"all demanding recognition and financial resources."[11]

Federal public lands should remain in federal public hands-not corporations.

Sincerely,

Rebecca Knight
Petersburg, AK

[9] Failed to meet simple eligibility criteria of not being modern or urban in character and having a majority Native population.

[10] U.S. Department of the Interior, Office of the Secretary, "Responses to Questions Posed by Senator Frank Murkowski Following the July 29, 1997 Senate Energy and Resources Committee Hearing on S.967," September 23, 1997."

[11] Letter to Honorable Don Young, Chairman Committee on Resources, House of Representatives, Washington, D.C 20515. Jul 24, 1996 from Sylvia Baca, Assistant Secretary Department of the Interior and Jim Lyons Under Secretary Department of Agriculture.

Bullet Points_S. 2554 _ Alaska Native Landless Equity Act
(Rebecca Knight)

- Introduced by Senator Lisa Murkowski and Representative Nick Begich, the 2025 Alaska Native Landless Equity Act (S. 2554) represents three decades of consecutive, unsuccessful legislative attempts to create five new Alaska Native corporations;
- S. 2554 would privatize 115,200 acres total or 23,040 acres for each new corporation from the Tongass National Forest;
- The five communities were fairly compensated under the 1971 Alaska Native Claims Settlement Act as "At-Large" members of Sealaska and received not only beneficial interest in surface and subsurface rights, but also have enjoyed lucrative shareholder dividends for 54 years—far exceeding those of village shareholders;
- The five communities were not left out of the ANCSA. They simply failed to meet eligibility requirements, that their communities not be of a modern and urban character, with a minimum of 25 native residents, and the majority be Natives;
- The legislation is precedent setting. If approved, approximately 80 other, similarly treated Native communities[1], would also seek benefits that the five communities were awarded under S.2554, potentially impacting an additional 1.8 MM acres statewide—a Pandora's Box;
- In short, the precedent setting nature of the bill, may eclipse/exacerbate the certain resource extraction impacts of S. 2554;
- Public access to the new selections is not guaranteed. Moreover, long established public hunting, fishing, and recreation on the selected lands would be displaced;
- S.2554 provides no language to prohibit clearcutting and/or other resource extraction like mining. Important fish and wildlife habitat will be destroyed;
- Where resource extraction occurs, lax State (vs. Federal) logging regulations provide for narrower fish stream buffers, no limit on size of clearcuts, no enforceable wildlife habitat protections, no consideration of cumulative impacts, and allows log export in the round;
- In addition to valuable Tongass land, S. 2554 gifts unquantified tens of millions of dollars of taxpayer funded Tongass NF infrastructure (roads, bridges, trails, log transfer facilities, silvicultural improvements, etc.) to the newly created, private corporations;

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[1] Letter to Honorable Frank Murkowski, Chairman, Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510 from United States Department of the Interior OFFICE OF THE SECRETARY Washingion. D.C. 20240 SEP' 23 1997

• S. 2554 cherry-picks for the best stands of trees that survived 60-70 years of clearcutting.

https://www.juneauempire.com/opinion/my-turn-why-i-oppose-privatization-of-the-tongass-rainforest/



Tongass National Forest. (U.S. Forest Service photo)

My Turn: Why I oppose privatization of the Tongass rainforest

- By Dominick A. DellaSala
- Tuesday, October 29, 2024 7:21amOPINIONCOLUMNS

Sen. Lisa Murkowski has been trying to privatize the Tongass for years. Her latest effort, the so-called "Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act," S.1889/H.R. 4748, is a giveaway to corporate interests of 115,200 acres, including 80,000 acres of prime old-growth forests and roadless areas. It would degrade the bio-cultural integrity of wild areas by opening them up to developers. And it would continue promoting the dispossession and disenfranchisement of Indigenous peoples and local communities that depend on the Tongass' world-class fish and wildlife populations that have sustained the ecology and economy of the region.

Tlingit elder Wanda Culp describes the act as "an industrial-rooted tool of Congress created to exterminate Indigenous land use and streamline the liquidation of 'natural resources' in our ancient ancestral homelands." I stand alongside Indigenous advocates and conservation scientists in opposing this shortsighted legislation.

Last February, I organized a letter signed by 124 fellow scientists that was sent to President Biden, Secretary Haaland, Senator Schumer, and White House National Climate Advisor Zaidi requesting that they oppose the bill and uphold their environmental and social justice commitments. We now need follow through on that effort as the bill could be brought to a full vote in the Senate or even attached to critical legislation like the Farm Bill, bypassing meaningful opposition.

For over three decades, I have been documenting the globally significant values at-risk on the Tongass rainforest. Here's what I and my colleagues have found that makes the Tongass unique and worthy of protection.

The Tongass is the nation's top national forest because it includes over 5 million acres of productive old-growth forests and over nine million acres of intact roadless watersheds. My research shows that it is the region's best natural climate solution, storing about 20% of all the carbon in the entire national forest system. The oldest trees are most important because they absorb massive amounts of our carbon pollution, as they have been for centuries, through the miracle of photosynthesis. Keeping carbon in old-growth forests by protecting them from logging is the best way to ensure that their irreplaceable values persist.

Because of its coastal distribution, the Tongass is a recognized climate sanctuary for fish and wildlife compared to interior Alaska and regions further south that are overheating the fastest. Importantly, five species of salmon find

sanctuary in the intact watersheds of the Tongass, supplying fisher and Indigenous peoples with an iconic benefit that needs cool streams to survive, especially as the climate changes. Development would degrade all these climate critical properties.

Efforts to dismantle protections for the Tongass have repeatedly faced public outcry during my long Tongass tenure. Over 14 attempts to overturn the 2001 Roadless Rule have been met with legal challenges and have ultimately failed because the public, scientists, and Indigenous people like Wanda Culp have spoken truth to power. And the courts have recognized the unique values of the Tongass rainforest, acknowledging its importance for future generations.

The Forest Service is currently amending all national forest plans, including the Tongass, to address the climate and biodiversity crises under President Biden's direction. The Tongass also has been shifting timber supply out of irreplaceable old-growth forests and into secondary forests where impacts are much lower. However, S.1889/H.R. 4748 would move us in the opposite direction, threatening this important progress that is a global model of conservation working with timber supply interests.

The Tongass is a symbol of natural beauty and irreplaceable bio-cultural relations that have been in place for millennia. Alaska needs to weather the climate change storm. Protecting its natural climate solutions, concentrated on the Tongass, is critical to how the region responds. We must ensure that its future is safeguarded for generations to come by opposing misguided privatization that would undermine the Tongass' unique character.

• *Dominick A. DellaSala is chief scientist at Wild Heritage, a Project of Earth Island Institute in Berkeley, California. He is speaking at The SeaBank Summit on Nov. 13 in Sitka.*

Alaska Rainforest Defenders
P.O. Box 6064
Sitka, Alaska 99835
defenders@akrainforest.org

November 3, 2023

To: The Subcommittee on Public Lands, Forests, and Mining (of the U.S. Senate Committee on Energy and Natural Resources)

Subj: Comments for the record of the October 25, 2023 hearing on S. 1889 ("Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act")

Dear Chair Cortez Masto, Ranking Member Lee, and Members of the Committee;

Alaska Rainforest Defenders (ARD) is an independent regional environmental organization in Southeast Alaska, formed twelve years ago. We arose to help close a crucial gap in maintaining the integrity of the region's lands, forests, fish and wildlife and their ability to sustain the people of our region.

ARD recognizes the strong cultural, spiritual and hereditary connections of indigenous people of the five communities to the land and waters of their surroundings and the wildlife and fish supported there. The matter concerning S.1889 is whether the rights and equity of the members of the five villages have been addressed in ANCSA, and if not how and whether further redress, through the bill, comports with the substantial cumulative impacts of past resource exploitation of the region. Many impacts of that exploitation will not be fully evident for decades, nor those in the future of these proposed new ANCSA corporations.

S.1889 is yet another attempt by Alaska's congressional delegation, in a long chain of attempts going back decades, to convey massive amounts of Tongass National Forest land to the state or to private entities, in order to unreasonably accelerate development of natural resources under the weaker environmental and planning regulations and capabilities of those entities than the federal regulations.

Those many attempted land conveyance authorizations — all but two of which failed in Congress so far — include large-scale ones to the State of Alaska (apart from its statehood entitlement), the University of Alaska, the Alaska Mental Health Trust, the regional Native corporation (Sealaska), and repeatedly the five would-be village urban corporations in S.1889.

The Senate Energy and Natural Resources Committee should quash S.1889 *for several substantive reasons*:

1. The lands proposed for selection are fully utilized already to their highest purpose. Under S.1889, unfettered forest or mineral development can be expected, to the detriment of all those other uses and the sustenance that they provide to the region's people. Region-wide, cumulative impacts to those uses are already very high as a result of unwisely administered resource extraction on federal lands and especially on state and private lands including those of Native corporations. S.1889 has no provisions to prevent such further resource abuse and its harms to all residents of the region.

2. The proposed selections are scattered all over the region, instead of being compact to each of the five villages, as ANCSA requires. This will create management problems for lands under other ownerships, a long-term adversity ANCSA sought to avoid. An even more important problem, because it would be statewide, is that allowing this manner of selection will create an inequity for all other ANCSA corporations, because they were unable to select land in this way. By creating this inequity, endless additional amendments to ANCSA can be expected in years ahead.

3. S.1889 will also reopen ANCSA in other ways, creating even deeper problems statewide than above. In the words of previous Secretaries of the Interior and Agriculture Departments, Jim Lyons and Sylvia Baca to Congress:[1]

[1] Letter from Secretaries Baca (Interior) & Lyons (Agriculture) to Rep. Don Young, concerned a 'landless' bill. July 24, 1996. In Senate Rept. 105-119 at 32-37. https://www.govinfo.gov/content/pkg/CRPT-105srpt119/html/CRPT-

> "Recognition of the five "landless" communities in southeast Alaska would itself effect an inequity among other "landless" communities elsewhere in Alaska. Recognition of the five "landless" communities could reopen the entire settlement scheme of ANCSA and result in a never-ending, extremely costly, and unattainable effort to effect total equality of treatment among all Natives in all communities."
>
> …
>
> "Recognition of any of these five communities would substantially lower the standards set out in ANCSA for village recognition with implications elsewhere. There are many 'landless' villages in Alaska which do not meet the Act's criteria for eligibility to select land. … Once recognition of heretofore ineligible communities in the southeast is commenced, pressure will mount for similar treatment by other communities. For example, Anchorage and Fairbanks have larger Native enrollments than any of the communities now seeking recognition. There is no land available in either of those communities for granting a new corporation a land base."
>
> …
>
> "Every regional corporation has 'at-large' stockholders who are 'landless' Natives, and even if Congress recognizes the five communities in the southeast, Sealaska Corporation will continue to have 'landless' at-large stock- holders. Therefore, recognition of these five communities will become a precedent for other unrecognized communities in all twelve regions all demanding recognition along with more land and financial resources."
>
> …
>
> "Recognition would not redress inequities, but result in new ones among Native shareholders and among groups, villages and communities throughout Alaska."

Within the bill itself, and in comparison to the existing ANCSA corporations in Southeast Alaska, one such inequity is that the bill uses a one-size-fits all approach by granting the same amount of acreage to each village or urban corporation in the region, despite large differences in Native enrollment (e.g. for Tenakee vs. for Juneau).

4. At the heart of controversy over S.1889 and similar previous bills is the matter, in the first place, of whether the five communities are eligible communities. Proponents of the 'landless' legislation often cite the 1994 report on their eligibility, commissioned by Congress and done by Alaska's Institute for Social and Economic Research (ISER). For example, in his June 17, 2015 testimony to a House Natural Resources subcommittee Leo Barlow (representing the Southeast Alaska Landless Corporation) said that the ISER report "concluded that requirements for villages eligible to form Native Corporations were met by the Native villages of Haines, Ketchikan, Petersburg, Tenakee and Wrangell."

Such mistaken claims about the ISER report's conclusions have circulated for decades. In fact, however, ISER's Director Lee Gorsuch wrote in a December 7, 1993 letter[2] to KFSK reporter Amy Miller (to set the record straight on inaccuracy in a news story by her):

> "Because they were denied the authority to form village or urban corporations, the five study communities received no land entitlements. The study villages were not, however (as you reported), denied all benefits under ANCSA. Qualified residents of those villages received cash payments and they are at-large members of Sealaska regional corporation. We did not, as you reported, make a finding that Congress had inadvertently omitted the study villages from land benefits, nor did we recommend that Congress should now award them land. We did not, as you implied, say that the study villages were entitled to the same economic benefits as Southeast communities with village or urban corporations have received. We did estimate what those benefits had totaled to date, but that is a much different thing from making a recommendation."

105srpt119.htm **... or …** [footnote extends to bottom of next page …]
https://books.google.com/books/download/Alaska_Native_Claims_Settlement_Act_Amen.pdf?id=u8jxrGjIuEYC&output=pdf&sig=ACfU3U3l4-nQxU3QstH4ftZWu0DvawDjvg

[2] Attached

...

"Congress will decide what if any changes to make in the status of the five study villages, based on thus report and other sources. It was not in our scope of work to make recommendations—just to present factual information." [Emphasis added.]

Further, several federal agency officials including a Dept. of Agriculture Undersecretary, a Dept. of Interior Assist. Secretary, and a Dept. of Indian Affairs Director wrote and testified before Congress in 1996 and 2015 regarding very similar versions of this bill. They reiterated that the five communities were found ineligible for village status under ANCSA because they failed to meet ANCSA's eligibility criteria. This was not an 'oversight' or an 'inadvertent' omission. It was an informed, considered, and an intentional determination under ANCSA. As Secretaries Baca and Lyons concluded in their 1996 letter to Rep. Young (cited earlier):

> "The proposed five 'landless' communities meet none of the criteria for corporate recognition, that is, have a majority Native population and not being modern or urban in character. None of the five has a Native majority and four out of the five are modern and urban in character. Tenakee has no actual Native residents and the enrollees only represent seven percent of the population of the community. Three of the communities appealed their status through the administrative processes prescribed by the Secretary of the Interior and were denied. *Recognition of any of these five communities would substantially lower the standards set out in ANCSA for village recognition with implications elsewhere.*"

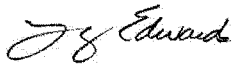
5. S.1889 does nothing to prevent logging of old-growth or mature second growth. Corporate proponents of the bill claim they won't log, but they refuse to include any logging restrictions or prohibitions in the bill. Though they claim they won't log, they say they intend to sell carbon certificates for the standing forest. However, this approach is fraudulent, because the purpose of the carbon market is to prevent forest from being logged. To seek obtaining forest that otherwise (in public ownership) would not be logged simply in order to sell development rights for carbon credits is contrary to the purpose, letter and spirit of the international agreements involved, and the prevention of climate change.

6. Despite claims to the contrary, public access to lands are not guaranteed due to the bill's language. The phrase 'reasonable restrictions' and other language on access are loose, and leave much to the discretion of the corporations that can lead to unreasonable harms to other users that those other users can redress only with difficulty, if at all.

Baca and Lyons, in their 1996 letter to Rep. Young, were also "concerned that such a [landless] proposal might be appended to ... other legislation [then] being considered in Congress." Indeed, this fear was well founded. In recent years Sen. Murkowski has twice made huge giveaways of, or swaps for, Tongass National Forest lands, through amendments to other bills, such as budget bills. This is a wholly inappropriate way for Congress to deal with major resource matters, such as those in S.1889.

It would be a travesty for the Senate Energy & Natural Resources Committee to leave S.1889 in a position to advance to the floor either as a standalone bill or as an amendment to other legislation. Indigenous land claims in Alaska were settled long ago. *Please quash* S.1889, so that it does not have an imprimatur of having had this hearing.

Sincerely,



Larry Edwards, President

Attachment: Dec. 7, 1993 letter by ISER Director Lee Gorsuch.

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SCHOOL OF PUBLIC AFFAIRS

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(907) 786-7710 FAX (907) 786-7739

December 7, 1993

Amy Miller,
Alaska Public Radio Network, Petersburg
Fax number 772-9296

Dear Ms. Miller:

While driving to work this morning and listening to KSKA, I was surprised to hear your story on the draft report, *A Study of Five Southeast Alaska Communities*, that we wrote for the U.S. Forest Service and other federal agencies. The story was inaccurate and disappointing. No one here at ISER was contacted for the story. If you had called me or Steve Colt, we could have pointed out several things that would have improved the accuracy of the story.

First, the report is still a draft and not a final report. It's not unheard of for draft reports to receive news coverage, but we prepare drafts so knowledgeable reviewers can help us find any omissions or mistakes or other shortcomings before we reach the final version. But the fact that the document is a draft is less important than the fact that you reported the substance of the report inaccurately.

We were asked, as we reported in the preface to the report, to examine two broad issues: (1) what is the available factual evidence on why Congress denied the five study communities the authority to form village or urban corporations under the Alaska Native Claims Settlement Act (ANCSA); and (2) how does historical use and occupancy in the five study communities compare with use and occupancy in other Southeast communities that received land under ANCSA. Because they were denied the authority to form village or urban corporations, the five study communities received no land entitlements. The study villages were not, however (as you reported), denied all benefits under ANCSA. Qualified residents of those villages received cash payments, and they are at-large members of Sealaska regional corporation.

We did not, as you reported, make a finding that Congress had inadvertantly omitted the study villages from land benefits, nor did we recommend that Congress should now award them land. We did not, as you implied, say that the study villages were entitled to the same economic benefits as Southeast communities with village or urban corporations have received. We did estimate what those benefits had totaled to date, but that is a much different thing from making a recommendation.

This report will be presented to Congress. Congress will decide what if any changes to make in the status of the five study villages, based on this report and other sources. It was not in our scope of work to make recommendations—just to present factual information.

We're always glad to receive news coverage of our work, and we have in the past felt that the Alaska Public Radio Network provided fair and accurate coverage. We would like you to set the record straight by airing a correction of this story. If you have any questions I'll be glad to talk to you.

Lee Gorsuch
Director, ISER
786-7710