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HUNA TOTEM CORPORATION LAND EXCHANGE ACT

SEPTEMBER 30, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1158]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1158) to amend the Alaska Native Claims Settlement Act, regarding the Huna Totem Corporation public interest land exchange, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Huna Totem Corporation Land Exchange Act."

SEC. 2. AMENDMENT OF SETTLEMENT ACT.

The Alaska Native Claims Settlement Act (Pub. L. 92–203, December 18, 1971, 85 Stat. 688, 43 U.S.C. 1601, et seq.), as amended, is further amended by adding a new section to read:

"SECTION . HUNA TOTEM CORPORATION LAND EXCHANGE.

"(a) GENERAL. The Secretary of Agriculture referred to as ("Secretary") in this section in accordance with the equal value provisions of section 22(f) shall, subject to valid existing rights and easements, convey to the Huna Totem Corporation the surface estate to the Federal lands described in subsection (b)(2) of this section and convey to Sealaska Corporation title to the subsurface estate in such lands.

"(b) DESCRIPTION AND DEADLINES. The land to be exchanged is located in the Copper River Meridian and is further described as follows:

"(1) the surface and subsurface estates to the land to be conveyed by Huna Totem Corporation and Sealaska to the United States, no later than ninety (90)

days after the effective date of this section, is depicted on the map dated September 1, 1007, and labeled attachment A, and is described as follows:

Municipal Watershed & Greenbelt Buffer

[T43S, R651E, C.R.M.]

Portion of Section	*Approximate Acres*
16	2
21	610
22	227
23	35
26	447
27	400
33	202
34	76
Approximate total:	1,999

"(2) The surface and subsurface estates to the land to be conveyed to Huna Totem Corporation and Sealaska by the Secretary of Agriculture shall be lands readily accessible to Hoonah and, where possible, located on the road system to Hoonah, and shall be conveyed within one hundred eighty (180) days after the conveyance of lands in subsection (b)(1); and are to be selected from the lands depicted on the map dated September 1, 1997, and labeled Attachment B.

"(c) TIMBER MANUFACTURING; EXPORT RESTRICTION. Notwithstanding any other provision of law, timber harvested from land conveyed to Huna Totem Corporation under this Section is not available for export as unprocessed logs from Alaska, nor may Huna Totem Corporation sell, trade, exchange, substitute, or otherwise convey such timber to any person for the purpose of exporting that timber from the State of Alaska.

"(d) RELATION TO OTHER REQUIREMENTS. To land conveyed to Huna Totem Corporation and Sealaska Corporation under this section is, for all purposes, considered land conveyed under the Alaska Native Claims Settlement Act.

"(e) MAPS. The maps referred to in this section shall be maintained on file in the Office of the Chief, United States Forest Service, and in the office of the Secretary of the Interior, Washington, D.C. The acreage cited in this section is approximate, and if a discrepancy arises between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land."

PURPOSE OF THE MEASURE

The purpose of S. 1158, as ordered reported, is to direct the Secretary of Agriculture to enter into an equal value exchange of lands and interests therein, in the Tongass National Forest with Huna Totem Corporation and Sealaska Corporation.

BACKGROUND AND NEED

The city of Hoonah is located in Southeast Alaska on the northeast part of Chichagoff Island. Hoonah has been the home of the Huna people since the last advance of the great ice masses into Glacier Bay, forcing the Huna people to look for new homes. Since the Huna people had traditionally used the Hoonah area each summer as a subsistence harvesting area, it was natural for them to settle in the area now called Hoonah. The community has a population of approximately 918 residents and is located forty miles from Juneau, Alaska's capital city.

Within the city of Hoonah is located the Huna Totem Corporation, an Alaska Native Corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) (P.L. 92–203). Huna Totem is the largest Tlingit Indian Village Corporation in Southeast Alaska. Under the terms of ANCSA each village corporation had to se-

lect lands within the core township or townships in which all or part of the Native village is located.

In 1975, Huna Totem filed its ANCSA land selections within the two mile radius of the City of Hoonah as mandated by ANCSA. Since the community of Hoonah is located along the shoreline at the base of Hoonah Head Mountain, the surrounding lands are steep hillsides, cliffs, or are designated watershed for the municipal water sources. Most of the land, approximately 1,999 acres, is not conducive to logging or development due to the topography and watershed limitations.

To resolve this problem, S. 1158 would require the Huna Totem Corporation to convey ownership of approximately 1,999 acres of land used for the municipal watershed to the United States Forest Service. In exchange, the Huna Totem Corporation will be allowed to select other lands readily accessible to Hoonah in order to fulfill their ANCSA entitlement. This legislation also requires the exchange of lands to be of equal value and provides for additional compensation if needed. Lastly, the legislation requires that any potential timber harvested from land acquired by Huna Totem Corporation not be available for export.

LEGISLATIVE HISTORY

S. 1158 was introduced on September 10, 1997, by Senator Murkowski. The full Committee held a hearing on S. 1158 on September 17, 1997. At the business meeting on September 24, 1997, the Committee on Energy and Natural Resources ordered S. 1158, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 24, 1997, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1158, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 1158, the Committee adopted an amendment in the nature of a substitute offered by Senator Murkowski. In addition to numerous clarifying, technical and conforming changes, the bill was reported with an amendment assuring the Sealaska subsurface estate will be transferred to the United States in conjunction with the Huna Totem surface estate. Additionally, the amendment clarified that the values of the lands and interests to be exchanged be equal.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section states that the Short Title of the S. 1158 to be the "Huna Totem Corporation Land Exchange Act".

SEC. 2. AMENDMENT OF SETTLEMENT ACT

Section 2(a) directs the Secretary of Agriculture, in accordance with the equal value provision of Section 22(f) of ANCSA to convey

to Huna Totem Corporation the surface estate and to Sealaska Corporation the subsurface estate to certain lands as described in Section (b)(2) of the legislation. Section 2(b)(1) directs that within 90 days after enactment the surface and subsurface interests owned by Huna Totem and Sealaska Corporation are to be conveyed to the Secretary. This section also contains a legal description of those lands along with a reference to maps showing the municipal watershed. Section 2(b)(2) requires that within 180 days after the lands described in Section 2(b)(1) have been conveyed to the Secretary, the Secretary shall convey the surface estate to Huna Totem Corporation and the subsurface estate to Sealaska Corporation in lands selected by Huna Totem Corporation from the area depicted on the map described in this section. Section 2(c) requires that any timber harvested from the lands conveyed to Huna Totem Corporation under this section not be available for the purpose of exporting that timber from the state of Alaska. This section also prohibits any party to which Huna Totem Corporation may sell, trade, exchange, substitute, or convey any of the timber from the lands it receives under this section from using the timber for the purpose of export. Section 2(d) requires the land conveyed to Huna Totem Corporation and Sealaska Corporation to be for all purposes, considered land conveyed under ANCSA. Section 2(e) directs the maps referred to in this section to be maintained on file in the Office of the Chief, Forest Service, and in the Office of the Secretary of the Interior, Washington, D.C. Should a discrepancy arise between cited acreage and lands on the maps this section dictates that the maps control.

COST AND BUDGETARY CONSIDERATIONS

On September 24, 1997, the Committee on Energy and Natural Resources requested cost estimates to be prepared by the Congressional Budget Office for S. 1158. These reports had not been received at the time the report on S. 1158 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1158. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1158, as ordered reported.

EXECUTIVE COMMUNICATIONS

On, September 25, 1997, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations on S. 1158. These reports had

not been received at the time the report on S. 1158 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Committee hearing follows:

STATEMENT OF ELEANOR TOWNS, DIRECTOR OF LANDS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to discuss these bills with you. I am Eleanor Towns, the national director of the lands program for the Forest Service. I am accompanied today by James B. Snow, Deputy Assistant General Counsel, U.S. Department of Agriculture.

S. 1158 would amend the Alaska Native Claims Settlement Act (ANCSA) to require the Secretary of Agriculture to convey Federal land in the Tongass National Forest to the Kake Tribal Corporation, Huna Totem Corporation, and Sealaska Corporation within 90 days of enactment, in exchange for surface interests in certain land within the townships to Kake and Hoonah. The Administration strongly opposes enactment of both bills.

Both bills set unacceptable precedents by reopening native entitlements under the Alaska Native Claims Settlement Act (ANCSA) and by enabling village corporations to exchange lands they selected under ANCSA for more valuable Federal land. Both bills direct land exchanges that are not in the public interest.

ANCSA effected an equitable settlement

The Alaska Native Claims Settlement Act (ANCSA) granted over 200 village corporations rights to select public lands for a variety of uses. Each corporation was required to select the public lands within the township in which the village is located. Any remaining lands needed to complete a village corporation's entitlement were to be selected from adjacent townships withdrawn for selection. Section 16 of ANCSA entitled each of ten village corporations in Southeast Alaska, including those from Kake Tribal and Huna Totem Corporation, to select 23,040 acres of public land in contiguous and reasonably compact tracts.

ANCSA provided each village corporation with management control over land in the core township immediately around the village. ANCSA did not require or contemplate that all land conveyed to village corporations be suitable for development. Nor did it require or contemplate a Federal responsibility to maximize financial returns to the village and regional corporations from the lands they selected.

If S. 1158 were enacted, any of the over 200 village corporations could argue that they too were entitled to exchange land they were required by law to select under ANCSA for more valuable Federal land. Setting this precedent would severely disrupt Federal land management throughout Alaska with significant costs and consequences for all of the American taxpayers. ANCSA was a final settlement and, as such, represented many trade-offs and compromises. Bills such as those before us threaten to unravel the settlement through piece-meal amendments.

In addition, the lands that Kake has identified for conveyance to them were not identified and withdrawn under ANCSA for selection by the corporation, and we are concerned that future claims by other village corporations would potentially seek to use a similar procedure to acquire lands not prescribed by ANCSA. In the long run, these types of exchanges could transfer vast wealth from the public to private corporations without equal value consideration to the United States.

Land exchanges not in the public interest

Mr. Chairman, we do not believe that the land exchanges directed in S. 1158 are in the public interest. The primary reason the Forest Service pursues land exchanges is to provide more efficient management of a forest through consolidation of existing federal ownership and to dispose of isolated parcels that are uneconomical to manage or where further consolidation is not anticipated. These bills are in direct conflict with these goals.

A premise in all public land law is that exchanges should be based on equal value not acre-for-acre as is proposed by these bills. It is common sense that the American public should get back something of equal value to what it gives up. In S. 1159 and S. 1158, Kake Tribal Corporation and Huna Totem Corporation would receive prime timber lands from the Federal government but, in return, some of the land that the Federal government would be receiving lands has already been cutover.

Another problem with the exchanges directed by these bills concerns the subsurface estate. Under ANCSA, Sealaska Corporation received the subsurface estate underlying village corporation selections in southeast Alaska. Under the bills, Sealaska would not exchange its rights underlying the areas conveyed to the United States but would acquire all the additional subsurface underlying the lands conveyed to Kake Tribal Corporation and Huna Totem Corporation. This would create a split estate in the areas that would be conveyed to the Federal government with the Federal government owning the surface and Sealaska Corporation owning the subsurface. Because of the many management problems engendered by split estates, USDA policy in exchanges it to require the exchange of both the surface and subsurface. The bills would result in a 4,426-acre windfall of additional subsurface estate in the Tongass National Forest for Sealaska Corporation and would not be in the public interest.

Section 22(f) of ANCSA authorizes equal value exchanges in Alaska between the Federal government and native corporations. In 1976, that authority was amended to allow for departures from equal value when the appropriate Secretary determined it to be "in the public interest" primarily in response to the difficulty of appraising land in Alaska where comparable sale data was sparse. However, the Forest Service's consistent administrative application of section 22(f) is to require equal value exchanges, with ambiguities in valuation permitted only where a demonstrable federal interest would be advanced by an exchange. No federal interest would be advanced by S. 1158.

S. 1158, Huna Totem Corporation

S. 1158 requires that the Secretary of Agriculture convey Federal lands in the Tongass National Forest to Huna Totem Corporation and Sealaska Corporation within 90 days of enactment in exchange for surface interests in lands in the township of Hoonah.

Under S. 1158, the Huna Totem Corporation would reconvey the surface interest in approximately 1,999 acres of land in Hoonah Township to the United States, but the subsurface estate in these lands would be retained by Sealaska Corporation.

S. 1158 identifies several parcels of lands to be conveyed to the United States from the Huna Totem Corporation. We do not have a full description of the lands that might be conveyed in exchange to the Government. However, we understand that one of the parcels is within the Hoonah watershed, but is not the source of Hoonah's municipal water supply. We also understand that some of the lands proposed for conveyance to the Government contain encumbrances that may present a variety of problems such as trespass residences or 14(c)(1) claimants and would require additional administration efforts, like issuing, managing, and collecting fees for special use permits. If the latter, this could substantially alter the number of acres conveyed to the United States.

We also are concerned about the effects that enactment of S. 1158 could have on the resource uses planned in the revision of the Tongass Land Management Plan. The bill could adversely affect lands set aside as wildlife habitat conservation areas. These same lands contain high value timber and would likely be desirable acquisitions for Huna Totem Corporation.

S. 1158 has the same technical and administrative problems as S. 1159. The timeframes to identify, value, and survey the lands involved are too short. The costs involved with survey are significant. The applicability of section 14(c)(3) of ANCSA to some portion of the lands in S. 1158 may be an issue. Huna Totem Corporation has not filed its 14(c) reconveyance plan with the Bureau of Land Management.

Closing

In summary, Mr. Chairman, the Administration strongly objects to S. 1158. We do not believe enactment of this bill would be in the public interest.

This bill sets unacceptable precedents by reopening native entitlements under the Alaska Native Claims Settlement Act (ANCSA) and by enabling village corporations to exchange lands they selected under ANCSA for more valuable Federal land. Both bills direct land exchanges that are not in the public interest. This bill could seriously disrupt Federal land management on the Tongass National Forest and result in potential windfalls for private corporations at the American taxpayers' expense.

That concludes my statement, Mr. Chairman.

ADDITIONAL VIEWS OF SENATOR BUMPERS

During consideration of S. 1158, the Committee adopted an amendment in the nature of a substitute that requires that the values of the lands and interests to be exchanged under this bill be equal. As a result, I voted to report the bill from the Committee. However, I have two additional concerns that are not adequately addressed in the Committee reported bill.

First, the Forest Service is concerned that the bill is a bad precedent. I agree. S. 1158 requires the Forest Service to enter into a land exchange agreement with Huna Totem Corporation, a village corporation, in order to return to Federal ownership lands within the township immediately surrounding the village that are important for municipal watershed purposes. In return, the village corporation will receive other lands on the Tongass National Forest that it can harvest. The Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203, granted more than 200 village corporations rights to select public lands for a variety of uses. Each corporation was required to select, as part of its entitlement, all public land within the township in which the village is located. While ANCSA intended a village corporation to control lands within the immediately surrounding township, it did not require or anticipate that *all* lands conveyed to village corporations be suitable for development. The Forest Service believes that enactment of these bills will likely result in additional village corporations requesting to return lands around their village that they were required by law to select pursuant to ANCSA in order to secure land currently in Federal ownership that is more economically viable. Ultimately, S. 1158 has the potential to undo settled Alaska Native claims as more and more villages seek to turn lands back to the Federal Government in exchange for more desirable lands elsewhere in the state.

Second, the Forest Service opposes S. 1158 because it does not believe that enactment of the bill will result in a mutually beneficial exchange. I agree. Land exchanges are generally pursued where both parties derive benefits. The Forest Service asserts that no compelling reason exists for the Forest Service to re-acquire lands in order to manage them for local watershed purposes. In fact, the recent revision of the Tongass Land Use Management Plan expressly discourages the acquisition of lands containing municipal watersheds due to management difficulties (lack of staff and equipment as well as the need to prepare special use permits for existing developments on the lands such as dams, pipelines, and water tanks). While the fact that the exchange contemplated under this bill must be equal value rather than acre for acre is a very positive step, the bill still has serious flaws that should be addressed.

DALE BUMPERS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1158, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 (43 U.S.C. 1601, et seq.), as amended.

"SECTION . HUNA TOTEM CORPORATION LAND EXCHANGE.

"(a) GENERAL. The Secretary of Agriculture referred to as ("Secretary") in this section in accordance with the equal value provisions of section 22(f) shall, subject to valid existing rights and easements, convey to the Huna Totem Corporation the surface estate to the Federal lands described in subsection (b)(2) of this section and convey to Sealaska Corporation title to the subsurface estate in such lands.

"(b) DESCRIPTION AND DEADLINES. The land to be exchanged is located in the Copper River Meridian and is further described as follows:

(1) the surface and subsurface estates to the land to be conveyed by Huna Totem Corporation and Sealaska to the United States, no later than ninety (90) days after the effective date of this section, is depicted on the map dated September 1, 1997, and labeled attachment A, and is described as follows:

Municipal Watershed & Greenbelt Buffer

[T43S, R61E, C.R.M.]

	Approximate Acres Portion of Section
16	*2*
21	*610*
22	*227*
23	*35*
26	*447*
27	*400*
33	*202*
34	*76*
Approximate Total	*1,999*

(2) The surface and subsurface estates to the land to be conveyed to Huna Totem Corporation and Sealaska by the Secretary of Agriculture shall be lands readily accessible to Hoonah and, where possible, located on the road system to Hoonah, and shall be conveyed within one hundred eighty (180) days after the conveyance of lands in subsection (b)(1); and are to be selected from the lands depicted on the map dated September 1, 1997, and labeled Attachment B.

"(c) TIMBER MANUFACTURING; EXPORT RESTRICTION. Notwithstanding any other provision of law, timber harvested from land conveyed to Huna Totem Corporation under this Section is not available for export as unprocessed logs from Alaska, nor may Huna Totem Corporation sell, trade, exchange, substitute, or otherwise convey such timber to any person for the purpose of exporting that timber from the State of Alaska.

"(d) RELATION TO OTHER REQUIREMENTS. The land conveyed to Huna Totem Corporation and Sealaska Corporation under this section is, for all purposes, considered land conveyed under the Alaska Native Claims Settlement Act.

"(e) MAPS. The maps referred to in this section shall be maintained on file in the Office of the Chief, United States Forest Service, and in the Office of the Secretary of the Interior, Washington, D.C. The acreage cited in this section is approximate, and if a discrepancy arises between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land."

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