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MISCELLANEOUS LANDS BILLS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

S. 522
S. 881
S. 1272
H.R. 1442
S. 865
S. 940
S. 1689

OCTOBER 8, 2009

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MISCELLANEOUS LANDS BILLS

WEDNESDAY, OCTOBER 8, 2009

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

The subcommittee met, pursuant to notice, at 2:38 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Ron Wyden presiding.

OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. The subcommittee will come to order. The purpose of today's hearing is to receive testimony on several bills pending before the committee. These include:

S. 522, to resolve the claims of the Bering Straits Native Corporation and the State of Alaska to land adjacent to the Salmon Lake in the State of Alaska and to provide for the conveyance to the Bering Straits Native Corporation of certain other public land in partial satisfaction of the land entitlement of the corporation under the Alaska Native Claims Settlement Act;

S. 865 and H.R. 1442, to provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 2000—January 23, 1909;

S. 881, to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes;

S. 940, to direct the Secretary of the Interior to convey to the Nevada System of Higher Education certain Federal land located in Clark and Nye Counties, Nevada, and for other purposes;

S. 1272, a piece of legislation I introduced, to provide for the designation of the Devil's Staircase Wilderness Area in my home State, and to designate segments of the Wasson and Franklin Creeks in the State of Oregon as wild or recreation rivers, and for other purposes; amd

S. 1689, to desingnate certain land as components of the National Wilderness Preservation System and the National Landscape Conservation System in the State of New Mexico, and for other purposes.

Before we begin, just a few words about the legislation that I introduced. I am especially pleased that we're having the hearing on the legislation to designate approximately 29,650 acres surrounding the Devil's Staircase Waterfall in Wasson Creek as wil-

derness. This area personifies what my home State is all about—rugged, wild, pristine, and remote.

The proposed Devil's Staircase Wilderness Area contains some of the finest old growth forests that remain in Oregon's Coast Range and a wealth of threatened and endangered wildlife. Today the Devil's Staircase Waterfall in Wasson Creek is a place that hikers are fortunate to find and that has been protected until now by its remoteness. The legislation would not only protect this hidden gem, but also the forest surrounding it.

The legislation would also designate approximately 10.1 miles of Wasson Creek and 4.5 miles of Franklin Creek and related areas as wild and scenic rivers. Preserving these majestic forests as wilderness is consistent with the goals of the existing land management plan and will ensure permanent protection.

So I want to thank all of the Oregon community leaders who have come together to pursue protection for this extraordinary area, and I look forward to working with them to ensure that this treasure is protected for future generations.

Senator Bingaman, any opening statement at this time?

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. Thank you very much, Mr. Chairman, for having the hearing. I'm mainly here to support the legislation that Senator Udall and I have introduced, which is S. 1689, the Organ Mountains-Desert Peaks bill, in southern New Mexico. Obviously, we have two witnesses on your hearing list today from New Mexico to talk about this: Oscar Butler, who's Vice Chairman of the Doña Ana Board of Commissioners. Jerry Schickedanz is the Chair of the People for Preserving Our Western Heritage. I welcome both of them to Washington and to this hearing.

This is an important piece of legislation for us in southern New Mexico and for Doña Ana County in particular. We've tried very hard in this legislation to develop a proposal that strikes the right balance between development opportunities and protection of the environment. While the wilderness proposal will have, any wilderness proposal, will have both supporters and opponents, this one generally has broad local support, including: the Doña Ana County Board of Commissioners, that Oscar Butler's going to speak about today, which unanimously endorsed the proposal; the city of Las Cruces; and the Town of La Messilla.

In addition, the Governor of New Mexico has written in support of the bill. Many other organizations, including sportsmen's groups and the Hispano Chamber of Commerce, have as well. I would ask your consent to include letters and resolutions evidencing this support in the record today.

Senator WYDEN. Without objection, that will be ordered.

The CHAIRMAN. The bill includes protection for the Organ Mountains, which are the majestic backdrop for the city of Las Cruces, rise to elevation of 9,000 feet. In addition to their scenic qualities, the Organ Mountains provide important wildlife habitat and recreational opportunities. Across the Rio Grande to the west of Las Cruces, the bill would establish the Desert Peaks National Conservation Area to protect the winding canyons of the Robledos and

the Lewis Mountains and the broad canyon watershed that lies in between.

Finally, the bill would protect the Chihuahua Desert grasslands and the volcanic cinder cones in the Potrillo Mountains that are located in the southwestern portion of the county.

So, again thank you very much for including this bill on the list of items being considered today, and I look forward to the testimony.

Senator WYDEN. Thank you, Chairman Bingaman.

Let's go to Senator Barrasso.

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

Senator BARRASSO. Thank you very much, Mr. Chairman, for scheduling this hearing. I know that Ranking Member Murkowski and Chairman Bingaman, as well as you, Mr. Chairman, have bills in today's hearing that are both significant as well as of personal importance. As we consider all the land legislation, we must balance the many needs placed on our lands. Public access and multiple use are critical to achieving that balance.

Local communities and small businesses all across the West depend on access to and the use of our Federal lands. Jobs and quality of life in these communities are directly affected by actions that we take in Congress and the decisions made by managers on the ground. It's important to make the right decisions from the start.

So I'd like to add my welcome to all my witnesses, to our 2 Senators, and to the others who are here, and thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Barrasso.

Let me just say, you've been a pleasure to work with. I know we're going to continue the bipartisan tradition of the subcommittee.

Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I truly appreciate the opportunity to have before the subcommittee today two bills that I have introduced: the Salmon Lake land conveyance exchange for the Bering Straits Regional Corporation; and then the Sealaska land conveyance bill, which involves lands in southeast Alaska.

What these bills at their heart attempt to resolve is issues with the Alaska Native Claims Settlement Act that this Congress passed some 38 years ago. That law intended to promptly settle Native land claims in Alaska by setting up corporations to receive Federal land, and the goal was to simply let the corporations make money off the land to benefit their Native shareholders.

But in these two cases, both Bering Straits and Sealaska have been prevented for almost 4 decades now from taking title to Federal lands that were promised to them back in 1971. To my knowledge, there's no opposition to the Bering Straits land conveyance bill. This resolves to everyone's apparent satisfaction the land ownership patterns near Salmon Lake, which is outside of Nome.

So I'd like to focus a couple minutes this afternoon on the Southeast Alaska Land Conveyance Finalization Act, given that the lands at stake are in the Nation's largest forest, the Tongass, which is always an area which generates its own level of public interest. But almost everyone agrees that Sealaska should be able to gain the last 65,000 to 85,000 acres promised the corporation by ANCSA's terms.

But in 1971 Sealaska was forced to make its land selections from a 327,000–acre selection pool because of the then long-term timber sale contracts in the region. The problem with that was that about 40 percent of this land is areas that were under water. A lot of the rest of them were in watershed areas that are vital for local village water supplies. So there were some very sound environmental reasons, besides economic ones, why timber development or other economic development should not necessarily take place there.

So this legislation that we have before us today allows Sealaska to pick from additional lands, most all of which are scheduled for timber harvest under the existing Federal Tongass forest plan and the majority of which have already been logged in the past. The plan focuses on allowing selections of second growth timber tracts and that will result in far less entry into roadless old growth timber areas, and that's a policy that I think most environmental groups have traditionally favored, and this is a policy that the rest of the Alaska timber industry is supporting.

The bill involves Sealaska giving up the right to harvest timber from about 8500 acres of selections, instead proposing to select lands for ecotourism or to protect sacred sites, and all those lands will have prohibitions against logging. Many will have prohibitions against mineral entry.

As we will likely hear, the question is always about, at least within the Tongass, over exactly which tracts will be permitted for logging and where they will be located. There's always going to be concern from residents that are closest to potential timber tracts about the effects of timber development on hunting and on the karst and the cave formations that are under the surface.

But I'm already supportive of making a change in the bill that would remove any provisions that would affect management in Glacier Bay National Park, and I stand ready to support additional modifications based on the public comments that we have heard. But I do believe that we can negotiate out a settlement after gaining more public input as a result of this hearing and work out a collection of lands that Sealaska will be able to select that will satisfy most reasonable local concerns.

I do hope that we can move ahead quickly with this bill, regardless of what else may be proposed concerning land use allocations in the Tongass, because I do believe that it is only just that Sealaska and its Native shareholders finally get their lands without having to wait additional years for the conveyances to be finished.

I do appreciate again the opportunity to address this today through this legislation. I have been asked to submit testimony for the record and would ask that a letter from the Alaska Department of Natural Resources on behalf of Governor Parnell, a statement on behalf of the Alaska Professional Hunters Association, a state-

ment* on behalf of Jeff Sbonek of Core Protection, including a petition signed by Core Protection Point Baker residents, on S. 881, as well as a statement on behalf of the Bering Straits Native Corporation on S. 522, for the hearing record.

Senator WYDEN. Without objection, those materials will be added to the record at this point.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Senator WYDEN. I thank my colleague.

Senator Bennett has a great interest in these matters. Senator, welcome and please proceed.

STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Senator BENNETT. Thank you very much, Mr. Chairman.

This is a very simple matter. To give you a quick history, the Mount Olivet Cemetery was established by an Act of Congress in 1874 when the Federal Government set aside 20 acres that were managed by the Secretary of War for the cemetery. It's right next to what was then Fort Douglas and therefore the Secretary of War was involved.

In 1909, just 100 years ago, Congress expanded the cemetery through a land exchange and the cemetery association traded land that it owned adjacent to the Fort Douglas firing range for military land adjacent to the original 20 acres. The only problem with that is that the land swap was not of equal value. The cemetery folks got more money than the taxpayers did or more value, more land, than the taxpayers did. A letter from the Secretary of War to the Congress included in the 1909 committee report confirms this.

So the Congress decided in its wisdom, in order to prevent the Mount Olivet Cemetery people from receiving a windfall if they ever chose to sell this land, they put in a reversionary clause that would take effect if the land ever ceased to be used for cemetery purposes; it would revert to the Federal Government, and BLM now owns the reversionary clause.

OK. One hundred years later, life has changed dramatically. Fort Douglas has disappeared. There are a variety of more intelligent uses for this land and the Mount Olivet Cemetery people want to sell it for those purposes. But they can't because under the law it reverts to the Federal Government if they ever decide they're no longer going to bury people there.

So the purpose of the bill is simply to allow Mount Olivet Cemetery people to buy the reversionary clause from the Federal Government. This is one of the easiest ones we have to deal with in this world of trillions. The taxpayers will be made whole after 100 years of waiting. The cemetery will be able to continue in its normal fashion and the BLM will be relieved of the risk of nominating this little tiny inholding right smack in the middle of metropolitan Salt Lake City.

I am delighted by the statement of Marcilynn Burke, the Deputy Director of the BLM, whose testimony is before the committee. Bottom line, she says: This bill has passed the House of Representatives 442 to nothing—that can't be right. There are only 435, so I

* Document and petition have been retained in subcommittee files.

guess it passed 422 to nothing. She says: A number of amendments were made to the House bill to address concerns raised by the Department in testimony before the House committee. She says: We support the House legislation as amended and encourage the committee to amend the S. accordingly.

Senator WYDEN. Senator Bennett, you've done good work as usual. Getting more than 400 votes in the House is not something that happens every day. So we thank you and look forward to working with you. You have secured the BLM's support. It's particularly helpful. Thank you.

Senator Risch, our Northwest neighbor.

Senator RISCH. Thank you. I'll pass.

Senator WYDEN. OK. Let's go then to our colleagues who are here to testify. We have Senator Udall and Senator Begich who are going to offer some remarks. My understanding is that you would like to sit with the subcommittee afterwards and you're welcome right after your remarks to come on up and join us this afternoon.

Why don't we start with you, Senator Begich. We'll go just alphabetical. Senator Udall knows what it's like to be a "U" or a "W." Senator Begich, go ahead.

STATEMENT OF HON. MARK BEGICH, U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much, Chairman Wyden and Ranking Member Murkowski. I appreciate the opportunity to address the committee today on two important bills to Alaska. It's no coincidence that both bills, S. 522, the Salmon Lake Land Exchange, and S. 881, the Sealaska Lands bill, deal with Alaska's relationship to the land. We believe that Alaskans' daily connection to our lands is more intense than most of America.

ANCSA, the Alaska Native Claims Settlement Act of 1971, was a sweeping act that returned 44 million acres out of 360 million acres total of Alaska to indigenous peoples of the State, in exchange for surrendering fee simple title. ANCSA may be history for many in Congress, but the Act continues to define daily life in my State 40 years after its passage.

I'm a co-sponsor of both of these measures and support your speedy passage of both. I realize the path is much more straightforward on one than the other. S. 522, I'm aware of no opposition to this three-way land exchange that resolves competing State and Native claims for pieces of Federal land. My office has received not one single communication opposition this legislation. In conversation between two Alaskans you're likely to get three more opinions on the same subject, so when we see a consensus the deal is obviously a good one.

Turning to S. 881, the Sealaska Lands bill, again I'm proud to be a co-sponsor and hope you will give it your fullest attention, but here the landscape is more complex. Sealaska Corporation, the ANCSA regional corporation for the Native people of Southeast Alaska, has not completed its land claims. In addition to returning some land to the Native people of Alaska, ANCSA set up Native-owned for-profit corporations to hold this land and look after the economic wellbeing of their shareholders. This system is the right one for our State, but we have to recognize the new construct Con-

gress created instead of a reservation system invites a natural tension.

In order to do the morally right thing and the thing that Congress charged them to do, look after their people, corporations have to engage in commerce with the resources they were given. This is primarily the lands that their ancestors relied on for generations. With 40 years of hindsight, we can see that a number of restrictions placed on Sealaska's ability to select lands both increased likelihood of community conflict and restrict their ability to engage in more sustainable economic development for the region.

The bill before you is an attempt by Sealaska Corporation to achieve a balance in the remaining land selections. It is an attempt to better balance their responsibilities as stewards of their lands and their economic responsibility to shareholders and the communities of Southeast Alaska where their shareholders live.

I hope today that you will hear testimony that explains this in great detail today and later in less formal briefings. I appreciate your patience and your help as we move Alaskans closer together in solving this issue.

As an aside, I know that you'll hear from a father of one of my interns today with some concerns on this bill, Bob Claus, a retired State trooper who will speak on behalf of SEACC, Southeast Alaska Conservation Council. That demonstrates pretty well the level of community discussion and interest in this legislation.

For Alaskans, it's critical that we come to agreement on this issue of the Sealaska lands bill so we can move forward on the larger issues of the future of Tongass. If we don't they will be dictated to us and likely in unpredictable outcomes of the court system.

I want to thank you for the interest in this legislation and I hope that you will have a positive consideration and conclusion to moving these bills forward. Thank you very much, Mr. Chairman.

Senator WYDEN. Thank you, Senator Begich. I know you feel very strongly about this. You've talked with me about it on the floor shortly after you came to the Senate. We'll work very closely with you on it. I know it's important to your region and to you, and we will follow up with you promptly.

Senator Udall.

STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you, Chairman Wyden, and thank you, Ranking Member Senator Murkowski and other members of the subcommittee, for allowing me to speak today about S. 6989, the Organ Mountains-Desert Peaks Wilderness Act, and to participate in this important hearing. I'd also like to thank Chairman Bingaman for the extensive work he and his staff have done over the past several years to prepare this bill for introduction. I think they have been painstaking in terms of trying to bring people together and find common ground.

This is a very important bill for New Mexico. The Organ Mountains-Desert Peaks Wilderness Act celebrates and preserves a portion of the unique and delicate landscape of southern New Mexico. Wilderness and conservation areas in Doña Ana and Luna Coun-

ties will protect a vast number of archaeological sites and riparian areas. These protected areas will act to maintain habitat and migration corridors for wildlife and preserve some of the only chihuahuan desert in the United States.

The wilderness and national conservation areas proposed in S. 1689 surround the growing city of Las Cruces, New Mexico's second largest city. The citizens of Las Cruces and the surrounding communities want to ensure that the area will continue to develop in a way that preserves the surrounding pristine landscapes, including the iconic Organ Mountains.

The Organ Mountains-Desert Peaks Wilderness Act is consistent with the city and county's long-term growth plan and will act to maintain growth patterns in a way that will allow all citizens to enjoy the impressive views and landscapes surrounding Las Cruces. Years of negotiation and cooperation have resulted in the legislation being introduced today. Nearby military facilities worked with the Bureau of Land Management on land exchanges that are reflected in the bill and will benefit the public and military entities. Recommendations from the Border Patrol on how to ensure that the new wilderness fits into homeland security efforts were incorporated into the bill. Conservation groups worked with hunting and outdoor recreation organizations to find common ground.

As a result, this bill enjoys the support of numerous local associations and governing bodies. In the past few weeks resolutions supporting the bill were passed unanimously by the Doña Ana County, the Town of Messilla, the city of Las Cruces, and, as Senator Bingaman mentioned, Governor Richardson has come out very recently in full support of the bill. Several local news agencies have published editorial endorsements of the Organ Mountains- Desert Peaks Wilderness Act and numerous organizations have shown support, including the Hispano Chamber of Commerce de Las Cruces, the High Tech Consortium of Southern New Mexico, the Doña Ana County Associated Sportsmen, and the New Mexico Wildlife Federation, among others.

The Organ Mountains-Desert Peaks Wilderness Act will protect thousands of acres of desert, riparian, and rugged mountainous lands. This area of rare and beautiful landscapes will be valued for generations. From the jagged basalt lava flows of the cinder cone wilderness to the roaming hawks and scrambling havalinas of the Robledo Mountains, this unique piece of southern New Mexico has abundant natural value and deserves protection.

With this legislation we build upon the work of conservation greats like Aldo Leopold, a man who saw the beauty of New Mexico's untamed wilderness lands and sought to preserve them for future generations. It was Mr. Leopold who said: "Conservation is a state of harmony between man and land." With the Organ Mountains-Desert Peaks Wilderness Act, we will move a step closer to achieving that state of harmony.

I thank the subcommittee for taking the time to consider this bill and I look forward to hearing from the next two panels of witnesses and, Chairman Wyden, joining you and the other committee members up there.

Senator WYDEN. Senator Udall, thank you for your statement and for your good work. I want to know what a havalina is?

Senator UDALL. A havalina is a wild pig. They're pretty fierce and they have tusks on them right out in front, and you don't want to run into a wild havalina——

Senator WYDEN. I'd rather not.

Senator UDALL [continuing]. Coming after you or charging you.

Senator WYDEN. I got the drift.

Senator UDALL. It's a wonderful little critter, though. If you'll come to New Mexico, Senator Bingaman and I will take you out and introduce you to a havalina.

The CHAIRMAN. We'll give you some barbecued havalina; how's that?

Senator WYDEN. I've gotten havalina 101.

Come on up and join us, colleagues, and thank you for your fine statements.

At this point we have a number of other materials that need to be made part of the record: from the Coalition of National Park Service Retirees on S. 881—that's the matter the Alaskans are interested in—and Senator Reid and Senator Ensign's statements in support of S. 940, the Southern Nevada Higher Education Land Act. Without objection, these statements will be included in the record as well.

Senator WYDEN. Let's now move to our Administration witnesses. Ms. Burke is here on behalf of the Bureau of Land Management and Jay Jensen is here on behalf of the Department of Agriculture. We appreciate both of you coming. Ms. Burke, I know this is a fairly new role for you, so welcome to the subcommittee, Mr. Jensen as well. We'll make your prepared statements part of the record in their entirety and if you could just summarize your views we can speed things along.

We'll start with you, Ms. Burke.

STATEMENT OF MARCILYNN A. BURKE, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Ms. BURKE. Thank you, Mr. Chairman and the committee, for inviting me and the Department of the Interior to testify on six bills of interest to the Department. As requested, I will briefly summarize my prepared testimony this afternoon.

The BLM is responsible for conveying Federal lands to Native corporations under the Alaska Native Claims Settlement Act and to the State of Alaska under the Alaska Statehood Act of 1958. The Bering Straits Native Corporation and the State of Alaska filed overlapping claims to lands in the Salmon Lake area. The Native corporation and the State negotiated a resolution of these overlapping claims and brought that tentative resolution to the BLM. All three parties signed the Salmon Lake Area Land Ownership Consolidation Agreement on July 18, 2007.

The BLM supports S. 522 because it would ratify that agreement among three parties and allow for a reasonable and practicable conveyance of the lands in the Salmon Lake area.

S. 865 and H.R. 1442 provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of the

Mount Olivet Cemetery in Salt Lake City, Utah. We support H.R. 1442 as passed by the House of Representatives on July 16 of this year, which addressed concerns that the BLM raised in earlier testimony.

The 1971 Alaska Native Claims Settlement Act established a framework under which Alaska Natives formed private corporations to settle their aboriginal claims to lands in Alaska. Sealaska is one of those 12 regional corporations formed in ANCSA. S. 881 would amend the act to allow Native corporations to receive conveyance of lands outside their original withdrawal areas established by the Act. The bill would also create new and unique categories of selections not available to any other regional corporation. It would impose time lines for the Secretary of Interior to complete the conveyance of lands and remove restrictive covenants on historic and cemetery sites.

Finally, the bill would require the National Park Service to enter into a cooperative management agreement with Sealaska and others with cultural and historical ties to the Glacier Bay National Park.

While the Department appreciates that time has brought the desire for amendments to the original ANCSA settlement, we have a number of concerns. We are concerned, for example, that the bill would lead other regional corporations to attempt to reopen their land claims at this very late stage in the land transfer program. If this occurs, it would prolong the process of completing ANCSA entitlements rather than accelerate them, as previously directed by Congress.

The Department supports the goal of completing the ANCSA entitlements as soon as possible and is working diligently to maintain the accelerated pace of the land transfer programs. We look forward to working with Sealaska, Congress, community partners, this committee, and others to find a solution that works.

S. 940 would convey without consideration three parcels totaling approximately 2400 acres to the Nevada System of Higher Education to meet the needs of southern Nevada's rapidly growing college and university system. As a matter of policy BLM supports working with State and local governments to resolve land tenure adjustments that advance worthwhile public policy objectives. BLM supports S. 940, but would like to work with the sponsors on amendments to ensure that the conveyances are consistent with the Recreation and Public Purposes Act and also to address the management needs associated with conveyance of the parcel located in Nye County, Nevada.

S. 1272 proposes to designate almost 30,000 acres of Federal land near the coast in southwestern Oregon as wilderness, as well as portions of both Franklin Creek and Wasson Creek as parts of the wild and scenic rivers system. We support these designations of BLM lands and recommend minor modifications.

Finally, the Administration supports S. 1689, which designates two new national conservation areas and eight new wilderness areas in Doña Ana County, New Mexico. The legislation also expands the Prehistoric Trackways National Monument, releases over 16,000 acres from wilderness study area status, and transfers

2,000 acres of high-resource value lands from the Army to BLM for inclusion in the Organ Mountains National Conservation Area.

Chairman Bingaman has worked for years with user groups, local governments, and conservationists to craft this legislation that will ensure that generations of New Mexicans and indeed all Americans will be able to witness the golden eagle soar over the Sierra de las Uvas Mountains, hike the landmark Organ Mountains, or hunt in the volcanic outcroppings of the Potrillo Mountains.

With that, I would like to conclude and thank you for allowing me to testify, and I'd be happy to answer any questions.

[The prepared statement of Ms. Burke follows:]

PREPARED STATEMENT OF MARCILYNN A. BURKE, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

S. 522

Thank you for the opportunity to testify on S. 522, the Salmon Lake Land Selection Resolution Act. As a party to the Salmon Lake Area Land Ownership Consolidation Agreement, the Bureau of Land Management (BLM) has supported efforts between the State of Alaska and the Bering Straits Native Corporation (BSNC) to resolve overlapping land selections at Salmon Lake. As such, the BLM supports S. 522 because it will ratify the agreement between the BLM, BSNC, and the State of Alaska, and allow for a reasonable and practicable conveyance of lands in the Salmon Lake area.

BACKGROUND

Salmon Lake is located on the Seward Peninsula, approximately 40 miles northeast of Nome. The lake is one of the largest bodies of fresh water on the peninsula, and has long been an important source of food and resources for the Native people. Because the area contains significant fisheries and other subsistence resources, it remains a popular resource and destination for local communities.

The BLM is responsible for expediting the conveyance of Federal lands to Native corporations, including the BSNC, under the Alaska Native Claims Settlement Act (ANCSA), and to the State of Alaska under the Alaska Statehood Act of 1958.

The BSNC, the Native regional corporation for the Bering Straits area, and the State of Alaska each sought to gain title to the Salmon Lake area through selection applications filed under respective provisions of ANCSA and the Alaska Statehood Act. However, the land addressed by the two applications overlapped. The BSNC and the State negotiated a resolution to this issue whereby each entity would receive title to distinct lands. The BLM supported this resolution, and the three parties signed the Salmon Lake Area Land Ownership Consolidation Agreement on July 18, 2007. Legislation is now required to ratify the Agreement between the United States (acting through the Department of Interior, BLM), the BSNC, and the State of Alaska. The Agreement would have expired on January 1, 2009, but its term was extended to January 1, 2011 in anticipation of ratifying legislation.

S. 522

S. 522 represents an opportunity to resolve the overlapping land selections between the BSNC and the State. The bill would ratify the Agreement between the BLM, the BSNC, and the State, and allow for finalization of land conveyances in the Salmon Lake area. The lands would be transferred in accordance with the terms of the signed Agreement.

As noted, the BLM supported the efforts between the BSNC and State, and signed the Agreement to recognize the desires of the entities. The bill would also further the intent of the Alaska Land Transfer Acceleration Act of 2004 (PL 108-452), expediting the transfer of title to federal lands to Native corporations and the State of Alaska.

CONCLUSION

Thank you for the opportunity to testify in support of S. 522. I am happy to answer any questions.

H.R. 1442 AND S. 865

Thank you for inviting the Department of the Interior to testify on S. 865 and H.R. 1442, which provide for the disposal of the Federal government's interest in certain acreage of the Mount Olivet Cemetery in Salt Lake City, Utah. The Bureau of Land Management (BLM) supports H.R. 1442 as passed by the House of Representatives.

BACKGROUND

The Mount Olivet Cemetery, in Salt Lake City, Utah, is owned and managed by the Mount Olivet Cemetery Association (the Cemetery Association). Located on the east side of Salt Lake City, the cemetery consists of approximately 80 acres of land, 20 acres of which is currently used for burials.

The Federal government, acting through the Secretary of War, first "set apart" 20 acres of what was then a military reservation "to be used as a public cemetery. which shall be forever devoted for the purpose of the burial of the dead" (Act of May 16, 1874). Subsequently, in 1909, the Congress provided for the conveyance of an adjacent 50 acres to the Mount Olivet Cemetery Association (under the Act of January 23, 1909). The 1909 Act provided that conveyance was contingent upon the Association first conveying to the United States a specified parcel of land, of approximately 150 acres, outside of Salt Lake City. However, the legislation also included a reverter clause, requiring that the land conveyed under the 1909 act could be used only as a cemetery:

> Said land to be by the said Mount Olivet Cemetery Association permanently used as a cemetery for the burial of the dead: Provided, That when it shall cease to be used for such purpose it shall revert to the United States.

The purpose of this reversionary clause is not established in the legislation. Whether it was due to an unequal exchange of lands, or for some other reason, is not stated, nor has the BLM been able to make any determination through the review of historical records.

In 1992, Congress took further action regarding Mount Olivet Cemetery with the enactment of legislation (Public Law 102-347), which allows the Cemetery Association to lease tracts of the lands conveyed in 1909 for up to 70 years, to the extent that such leases would not prevent future use as a cemetery. Public Law 102-347 speaks only to the possibility of 70-year leases, and the BLM has interpreted the 1909 reverter clause still to be in effect. Therefore, upon application by the Cemetery Association, in December of 1993, the BLM issued a "Certificate of Approval" for the lease of 15 acres to the adjacent East High School for a football field, and in January of 1996, an additional certificate was issued for the lease of lands for a nursing and retirement facility which was never built.

In recent years, the Cemetery Association has sought to sell, rather than lease, some of the acres conveyed under the 1909 Act to Rowland Hall/St. Mark's School. Because the proposal is for a sale, rather than a lease of up to 70 years, the BLM does not have the authority to approve such a conveyance by the Cemetery Association. Specific authority for the BLM to dispose of the reversionary interest, established in 1909, to the Cemetery Association, as well any additional direction respecting valuation of this reversionary interest through appraisal, would facilitate resolution of this adjustment in land tenure.

S. 865 AND H.R. 1442

The House of Representatives passed H.R. 1442 on July 16, 2009; our testimony addresses the House-passed bill.

H.R. 1442 is a reasonable solution to the desire of the Mount Olivet Cemetery Association to be able not only to lease, but also to sell, the cemetery lands. Under H.R. 1442, the Secretary of the Interior (acting through the Department's Appraisal Service Directorate) will undertake an appraisal of the reverter clause attached to the 1909 lands. Upon receiving that appraisal, the Cemetery Association may purchase the reverter, thus owning all right, title, and interest in the land. All costs associated with this conveyance, including the appraisal, would be the responsibility of the Association.

A number of amendments were made to H.R. 1442 to address concerns raised by the Department in testimony before the House Natural Resources Committee on May 14, 2009. We support the House legislation, as amended, and encourage the Committee to amend the S. accordingly.

S. 881

Thank you for the opportunity to testify and provide the Department of Interior's (Department's) views on S. 881, the Southeast Alaska Land Entitlement Finalization Act. The Department supports the goals of completing Alaska Native Claims Settlement Act (ANCSA) entitlements as soon as possible so that Alaska Native corporations, including Sealaska Corporation (Sealaska), may each receive the full economic benefit of land title. However, while the Department appreciates that time has brought a desire for amendments to the original ANCSA settlement to light, we have a number of concerns. We look forward to working with Sealaska, Congress, and other community partners and interests to find a solution that works. My testimony today will focus on outlining those concerns.

BACKGROUND

The Bureau of Land Management (BLM), Alaska State Office, is responsible for expediting federal land conveyances to individual Alaska Natives, Native corporations, and the State of Alaska under four major statutes: the Alaska Native Allotment Act of 1906, the Alaska Statehood Act of 1958, the Alaska Native Veterans Allotment Act of 1998, and ANCSA. When these land conveyances are ultimately completed, about 150 million acres, or approximately 42 percent of the land area of Alaska, will have been transferred from federal to State and private (Native) ownership.

ANCSA established a framework under which Alaska Natives could form private corporations to select and receive title to 44 million acres of public land in Alaska and receive payment of $962.5 million in settlement of aboriginal claims to lands in the State. Sealaska is one of twelve regional corporations formed under ANCSA to receive land benefits.

S. 881

S. 881 would amend ANCSA to allow Sealaska to receive conveyance of lands outside of the original withdrawal areas established by the Act in 1971, and would create new and unique categories of selections not available to other regional corporations. Specifically, it would allow Sealaska to select and receive conveyance from Forest Service-administered lands in the Tongass National Forest other than those that were originally available for selection. The Department defers to the Forest Service regarding the effects of the bill on Forest Service-administered lands. However, the Department notes the undesirable precedent of substituting new lands for one of the corporations at this stage in the land transfer program. Doing so would in effect postpone deadlines and permit new selections. The bill would also impose timelines for the Secretary of the Interior to complete the conveyance of land, would remove restrictive covenants on historic and cemetery sites, and would require the National Park Service (NPS) to enter into a cooperative management agreement with Sealaska and others with cultural and historical ties to Glacier Bay National Park.

As noted, the Department supports finalizing entitlements under ANCSA and the BLM is maintaining the accelerated pace of the program while ensuring that the intent of ANCSA is implemented. By the end of FY 09, BLM has surveyed and patented 58 percent of lands to the native Corporations, and has granted interim conveyance on an additional 34 percent. The Department is concerned that S. 881 would provide an impetus for other regional corporations to attempt to reopen land claims at this critical final stage in the land transfer program. If this occurs, it would obstruct the progress of the program, and prolong the process of completing ANCSA entitlements. Provisions of S. 881, such as future selections, would also create uncertainty regarding the boundaries of federally-managed public lands in Alaska.

In addition, the Department is very concerned with the deadlines for conveyance set in S. 881. These deadlines would put the completion of Sealaska conveyances ahead of all other regional corporations, individual Alaskan Natives, and the State. This "front of the line" approach would set a negative precedent of preferential treatment and interrupt progress on conveyances to other entities. The BLM has made significant progress since the enactment of the Alaska Land Transfer Acceleration Act of 2004, which gave the BLM the tools it needed to expedite these land transfers. An amendment such as S. 881, which would change fundamental provisions of this statute, would serve to reverse much of the progress we have made thus far.

S. 881 would also remove existing covenants on historic and cemetery sites conveyed under ANCSA Section 14(h)(1), which restrict activity that is incompatible

with these sites' cultural or historic values. The Department believes this would provide an opportunity for other regional corporations to request removal of similar restrictions from other Native corporation sites, further negatively impacting the land transfer program.

The cooperative management agreement provisions in sections 3(a)(2) and 3(c)(2) of the legislation would require the National Park Service (NPS) to offer to enter into cooperative management agreements with Sealaska and other corporations for activities in Glacier Bay National Park. This could confuse the execution of existing memoranda of understanding and concession contracts which are currently working well in the park. The NPS maintains a Memorandum of Understanding with the Hoonah Indian Association, a federally recognized tribe, as well as a cooperative agreement with the non-profit Huna Heritage Foundation to provide cultural learning activities in the park. Both entities are also partners in monitoring the condition of Tlingit historic sites in the park.

In addition, requiring cooperative management agreements for such activities such as guided tours and establishment of visitor sites with profit-making corporations would be inconsistent with the open, competitive process currently provided under concession management law and regulation. Existing practices are already resulting in engaging Native Alaskans in the visitor experience: a subsidiary of Huna Totem Corporation has the Glacier Bay lodge and tour contracts with Aramark Leisure Services through 2013, and Goldbelt Inc., a Juneau-based Native corporation, had the contracts between 1996 and 2004.

The Department also has concerns about Section 5(e)(2), which would broaden the definition of tribal lands under the National Historic Preservation Act (NHPA) to include all ANCSA lands in Alaska (approximately 44 million acres). Although this provision addresses the definition of tribal lands only with respect to the NHPA, granting tribal status to lands owned by for-profit corporations for any purpose could have wider implications than what may be intended. The Department would like to have more time to assess this potential impact of this provision before the committee takes any action on it.

CONCLUSION

As noted above, the Department supports the goal of completing ANCSA entitlements as soon as possible and is working diligently to maintain the accelerated pace of the land transfer program. The Department is committed to working with the parties to reach a solution. Thank you for the opportunity to testify on this matter. I will be glad to answer any questions.

S. 940

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on S. 940, the Southern Nevada Higher Education Lands Act of 2009. S. 940 would convey, without consideration, three parcels totaling 2,410 acres to the Nevada System of Higher Education (NSHE) to meet the needs of southern Nevada's rapidly growing college and university system. The BLM supports the goals of S. 940, but would like to work with Senator Reid, the bill's sponsor, on amendments to ensure the conveyances are consistent with the Recreation and Public Purposes Act (R&PP), and to address certain parcel-specific management needs associated with the conveyances.

BACKGROUND

The Nevada System of Higher Education serves more than 71,000 students in southern Nevada, and its enrollment is expected to grow by more than 20 percent over the next 10 years. Three institutions of higher education serve southern Nevada residents: the University of Nevada, Las Vegas; the College of Southern Nevada, located in Clark County; and Great Basin College, located in Pahrump in rural Nye County. All three of these institutions are operating near capacity. The NSHE is seeking to increase their capacities to provide for future growth and improve access to higher education opportunities in southern Nevada.

The communities of Las Vegas and Pahrump are nearly surrounded by BLM-administered lands. Under the direction of the 1998 Southern Nevada Public Land Management Act (SNPLMA), as amended, and through the BLM's land use planning process, the BLM has identified public lands within and near these communities for potential disposal from public ownership to help meet urban growth needs. The three public land parcels proposed for conveyance by S. 940 have been identified for disposal through these processes.

The R&PP Act authorizes the Secretary of the Interior to lease or convey public lands at nominal cost for recreational and public purposes, including educational fa-

cilities, municipal buildings, golf courses, campgrounds, and other facilities benefiting the public. Commercial uses may be allowable under the R&PP Act in limited circumstances, if revenues from concessions go toward site management and use.

S. 940

S. 940 proposes to convey to the NSHE, without consideration, all right, title, and interest of the United States to three parcels detailed on the maps prepared at the request of Senator Reid, dated July 11, 2008. The bill requires the NSHE to pay any administrative costs associated with the conveyances.

The bill requires the conveyed lands to be used for educational and recreational purposes related to the NSHE, and it allows residential and commercial development that would generally be associated with an institution of higher education. The bill also contains a reversionary clause that provides for the land to revert to the United States, at the discretion of the Secretary, if it ceases to be used for the higher education system.

As a matter of policy, the BLM supports working with State and local governments to resolve land tenure adjustments that advance worthwhile public policy objectives. In general, the BLM supports conveyances if the lands are to be used for purposes consistent with the R&PP Act and includes a reversionary clause to enforce that requirement. It is not clear, however, if the residential or commercial uses envisioned by the bill would be consistent with the R&PP Act. The BLM recommends that the legislation be clearly amended to ensure consistency with the R&PP Act.

S. 940 would convey two parcels that are located in urban settings near Las Vegas in Clark County. One parcel contains approximately 40 acres and would be utilized to meet the expansion needs of the College of Southern Nevada. This parcel is essentially a vacant, weedy field surrounded by major roads near a freeway entrance. It contains no significant natural resource values.

The second parcel contains approximately 2,085 acres and would be used for the expansion of the University of Nevada, Las Vegas. This parcel is located in a rapidly urbanizing area on the northern edge of Las Vegas. Its eastern boundary abuts Nellis Air Force Base and its northern boundary abuts the Nevada Desert Wildlife Refuge managed by the U.S. Fish and Wildlife Service.

Because of their proximity to Nellis Air Force Base, these lands may have been impacted by past military training activities and may contain hazardous materials. For this reason, S. 940 requires that the Secretary receive a certificate of acceptable remediation of environmental conditions on the parcel before initiating the conveyance, and it releases the United States from any liability arising from prior land uses. The bill also requires, under Sec. 4(2), that the NSHE enter into a binding agreement with Nellis Air Force Base to address any site development issues and to preserve the Base's long-term capability. Because this parcel also borders the Nevada Desert Wildlife Refuge, we would like to work with the sponsor to ensure that site development along the shared boundary would be sensitive to and compatible with refuge values.

S. 940 would also convey a parcel of approximately 285 acres, located just outside of Pahrump in Nye County, Nevada, which would be utilized for the expansion of Great Basin College. This parcel borders an existing BLM fire station and helipad, and certain types of adjacent development could affect the safe operation of this facility. This parcel also contains Carpenter Canyon Road, which is heavily utilized for recreation activities and provides access to the west side of the Spring Mountain National Recreation Area, which is managed by the U.S. Forest Service. The BLM would like to work with the sponsor to ensure that the bill provides for the continuation of these existing land uses and access to National Forest System land. We also note that this parcel contains desert tortoise habitat. If conveyed, the NSHE would need to prepare a Habitat Conservation Plan, obtain an incidental take permit, and meet other requirements of the U.S. Fish and Wildlife Service before site development could proceed.

Finally, under S. 940, the NSHE will assist the BLM in sharing information with students and Nevada citizens about public land resources and the BLM's role in managing public lands. The BLM looks forward to working with the NSHE on this constructive, collaborative effort.

CONCLUSION

Thank you for the opportunity to testify. The BLM looks forward to working with the bill's sponsor and the Committee to address the needs of the Nevada System of Higher Education.

S. 1272

Thank you for inviting the Department of the Interior to testify on S. 1272, the Devil's Staircase Wilderness Act of 2009. The Bureau of Land Management (BLM) supports S. 1272 as it applies to lands we manage, and we would like to work with the sponsor and the Committee on minor refinements to the bills.

BACKGROUND

The proposed Devil's Staircase Wilderness, near the coast of southwestern Oregon, is not for the faint of heart. Mostly wild land and difficult to access, the Devil's Staircase reminds us of what much of this land looked like hundreds of years ago. A multi-storied forest of Douglas fir and western hemlock towers over underbrush of giant ferns, providing critical habitat for the threatened Northern Spotted Owl and Marbled Murrelet. The remote and rugged nature of this area provides a truly wild experience for any hiker.

S. 1272

S. 1272 proposes to designate nearly 30,000 acres as wilderness, as well as portions of both Franklin Creek and Wasson Creek as components of the Wild and Scenic Rivers System. The majority of these designations are on lands managed by the U.S. Forest Service. The Department of the Interior defers to the U.S. Department of Agriculture on those designations.

Approximately 6,100 acres of the proposed Devil's Staircase Wilderness and 4.2 miles of the Wasson Creek proposed designation are within lands managed by the BLM. The Department of the Interior supports these designations and would like to work with the sponsor and the Committee on minor boundary modifications to improve manageability.

We note that while the vast majority of the acres proposed for designation are Oregon &California (O&C) lands, identified under the 1937 O&C Lands Act for timber production, however, the BLM currently restricts timber production on these lands. These lands are administratively withdrawn from timber production by the BLM, either through designation as an Area of Critical Environmental Concern or through other classifications. Additionally, the BLM estimates that nearly 90 percent of the area proposed for designation is comprised of forest stands that are over 100 years old, and provides critical habitat for the threatened Marbled Murrelet and Northern Spotted Owl.

The 4.2 miles of Wasson Creek would be designated as a wild river to be managed by the BLM under S. 1272. The majority of the acres protected through this designation would be within the proposed Devil's Staircase wilderness designation, though 752 acres would be outside the proposed wilderness on adjacent BLM lands.

The designations identified on BLM-managed lands under S. 1272 would result in only minor modification of current management of the area and would preserve these wild lands for future generations.

CONCLUSION

Thank you for the opportunity to testify in support of these important Oregon designations. The Department of the Interior looks forward to working with the sponsors and the Committee on minor modifications to the legislation and to welcoming these units into the BLM's National Landscape Conservation System.

S. 1689

Thank you for inviting the Department of the Interior to testify on S. 1689, the Organ Mountains-Desert Peaks Wilderness Act. The Administration supports S. 1689, which designates two new National Conservation Areas (NCAs) and eight new wilderness areas in Dõa Ana County, New Mexico. We welcome this opportunity to enhance protection for some of America's treasured landscapes.

BACKGROUND

Doña Ana County is many things—the county with the second highest population in New Mexico; home to Las Cruces, one of the fastest growing cities in the country; and a land of amazing beauty. Towering mountain ranges, dramatic deserts, and fertile valleys characterize this corner of the Land of Enchantment. The Organ Mountains, east of the city of Las Cruces, dominate the landscape. Characterized by steep, angular, barren rock outcroppings, the Organ Mountains rise to nearly 9,000 feet in elevation and extend for 20 miles, running generally north and south. This high-desert landscape within the Chihuahua Desert contains a multitude of bi-

ological zones—mixed desert shrubs and grasslands in the lowlands ascending to pinon and juniper woodlands, and finally to ponderosa pines at the highest elevations. Consequently, the area is home to a high diversity of animal life, including peregrine falcons and other raptors, as well as mountain lions and other mammals. Abundant prehistoric cultural sites, dating back 8,000 years, dot the landscape. The Organ Mountains are a popular recreation area, with multiple hiking trails, a popular campground, and opportunities for hunting, mountain biking, and other dispersed recreation.

On the west side of Las Cruces are the mountain ranges and peaks of the Robledo Mountains and Sierra de las Uvas, which make up the Desert Peaks area. These desert landscapes are characterized by numerous mesas and buttes interspersed with deep canyons and arroyos. Mule deer, mountain lions, and golden eagles and other raptors are attracted to this varied landscape. Prehistoric cultural sites of the classic Mimbres and El Paso phases are sprinkled throughout this region along with historic sites associated with more recent settlements. This area is also home to the unusual Night-blooming Cereus—seeing the one-night-a-year bloom in its natural surroundings is a rare delight. Finally, the area provides varied disbursed recreational opportunities.

To the southwest of Las Cruces, near the Mexican border, is the Potrillo Mountains Complex. The geologic genesis of these mountains is different from that of the Organ Mountains and Desert Peaks area. Cinder cones, volcanic craters, basalt lava flows, and talus slopes characterize this corner of Doña Ana County. These lands are famous for their abundant wildlife, and contain significant fossil resources. A well-preserved giant ground sloth skeleton, now housed at Yale University, was discovered in this area. The sheer breadth of these lands and their open, expansive vistas offer remarkable opportunities for solitude.

Senator Bingaman and a wide range of local governments, communities, user groups, conservationists, and Federal agencies have worked collaboratively to develop this consensus proposal to protect all of these special areas.

S. 1689

S. 1689 proposes to designate two new NCAs and eight wilderness areas in Doña Ana County, New Mexico, which would be included in BLM's National Landscape Conservation System. The legislation also releases over 16,000 acres from wilderness study area (WSA) status, transfers land from the Department of the Defense (DOD) to the BLM for inclusion within an NCA, and withdraws certain additional lands from disposal, mining, and mineral leasing.

Section 3 of S. 1689 designates eight wilderness areas totaling approximately 259,000 acres. The BLM supports the proposed wilderness designations in S. 1689. We would like the opportunity to work with the Chairman on minor boundary modifications for manageability, as well as modifications to some minor technical provisions.

These new wilderness designations are in three distinct areas of the county. First, within the proposed Organ Mountains NCA, 19,400 acres would be designated as the Organ Mountains Wilderness.

The second area is within the Desert Peaks National Conservation Area proposed in this legislation. The bill proposes three designations in this area: Broad Canyon Wilderness (13,900 acres); Robledo Mountains Wilderness (17,000 acres); and Sierra de las Uvas Wilderness (11,100 acres). These three areas are within the 33,600-acre Desert Peaks NCA. Within the Robledo Mountains Wilderness, a small corridor of approximately 100 acres has been designated as "potential wilderness" by section 3(g) of S. 1689. The lands included in this potential wilderness contain a communications right-of-way, and it is our understanding that it is the intention of the Chairman to allow the continued use of this site by the current lessees. However, in the event that the communications right-of-way is relinquished, these lands would be reclaimed and become part of the wilderness area. We support this provision.

Finally, the Potrillo Mountains complex in the southwest corner of Doña Ana County includes: Aden Lava Flow Wilderness (27,650 acres); Cinder Cone Wilderness (16,950 acres); Potrillo Mountains Wilderness (143,450 acres); and Whitethorn Wilderness (9,600 acres). Both the Potrillo Mountains Wilderness and Whitethorn Wilderness extend into adjacent Luna County. The legislation releases a substantial swath of land along the border with Mexico that is currently designated as WSA from WSA restrictions. The release contemplated by the legislation would allow greater flexibility for law enforcement along the border. We support this WSA release.

Two National Conservation Areas are established by section 4 of the legislation—the Organ Mountains NCA and the Desert Peaks NCA. As noted above, both of these NCAs include proposed designated wilderness within their boundaries. Each of the NCAs designated by Congress and managed by the BLM is unique. However, all NCA designations have certain critical elements in common, including withdrawal from the public land, mining, and mineral leasing laws; off-highway vehicle use limitations; and language that charges the Secretary of the Interior with allowing only those uses that further the purposes for which the NCA is established. Furthermore, NCA designations should not diminish the protections that currently apply to the lands. Section 4 of the bill honors these principles, and the BLM supports the designation of both of these NCAs.

Much of the lands proposed for both wilderness and NCA designations have been historically grazed by domestic livestock, and grazing continues today. Many of BLM's existing wilderness areas and NCAs throughout the West are host to livestock grazing, which is compatible with these designations. This use will continue within the NCAs and wilderness areas designated by S. 1689.

Section 4(f) of the bill transfers administrative jurisdiction of 2,050 acres from DOD to the BLM. These lands, currently part of the Army's Fort Bliss, would be incorporated into the Organ Mountains NCA. The lands to be transferred include the dramatic and scenic Fillmore Canyon as well as the western slopes of Organ Peak and Ice Canyon. We would welcome these lands into BLM's National System of Public Lands, and we would like to work with the Committee and DOD to ensure that the transfer is conducted consistent with other DOD land transfers to BLM.

Section 6 of S. 1689 concerns the recently established Prehistoric Trackways National Monument, just southeast of the proposed Desert Peaks NCA. The Monument was established in Title II, Subtitle B of the Omnibus Public Land Act (Public Law 111-11) signed by the President on March 30 of this year. Section 6 of S. 1689 addresses recent additional discoveries of 280 million-year old reptile, insect, and plant fossils on adjacent BLM-managed lands by adding 170 acres to the Monument. The BLM supports this expansion of the Monument.

Section 5(d) of the legislation provides for the withdrawal of two parcels of BLM-managed lands from the land, mining, and mineral leasing laws. The parcel designated as "Parcel A" is approximately 1,300 acres of BLM-managed lands on the eastern outskirts of Las Cruces. This parcel is a popular hiking and mountain biking site, and provides easy access to the peak of the Tortugas Mountains. From here, visitors can take in spectacular views of Las Cruces and the Rio Grande Valley. We understand that Chairman Bingaman's goal is to ensure that these lands are preserved for continued recreational use by Las Cruces residents. The legislation provides for a possible lease of these lands to a governmental or nonprofit agency under the Recreation and Public Purposes Act. The larger, 6,300 acre parcel, designated as "Parcel B," lies on the southern end of the proposed Organ Mountains NCA. It is our understanding that Chairman Bingaman considered adding this parcel to the NCA because of important resource values. However, a multitude of current uses make inclusion of this parcel in the NCA inconsistent with the purposes established for the NCA. Therefore, the limited withdrawal of the parcel will better serve to protect the resources within this area without negatively affecting the current uses of the area. The BLM supports the withdrawal of both of these parcels.

Finally, the BLM, along with many partners, has undertaken restoration efforts on more than one million acres of degraded landscapes in New Mexico, with the goal of returning grasslands, woodlands, and riparian areas to their original healthy conditions. We would like to work with the Chairman to develop language to support the BLM in implementing appropriate land restoration activities that will benefit watershed and wildlife health within these designated areas.

CONCLUSION

Thank you for the opportunity to testify in support of S. 1689. Both the BLM and the Department welcome opportunities to engage in important discussions such as this that advance the protection of treasured American landscapes. Passage of this legislation will ensure that generations of New Mexicans and all Americans will be able to witness a golden eagle soar over the Sierra de las Uvas, hike the landmark Organ Mountains, or hunt in the volcanic outcroppings of the Potrillo Mountains.

Senator WYDEN. Thank you, Ms. Burke. I know we'll have some in just a few minutes.

Mr. Jensen.

STATEMENT OF JAY JENSEN, DEPUTY UNDER SECRETARY FOR FORESTRY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. JENSEN. Thank you. It's good to be back in front of the committee again.

Mr. Chairman, Ranking Member Barrasso, members of the subcommittee: Thank you very much for this opportunity to speak to you today about bills that address wilderness designations in the coastal Douglas fir forest of Oregon and Native land claims in Alaska. My remarks will address the designation of the Devil's Staircase and then the Southeast Alaska Native Land Entitlement Act.

Devil's Staircase. The proposed designations would enhance the national wilderness preservation system and our national wild and scenic rivers system while preserving a unique landscape feature, the Devil's Staircase, a stairstep waterfall on Wasson Creek. The Department and the United States Forest Service support these designations of the national forest system lands. All these national forest system lands would be designated as wilderness and classified as late successional reserves, meaning they provide for the preservation of old growth habitat.

The forest has older stands of doug fir and western hemlock, with red alder in riparian areas. All three of these tree species are underrepresented in the national wilderness preservation system relative to their abundance in the national forest lands in Washington and Oregon. The proposed Devil's Staircase wilderness and wild and scenic river designation for Wasson and Franklin Creeks preserve an untrammeled representation of the Oregon Coast Range and we support those designations—as you said, Mr. Chairman, the perfect representation of the rugged, pristine, and wild characterization of Oregon.

Moving on, I'd like to open my testimony about the Southeast Alaska Native Land Entitlement Finalization Act by stating the Department and the agency approach regarding decisions about the Tongass National Forest, mindful of the Native Alaskan way of life, cognizant of the rich and deep tribal history, traditions, and rights on the Tongass landscape.

We support the timely and equitable distribution of the Alaska Native Claims Settlement Act. We are also very focused on the Department and agency's role in providing sustainable support for diversity of economic opportunities for Alaskan communities and Native Alaskans. I recently got to visit Southeast Alaska with my rural development counterpart, Deputy Under Secretary Victor Vasquez in Rural Development. While there, we co-hosted two economic diversity workshops in Sitka and Ketchikan to hear directly from members of the community about how USDA can support the people of Southeast Alaska. Similar workshops are now being held in every southeastern community, 32 in all.

We want to convey our commitment to working with the citizens of the region to find solutions that they want to pursue. The Department views this legislation within the broader context of the challenges facing the Tongass National Forest and Southeast Alaska. We support many of the goals of S. 881 and are committed to working collaboratively with Congress, Sealaska, and other community partners to find a solution that works.

As we step into this process, we are mindful of how complicated Tongass National Forest issues can be, how one issue, if not addressed in the context of the broader landscape, can have significant implications and repercussions. I will turn to my written testimony for further details speaking to our concerns with the bill, but I will end my comments here by sharing a little further, that recently I got a chance to attend the Tongass Future roundtable meeting that was held last week up in Anchorage. This dedicated collaborative group is dedicated to forging a comprehensive vision for the Tongass National Forest. While we know that that process has its challenges, the USDA supports this roundtable as the kind of forum needed to develop a shared vision for these lands.

In our brief time so far in this administration, we believe it would be difficult to extract the lands identified in S. 881 from the broader attempt to achieve a comprehensive and equitable solution for all those who have rights, interests, and investments in their use and management.

With that, I will conclude my remarks and look forward to your questions.

[The prepared statement of Mr. Jensen follows:]

PREPARED STATEMENT JAY JENSEN, DEPUTY UNDER SECRETARY FOR FORESTRY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

S. 1272 AND S. 881

Mr. Chairman, Honorable Ranking Member and distinguished members of the Committee, thank you for the opportunity to speak with you today about bills that address Wilderness designations in the coastal Douglas-fir forests of Oregon and Native land claims in Alaska. I will open my testimony by addressing the designation of Devil's Staircase and followed by the Southeast Alaska Native Land Entitlement Finalization Act.

S. 1272 would designate an area known as the Devil's Staircase as Wilderness under the National Wilderness Preservation System. In addition, S. 1272 would designate segments of Wasson and Franklin Creeks in the State of Oregon as wild rivers under the Wild and Scenic Rivers Act. The Department supports the designation of the Devil's Staircase Wilderness as well as the Wild and Scenic River designations on National Forest System lands. We would like to offer minor modifications to S. 1272 that would enhance wilderness values and improve our ability to manage resources in the area.

Devil's Staircase Wilderness Designation

The Devil's Staircase area lies in the central Oregon Coast Range, north of the Umpqua River and south of the Smith River. Elevations in the area range from near sea level to about 1,600 feet. The area is characterized by steep, highly dissected terrain. It is quite remote and difficult to access. A stair step waterfall on Wasson Creek is the source of the name Devil's Staircase.

The proposed Wilderness encompasses approximately 29,600 acres of National Forest System (NFS) and Bureau of Land Management (BLM) lands. NFS lands are approximately 23,500 acres, and BLM lands are approximately 6,100 acres. Approximately 7,800 acres of the NFS lands are within the Wasson Creek Undeveloped Area under the Forest Plan for the Siuslaw National Forest and were evaluated for wilderness characteristics in the 1990 Siuslaw National Forest Land and Resource Management Plan. While the Forest Service remains committed to the forest planning process, the agency did not have the opportunity to recommend wilderness during the development of the 1990 Siuslaw National Forest Land and Resource Management Plan. Congress passed Public Law 98-328, the Oregon Wilderness Act of 1984. That Act provided specific language regarding the wilderness recommendation process that exempted the Forest Service from having to further review a wilderness option for unroaded lands in the forest planning process since Congress had just acted on the matter. The Act does specify that during a forest plan revision the agency be required to revisit the wilderness options. For this reason, the Siuslaw National Forest Land and Resource Management Plan did not include a wilderness

recommendation. The 1990 Record of Decision determined that the Wasson Creek inventoried Roadless Area would be managed for undeveloped recreation opportunities.

All NFS lands that would be designated as Wilderness are classified as Late Successional Reserve under the Northwest Forest Plan, which amended the Siuslaw National Forest Land and Resource Management Plan in 1994. This land allocation provides for the preservation of old growth (late successional) habitat. There are no planned resource management or developed recreation projects within the NFS portion of the lands to be designated as Wilderness.

Most of the area is forested with older stands of Douglas-fir and western hemlock, and red alder in riparian areas. All three tree species are under-represented in the National Wilderness Preservation System, relative to their abundance on NFS lands in Washington and Oregon. These older stands provide critical habitat and support nesting pairs of the northern spotted owl and marbled murrelet, which are listed as Threatened species under the Endangered Species Act.

The proposed Devil's Staircase Wilderness provides an outstanding representation of the Oregon Coast Range and would enhance the National Wilderness Preservation System. The Oregon Coast Range has been largely modified with development, roads, and logging. Three small wilderness areas currently exist along the Oregon portion of the Pacific Coast Range, and the proposed Devil's Staircase Wilderness would more than double the acres of old-growth coastal rainforest in a preservation status. Wilderness designation would also preserve the Devil's Staircase, which is a unique landscape feature.

Road and Road Decommissioning

There are approximately 24 miles of National Forest System roads within the proposal boundary, 10.5 miles of which are not needed for administrative use and would be decommissioned or obliterated.

The remaining 13.5 miles of road comprise Forest Service Road 4100, which bisects the proposed wilderness. The Department recommends the Committee consider including in the Wilderness designation Forest Service Road 4100 to be managed as a non-motorized, foot and/or horse trail compatible with wilderness uses. Removing the road would result in the Department being able to manage the wilderness as a whole rather than two halves. The road is currently brushy and difficult to travel, making restoration of a wilderness setting a viable option. The Forest Service would use a minimum-tool analysis to determine the appropriate tools necessary to complete activities associated with the road.

Wild and Scenic River Designations

S. 1272 would also designate approximately 10.4 miles of streams on National Forest System lands as part of the National Wild and Scenic Rivers System: 5.9 miles of Wasson Creek and 4.5 miles of Franklin Creek, both on the Siuslaw National Forest. Both Wasson and Franklin Creeks have been identified by the National Marine Fisheries Service (NMFS) as critical habitat for coho salmon (Oregon Coast ESU [Evolutionarily Significant Unit] of coho salmon), a Threatened species under the Endangered Species Act.

The Department defers to the Department of the Interior concerning the proposal to designate the 4.2-mile segment of Wasson Creek flowing on lands administered by BLM.

The Forest Service conducted an evaluation of the Wasson and Franklin Creeks to determine their eligibility for wild and scenic rivers designation as part of the forest planning process for the Siuslaw National Forest. However, the agency has not conducted a wild and scenic river suitability study, which provides the basis for determining whether to recommend a river as an addition to the National System. Wasson Creek was found eligible as it is both free-flowing and possesses outstandingly remarkable scenic, recreational and ecological values. The Department supports designation of the 5.9 miles of the Wasson Creek on NFS lands based on the segment's eligibility.

At the time of the evaluation in 1990, Franklin Creek, although free flowing, was found not to possess river-related values significant at a regional or national scale and was therefore determined ineligible for designation. Subsequent to the 1990 eligibility study, the Forest Service has found that Franklin Creek provides critical habitat for coho salmon, currently listed as Threatened under the Endangered Species Act, and also serves as a reference stream for research because of its relatively pristine character, which is extremely rare in the Oregon Coast Range. The Department does not oppose its designation. Designation of the proposed segments of both Wasson and Franklin Creeks is consistent with the proposed designation of the area as wilderness. The actual Devil's Staircase landmark is located on Wasson Creek.

We would like to work with the bill sponsors and the committee on several amendments and map revisions that we believe would enhance wilderness values and improve the bill.

SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION ACT

I will now discuss the Department of Agriculture's views on and approach to S.881, the Southeast Alaska Native Land Entitlement Finalization Act. We recognize and support the timely and equitable distribution of land to Alaska Native Corporations, including Sealaska Corporation (Sealaska), under the Alaska Native Claims Settlement Act (ANCSA). USDA also understands and supports Sealaska's interest in acquiring lands that have economic and cultural value. We defer to the Department of the Interior for an analysis of this bill as it relates to ANCSA implementation as it affects the Department of the Interior.

The Department views this legislation in the broader context of the challenges facing the Tongass National Forest (Tongass) and Southeast Alaska, which include issues facing Native Alaskans and Sealaska Corporation. Recently, I joined my rural development counterpart, USDA Deputy Under Secretary Victor Vasquez, on a visit to the region. While there, we co-hosted two economic diversity workshops to better understand how USDA can support a diversified economy and range of opportunities for Southeast Alaskans. USDA regional staff, led by the Forest Service, committed at the close of those workshops to hold similar workshops in every community in Southeast Alaska; those sessions are happening now. We are focused on developing USDA's role in providing long-term, sustainable support for a diversity of economic opportunities for Alaskan communities and Native Alaskans.

While the USDA supports a number of the goals of this legislation and is committed to working collaboratively with Sealaska, Congress, and other community partners and interests to find a solution that works, we have a number of concerns that we want to work through with the parties. My testimony today will focus on outlining those concerns.

Background

By enacting ANCSA, Congress balanced the need for a fair and just settlement of Alaska Native aboriginal land claims with the needs for use of the public lands in Alaska. Congress' approach to resolving Alaska Native land claims in ANCSA is unique in its reliance on the formulation of native corporations. To manage the federal land entitlement conveyed to Alaska Natives, ANCSA created two tiers of native corporations: village corporations, of which there are over 200, and the larger regional corporations, of which there are thirteen, with twelve holding title to land. Federal lands were withdrawn to allow village corporations to select lands traditionally used by Alaska Native villagers. The twelve regional corporations were composed, as far as practicable, of Native shareholders having a common heritage who shared common interests within certain geographic regions. As the regional corporation representing Southeast Alaska Natives, Sealaska is required to fulfill its land entitlement from within the ten Southeast Alaska village withdrawal areas that represent the lands traditionally used by Southeast villagers and Sealaska's current Native shareholders.

Congress generally defined the land entitlements of both village and regional corporations, but provided for some differentiation among corporations to consider individual village or regional circumstances. One such consideration was the reduction of land entitlement to Sealaska to reflect a previous award of damages granted to Sealaska's primary shareholders, the Tlingit and Haida Tribes of Southeast Alaska.

Those tribes brought early suit against the United States to recover the value of land and property rights appropriated by the United States in Southeast Alaska. The suit was settled before the passage of ANCSA by a 1968 U.S. Court of Claims decision awarding damages of $7.5 million dollars to the Tlingit and Haida Indians of Alaska. The Court of Claims decision is based on the fair market value of the land expropriated by the United States at the time the lands were taken, as determined by valuing the highest and best use of the land and resources. Congress recognized this prior settlement in ANCSA and limited Sealaska's entitlement.

Sealaska is entitled to receive lands under Section 14(h)(8) of ANCSA, which allocates and provides for conveyance of land from the remaining portion of two million acres that is not otherwise conveyed as entitlement under the other subsections of 14(h) to be allocated among the twelve regional corporations on the basis of population. The BLM is responsible for determining Sealaska's final allocation under Section 14(h)(8). However, until other all other 14(h) entitlements are completely allocated, the BLM can only estimate what Sealaska's final entitlement will be. Based on the most recent information provided to the Forest Service from the BLM (October, 2008), Sealaska has been conveyed approximately 290,774 acres under Section

14(h)(8). Its remaining 14(h)(8) entitlement is63,535 acres plus 21.85% of any future allocation pursuant to this section. Thus, Sealaska has received more than 80% of its Section 14(h)(8) entitlement. These lands have been selected from the original federal land base withdrawn for selection pursuant to ANCSA. Currently, Sealaska has selected 170,000 acres from within the ANCSA withdrawal area, from which Sealaska has prioritized its remaining to 78,898-acre entitlement pursuant to Section 403 of the Alaska Transfer Acceleration Act. Indeed, Sealaska can fulfill all of its remaining actual, and potential, entitlement from the 170,000 plus acres of currently selected lands.

S.881

S.881 would amend ANCSA to allow Sealaska to select and receive conveyance from lands administered by the Forest Service that are outside of the original withdrawal areas established by the Act in 1971, and that would create new and unique categories of selections not available to other regional corporations. Specifically, S.881directs directs the Secretary of the Interior to convey to Sealaska three categories of lands from within the Tongass: economic development lands, sacred site lands, and Native futures sites. None of these categories of land selections currently appear in ANCSA and other Native Corporations are not entitled to make such selections. The Department is concerned that S.881 would provide an impetus for other regional corporations to reopen land claims at this critical final stage in the land transfer program.

The pool of lands identified in S.881 from which Sealaska would select its economic development lands includes significant areas of productive old-growth timber and major areas of young-growth timber. While the specific lands Sealaska will select as economic development lands from this pool are not known, we have a number of concerns regarding potential consequences these selections would have on USDA's efforts to develop a long-term, sustainable plan for supporting a diversity of economic opportunities for Alaskan communities and Native Alaskans. These concerns reflect the interconnected nature of the problems facing Southeast Alaskans: legislation that pulls out one piece of the puzzle makes it more challenging to find a comprehensive solution that is responsive to the concerns of local communities and conservation groups while also working for Sealaska.

In previous years, the Tongass National Forest has supported communities in Southeast Alaska through its timber program. In exploring a diversity of opportunities to support the communities and people of Southeast Alaska, the Forest Service is seeking to expeditiously transition that program away from reliance on sales of old-growth timber in roadless areas to an integrated program of work focused on restoration, development of biomass opportunities, and sales of young-growth timber in roaded areas. Indeed, the Tongass Futures Roundtable, a Southeast Alaska collaborative group that includes villages, industry, native corporations, the Forest Service and the State of Alaska, is addressing the integration of forest restoration and broad economic development during the transition from old-growth timber sales.

This shift will allow stakeholders in the region to come together to support healthy, vibrant communities and forested lands, and sustain the ability of Native Alaskans to pursue their way of life, communities, and culture, as they have for over 10,000 years. However, this transition will require a reliable supply of young-growth timber from lands having the infrastructure (e.g., roads, proximity to mills) to support an economically viable industry.

The lands identified in S.881 for selection by Sealaska are largely found on Prince of Wales Island. These lands represent a significant part of the Forest Service's roaded land base identified in the Tongass Land Management Plan as open to timber harvest. This land base is also closest to one of the few remaining large mills in the Tongass National Forest, as well as other smaller mills.

The lands involved in this legislation, therefore, are central to the Forest Service's ability to provide a sustainable supply of young-growth timber to facilitate transition of its timber program from old-growth timber harvest to restoration work, biomass, and young-growth harvest.

Another concern is that the old-growth reserves found within the land pool identified in S.881 are central to the Tongass National Forest's conservation strategy as outlined in its Land Management Plan. The amended TLMP established a comprehensive, science-based conservation strategy to address wildlife sustainability and viability. This strategy includes a network of interconnected, variably sized old-growth reserves across the forest designed to maintain the composition, structure and function of the old-growth ecosystem. Conveyance of economic development lands as proposed in S.881 would likely decrease the Tongass' ability to meet the

TLMP conservation strategy due to the likely inability to replace key lands associated with old-growth habitats.

It is also important to note that these lands overlap those of interest to the State of Alaska's Mental Health Trust, as well as to the "landless tribes" who did not receive an original land entitlement in ANCSA. It may be difficult to extract these lands while providing a comprehensive and equitable solution for all who are interested or invested in their use and management.

Although the proposed legislation states that implementation of the bill and conveyance of lands to Sealaska would not require an amendment or revision of TLMP, this language does not resolve land management issues that likely will arise regarding TLMP implementation. Regardless of whether an amendment or revision of TLMP is required, if the significant management strategies that form the basis of the current plan are modified through enactment of S.881, TLMP cannot be implemented as currently intended.

Enacting S.881 could also affect the ability to provide for continuous public access for recreation and subsistence uses on the Tongass. Among other things, the legislation provides that Sealaska has the right to regulate access on certain lands where the public use is incompatible with Sealaska's natural resource development, as determined by Sealaska. The Native futures sites identified for conveyance in the legislation include some of the most significant recreation sites that are critical to both commercial outfitter and guide use and public recreational use. The ability of the Tongass to provide for public and commercial recreation and tourism activities would be limited by enactment of the legislation. S.881 would also remove covenants on historic and cemetery sites conveyed under ANCSA Section 14(h)(1), which restrict activity that is incompatible with these sites' cultural or historic values. The Department believes this would provide an opportunity for other regional corporations to request removal of similar restrictions from other Native corporation sites, further negatively affecting the land transfer program. Similarly, the legislation does not provide for the ability to protect significant karst and cave resources that may be located on lands conveyed under S.881 to Sealaska.

AMENDMENTS TO THE TRIBAL FOREST PROTECTION ACT AND THE NATIONAL HISTORIC PRESERVATION ACT

Finally, the legislation includes amendments to the Tribal Forest Protection Act (TFPA) and the National Historic Preservation Act (NHPA) to consider lands owned by any Alaska Native Corporation as tribal-owned lands for the purposes of these Acts, the implications of which are described below. The Department would be willing to discuss ANCSA; however, we view the amendments to the TFPA and NHPA as unrelated to fulfilling the remaining acres of the ANSCA entitlement.

The TFPA is intended to strengthen Forest Service relationships with federally recognized Tribes and to restore forested lands by authorizing the Secretary of Agriculture to enter into contracts and agreements with Tribes to carry out certain projects on the National Forests to reduce threats to adjacent or bordering lands owned by Tribes. The bill would extend the benefits of TFPA beyond those Tribes currently listed on the official list of federally acknowledged tribes in the contiguous 48 states and in Alaska: Indian Entities Recognized and Eligible To Receive Services from the United States Bureau of Indian Affairs. The Alaska Native Corporations are not Tribal Governments as recognized by the BIA, and they do not have the capability of having the Federal government hold their lands in trust.

S.881 would amend the National Historic Preservation Act to include Alaska Native Corporations. Tribal lands as now defined in the NHPA include those within the boundaries of American Indian Reservations, which are governed by a Tribal Council duly elected by the Tribal members. These lands are managed for the benefit of Tribal members. Alaska Native Corporation lands, however, are managed by a corporate board of directors to provide a profit for the benefit of its shareholders.

The inclusion of Alaska Native Corporations as parties entitled to the benefits prescribed under both the TFPA and NHPA is at odds with the intent to provide tribes with certain benefits prescribed by these Acts.

ENVIRONMENTAL MITIGATION AND INCENTIVES

With respect to Section 5(b) of S.881 expressly authorizing environmental mitigation and incentives, we support the provisions that would allow any land conveyed to be eligible for participation in carbon markets or other similar programs, incentives, or markets established by USDA.

CONCLUSION

In conclusion, I want to note comments we have received from local residents and Alaska Natives regarding enactment of this legislation. Residents are concerned that the legislation will affect subsistence use and will affect public access for recreation, hunting, fishing, and gathering. Residents in communities throughout Southeast Alaska are surrounded by, and dependent upon, the Tongass for their livelihood and well-being and they seek "closure" to the decades-long forest planning process. Many are concerned the legislation will disrupt implementation of the amended TLMP. Some are concerned with the environmental consequences of the legislation, especially related to sustainable timber harvest and management and to the implementation of the Forest Service's conservation strategy. Finally, a number of comments reflect the interconnected nature of the problems facing Southeast Alaskans: legislation that pulls out one piece of the puzzle makes it more challenging to find a comprehensive solution that is responsive to the concerns of local communities and conservation groups while also working for Sealaska. Last week I attended a meeting of the Tongass Futures Roundtable, the collaborative group dedicated to forging a comprehensive vision for the Tongass National Forest. While that collaborative process presents its own challenges, USDA supports the Tongass Futures Roundtable and its efforts to find a shared vision for the land that we all love.

USDA and the Forest Service are prepared and eager to work with all parties to find a solution that works.

This concludes my testimony. I am happy to answer any questions that you may have on Devil's Staircase Wilderness Act or the Southeast Alaska Native Land Entitlement Act.

Senator WYDEN. Thank you very much.

I know many of my colleagues have questions for you, Ms. Burke, and you, Mr. Jensen. It sounds like it's a pretty good afternoon for the forests and the hikers and all those who are enjoying the Devil's Staircase area and the wilderness that we're proposing.

Mr. Jensen, you're for the legislation that Senator Merkley has introduced, 1272. Ms. Burke, you seem to be for it. You said something about minor modifications. Is it fair to say that as far as the administration is concerned there's no reason why the bill shouldn't be reported by the committee and approved by the Senate?

Ms. BURKE. That's correct. It's just that we would like to work with the committee with some minor modifications.

Senator WYDEN. I think I ought to quit while I'm ahead. That's some good news for Oregonians. These are special treasures that we feel strongly about.

Both your agencies have cooperated fully with us. I'd have more questions under normal circumstances, but I know a lot of colleagues have interests that are very important to them. So we'll start with Senator Bingaman, I think, and then we'll go to Senator Barrasso.

The CHAIRMAN. Thank you very much.

Let me ask Ms. Burke just a few questions about the legislation that Senator Udall and I are proposing there in southern New Mexico, the Organ Mountains-Desert Peaks Wilderness Act. One of the issues that's often raised with new conservation proposals is what effect the designation will have on energy development. Are you aware of any applications for renewable energy development in these areas?

Ms. BURKE. The BLM in New Mexico informs me that they have not received any applications for renewable energy in this area.

The CHAIRMAN. Can you tell us what the potential is for oil and gas development within the proposed wilderness and national conservation areas covered by the act?

Ms. BURKE. Yes. The BLM in New Mexico informs me that the areas that are designated by this bill have very low potential for oil and gas development. There are currently three existing oil and gas leases within the Desert Peaks National Conservation Area and those valid existing rights will be protected, but currently there is no oil on those leases.

The CHAIRMAN. Finally, can you tell me whether there are any West-side energy corridors that run through the areas that are proposed for designation?

Ms. BURKE. BLM recently completed work on a series of these corridors and, no, they do not conflict with the designations in this bill.

The CHAIRMAN. As a general matter, can you tell us the experiences that the BLM has had with managing the grazing in areas that have been designated as national conservation areas? Does the designation of an area as a national conservation area significantly affect the existing grazing activities based on the experience of the BLM?

Ms. BURKE. Most of the NCAs managed by the BLM had livestock grazing on them before designation and that grazing continues today. Grazing is managed in the national conservation areas under the same rules and regulations as on other BLM lands.

The CHAIRMAN. Thank you very much.

Senator WYDEN. Thank you, Senator Bingaman.

Senator Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

Mr. Jensen, several of these bills are going to set aside large areas and put them off limits to motorized recreation. I understand that there is quite a large off-road recreation community often within or near many of these areas. So for each of these areas, can you give me some understanding or bring me some information on how much we're talking about and the impact to those people who use off-road vehicles?

Mr. JENSEN. I believe in the wilderness designation case that I believe you're referring to in Oregon my briefing is that there is one road that goes through the area, but it's not heavily used. It's a fairly rugged road that is being looked at potentially being decommissioned as part of this. But the larger approach of the NCUs is to look at these sort of designations in relation to recreation and to the tribal management system and plans. Currently right now, all national forests are going through this process to catalogue, identify shared resources in forests, so that these sorts of designations and other uses are done in a way that doesn't impact, severely impact, user groups and is done in a way that's environmentally sensitive.

Senator BARRASSO. Ms. Burke, S. 940, the Southern Nevada Higher Education Land Act. I read that and I think that it may be vague in the restrictions on how the three colleges may use the conveyed lands. The proposed legislation could be interpreted to mean that these colleges could put commercial or private development on the land. So I'm just curious if there is any precedent for this type of provision in other laws when we do these kind of exchanges. Anything that you're aware of?

Ms. BURKE. Yes. Last year in S. 2324, which was in Twin Falls, Idaho, that the BLM supported, which was the transfer of land for recreational purposes and for a waste water treatment facility. This year we supported S. 1140, which was in Oregon. That was for rodeo grants and also for a wastewater treatment facility.

Senator BARRASSO. I'm wondering if it's an open-ended conveyance, because you said it sounds like that was a clearly designated issue. Is it the policy of the administration to support open-ended conveyances of Federal lands?

Ms. BURKE. It's the policy of the Administration to support conveyances that are consistent with the Recreation and Public Purposes Act. So as I said in my testimony, the BLM would welcome the opportunity the work with the sponsor of the bill and the committee to make sure that the conveyances are consistent with that act.

Senator BARRASSO. Thank you.

To both of you: This spring Senator Murkowski sent a letter to the Secretaries of Interior and Agriculture requesting information be made available by the administration on energy potential and renewable energy potential, as to mineral availability for all areas that are proposed for set-asides in legislation before this committee. I don't know if you know what the status might be of any maps or any information regarding these bills that we're considering today.

Mr. JENSEN. My understanding is that efforts are under way, if not have already been transmitted to the committee, related to that request. I hope that they are indeed already there.

Senator BARRASSO. If not, can you work more closely with the committee so we would have these before we make final consideration of the legislation.

Mr. JENSEN. Yes.

Senator BARRASSO. That would be for both of your agencies.

Ms. BURKE. Yes.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. Why don't we go next to Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

First to you, Ms. Burke. I appreciate the administration's statement of support for S. 522. I want to address or discuss with you a couple of the concerns that you have raised, and Mr. Jensen as well, regarding the Sealaska legislation. You have suggested, Ms. Burke, that we may see a delay in conveyances despite the legislation that we were successful in introducing and getting passed some years ago, the Alaska Lands Acceleration Act. But under the terms of that act what we provided for was that these conveyances would be complete by the anniversary, the fiftieth anniversary of statehood, which we are celebrating this year.

We are not going to meet that deadline. Your suggestion is that somehow or other this delays conveyances. I might suggest to you that part of the problem with accomplishing what we set out in that Acceleration Act was that there hasn't been sufficient funding. We have not been able to get the survey that we have needed.

It seems to me that the appropriate response here is to say that we've got to do more within the budget to allow for these convey-

ances to move forward, rather than to suggest that Sealaska should just wait longer for its conveyances. I think 40 years or 38 years is long enough. So I would hope that as we look to this issue we recognize that it is a bigger picture in terms of the conveyances that are due the State under the ANCSA Act.

Let me ask a question about the precedent-setting. You have suggested this, Ms. Burke, and I understand, Mr. Jensen, in your written testimony that I only received this morning that you both are concerned about this somehow being precedent-setting. I would like to point out a couple facts. First, ANCSA's has already been amended. It has been amended about 40 different times, so this is hardly going to be a first.

Given the unique circumstances that we have with Sealaska, dating back to 1971 they were the largest block of shareholders of the Native corporations and they received the smallest amount of land, largely because at that time the land, a large portion of southeastern land was locked up or encumbered by these long-term timber sales contracts.

Now, all those contracts have been canceled and they were canceled by your Department, about 25 years after ANCSA went into effect. Now you have literally hundreds of thousands of acres that are now available for selection in the mid-1990s.

I look at this situation and say it is very unique within ANCSA and can hardly be construed as precedent-setting. I don't see any other entity that will be able to make this claim. Would you agree with me? I'd ask this of both of you.

Ms. BURKE. I will. It is true that Alaska has some unique circumstances. Sealaska has had sufficient land selections on file in order to satisfy their entitlements.

Senator MURKOWSKI. Would you agree that about 40 percent of those are under water and that a considerable number of those were also locked up or encumbered with these long-term timber contracts until the mid-1990s?

Ms. BURKE. Well, I'm not aware of how much of that might be tied up today. But Sealaska has selected over 170,000 acres and its remaining allocation is about 63, 64,000. So we think that's more than adequate to satisfy that entitlement.

Senator MURKOWSKI. I'm not sure that I understand. There's somewhere between 65 and 85,000 that Sealaska is yet eligible to claim. You're not suggesting that they are not entitled to that?

Ms. BURKE. No, not at all. I'm saying that they've selected, Sealaska has selected, over 170,000 acres. The remaining entitlement as far as we can determine as of today is about 64,000. So within that 177,000 we should be more than able to satisfy the entitlement of 64,000.

Senator MURKOWSKI. Again, I would take you back to my point that if you look at the maps, which I'm sure you have given great consideration, you have a great portion of this that is not viable. However, when you have 40 percent of your available areas that would be under water, to me that's not a viable selection.

What we're trying to provide here is equity to the Sealaska shareholders. The whole purpose under ANCSA was to allow for economic opportunities to proceed and that, as Senator Begich has mentioned, is so integrated to the land.

Mr. Jensen, I haven't given you an opportunity to answer. My time has expired, but if you could just briefly address it.

Mr. JENSEN. There many different precedential components to this exchange. The key part of the context for us is some of the court claim settlements that occurred even before ANCSA around Southeast Alaska Corporation. I think that those agreements that went in before the agreements that were laid out for the corporation to this day relate a lot to how we view the issue.

My understanding is that the corporation did submit its selection of those lands some years ago, but has not moved forward. I'm not fully briefed on that and will commit to working with you to find out how that currently stands.

Senator MURKOWSKI. OK. We can certainly help you with better information.

Mr. Chairman, my time has expired.

Senator WYDEN. I thank my colleague.

Let's go next to Senator Udall.

Senator UDALL. Chairman Wyden, I believe Senator Begich has an appointment that's more urgent than I do. So I would defer to him at this point.

Senator WYDEN. Let's recognize Senator Begich.

Senator BEGICH. Thank you very much. I'll be brief. I do have a 3:30.

I'm going to try to follow what Senator Murkowski laid out there, Ms. Burke. That is, I understand the mathematical issue of how much acres is available, how much they selected and what is left to select, but the question is the quality of the land. We can debate if 30 percent or 40 percent or whatever that percent is is under water or on mountaintops. It's very difficult to do what Sealaska is required to do under ANCSA, which is to manage the lands for their people, which is not only economically but also for subsistence or utilization within that corporation. So there's multiple reasons.

Do you see that as an important factor in this, that the lands that may be available do not meet those needs? I have to warn you that I can only speak to this from my knowledge of this bill because my dad wrote the bill, because I want you to be prepared for that as you answer this.

Ms. BURKE. I don't know that I can comment on fairness per se, but I can say that the BLM is committed to working with Sealaska and with the other interested parties in the State of Alaska to come to a solution that works. Our concern with this particular bill, as we said, is just the precedent that it would set and that we think there are other ways to work with Sealaska that we have yet to explore fully, but that this is not—this is not the way to go, given our interest in accelerating completion of the entitlement process.

Senator BEGICH. I understand that. But I'm new around here, but I will tell you when I hear "precedent-setting," there's nothing in this body that I've ever seen that stays the course, that's always the same year in and year out. One thing I have noticed around here is there's always tweaks and turns from the administration as well as from Congress, because things change. Conditions change.

I think Senator Murkowski laid out an interesting comment in regards to the lands that suddenly became available. I use the

word "suddenly." 25 years is not really suddenly. But still, in fact they became available, which changed the dynamics. In 1971 there was a certain parameter that you looked at. In the 1990's that enlarged.

So I guess I want to stress the point. I think there is a way to resolve this issue. What I guess I'm looking for from both of you actually, that you don't have the narrow window of a bureaucracy that says we can't set a precedent, because everything we do in Congress is setting a new precedent about everything. So I don't want you—if that's the answer, obviously that doesn't get to what the core issue of ANCSA was, which was all about management of lands for the people, and therefore the people need to be heard.

I know there's conflict within our community and we're working through that. But I hope that the Departments don't use precedent-setting as the only reason. At the end of the day I'm looking for an answer from both of you on that, because that doesn't really cut it.

Mr. JENSEN. If I might jump in, I think your question is a perfect example of what it is the position of both the Department of the Interior and the Department of Agriculture we need to sit down and talk about these issues a little more and look into the circumstances of how those designations were put out when the law first passed and look at the situation that we have right now. We do have other cases that this may be precedent-setting for, but that's a consideration.

So we really do look forward to sitting down and talking with you to figure out how we might come together in agreement on this.

Senator BEGICH. That's a fair statement. I'll leave it at that.

The only other thing I would ask—and I don't recall because I don't have the budget information here, but on the accelerated land transfers can you say, Ms. Burke, that the dollars you need—every dollar you need you've asked for to accelerate that?

Ms. BURKE. I would have to get back to you on that question. I cannot say whether or not without our past budget requests.

Senator BEGICH. Can you do that for the record, not only from the past, but what you're preparing now for the next budget cycle? Because if you're not asking for the money you'll never accelerate. So you can't use that argument because that just goes around in circles. So I want to make sure that the resources are available. Senator Murkowski laid it out very well that if you're going to accelerate you need the funding. But you need to ask for it. If you're not asking for it, we can't accelerate.

So if you could do that for the record. Mr. Chairman, if that's OK I'd appreciate it.

Senator WYDEN. We will hold the record open for it.

Senator BEGICH. Thank you very much, Mr. Chairman. I appreciate the courtesy of allowing me to testify and also to ask questions.

To the Alaskans here, I apologize, but I have to take care of some other business. But I know Senator Murkowski will be the lead and be aggressive in making sure all the good facts that you have are presented.

Thank you very much.

Senator WYDEN. Glad to have you here. You are welcome.

Senator Udall.

Senator UDALL. Thank you very much, Chairman Wyden.

Ms. Burke, the New Mexico wilderness areas included in this bill under consideration today are in close proximity to the Mexico-United States border, and as we consider the merits of land preservation it's important to take into consideration the impact that land designations may have on homeland security efforts.

Can you describe the working relationship between the BLM and the Border Patrol in areas such as Doña Ana County, and do you think we've made the changes we need to make to protect border security?

Ms. BURKE. Yes. The Department has a memorandum of understanding from 2006 to work cooperatively along the border with respect to areas that we manage. This bill actually would release 16,000 acres that are under the wilderness study area designation, so it would move the boundary line from where it is currently to about a half mile from the Mexican border to 3 miles back. So we think that is sufficient space for the Border Patrol and other law enforcement agencies to do their important work.

Senator UDALL. I assume you would also work with them in terms of ecological value of the land and in whatever activities they have to carry out there also?

Ms. BURKE. Absolutely.

Senator UDALL. You have done that in the past?

Ms. BURKE. Yes.

Senator UDALL. One other question I have regards taking on the issue of invasive species. I know you've been doing that in southern New Mexico on your lands. Does changing the designation here hurt your efforts in any way to continue those kinds of efforts?

Ms. BURKE. Senator Udall, I have to get back to the committee on that question.

Senator UDALL. OK, that would be great. That would be great, if our chairman and ranking member would let us supplement the record on that. Thank you very much. Thank you both for your testimony.

Senator WYDEN. We will—we thank you.

I think we're prepared to excuse you both at this time. Senator Murkowski, additional questions?

Senator MURKOWSKI. I appreciate the opportunity and I will try to be very quick.

Mr. Jensen, you mentioned the Tongass Futures Roundtable. We too have been very hopeful that good things will materialize from the dialog and the talks that have been going on for several years. I am a little concerned, though, that you may be suggesting that we can't resolve Sealaska without the Tongass Futures' blessing. There currently has been a new proposal that has just been put out on the table in the past week. Are you suggesting that we should put a hold on the Sealaska measure in anticipation of something from the roundtable?

Mr. JENSEN. I'm glad you've given me a chance to clarify. Not at all. The Department's interest in the Tongass Futures roundtable is grounded in a place where people come together to talk about these issues and find if there is some common ground to work for-

ward on. That's where it focuses our attention. It gives us an idea of some of the places where there are some ideas and some solutions. So we don't just look at the roundtable as one place to deal with Sealaska. We look at that as a place to deal with some of the larger issues that are impacting the region and the forests there and as one example of the collaborative type efforts that we view as potentially methods to have us work through these very troublesome and difficult issues all across the country.

So particularly with this case here, we're simply looking to the roundtable for an expression from a multiple set of stakeholders on how they view the various issues around the Tongass National Forest.

Senator MURKOWSKI. I appreciate you saying that, because I don't want this to be a situation where this legislation that would bring, equity to the Sealaska people would be held hostage to a process that is certainly important, but it's also one that is very complicated, takes a great deal of time, and takes years.

The Secretary of Agriculture has said repeatedly that one of his initiatives or priorities is to make sure that American Indians, Alaska Natives, or indigenous peoples are treated fairly. I would suggest to you that 38 years for the Sealaska people to wait for their lands is not treating them fairly.

Mr. JENSEN. I can assure you that Secretary Vilsack feels the same way.

Senator MURKOWSKI. Thank you, I appreciate that.

Senator WYDEN. Thank you, Senator Murkowski. I know we'll be following up with you on a number of the issues raised today. I will excuse you at this time.

Our next panel: the Honorable Oscar Vasquez Butler of Las Cruces, New Mexico; and Dr. Jerry G. Schickedanz, also of Las Cruces; Byron Mallott, Sealaska Corporation, Juneau; and Bob Claus, Southeast Alaska Conservation Council, also of Alaska.

All right, let's proceed. We'll start with Mr. Butler, Mr. Schickedanz, Mr. Mallott, and Mr. Claus. All right, please proceed, Mr. Butler.

STATEMENT OF OSCAR VAŚQUEZ BUTLER, VICE-CHAIR, DOÑA ANA COUNTY BOARD OF COMMISSIONERS, LAS CRUCES, NM

Mr. BUTLER. Good afternoon, Mr. Chairman and members of the subcommittee. It is my great privilege to be here at Senator Bingaman's invitation to testify before the Subcommittee on Public Lands and Forests.

The CHAIRMAN. I do think you need to push the button once more, Oscar. Thank you.

Mr. BUTLER. I'm sorry.

I am honored to represent the 2,000-plus residents that we represent in New Mexico. There are few issues in Doña Ana County that have received as much attention since 2005 as the potential for significant public lands conservation through wilderness and national conservation area designations. Local stakeholders have dedicated long hours to realize the benefits that conservation can bring and have worked hard to address the issues and concerns.

I am here to endorse S. 1689, the Organ Mountains-Desert Peaks Wilderness Act, jointly introduced by Senator Jeff Bingaman and

Senator Tom Udall. This legislation meets the hopes of almost everyone involved. It assures our children and grandchildren will be able to enjoy these designated wilderness areas as have their parents and ancestors.

From the Organ Peaks to those rare desert grasslands in the Potrillo and Uvas Mountains, to Broad Canyon's hidden riparian areas and beyond, this legislation would protect the natural marvels of Doña Ana County and the diversity and rich culture of its residents and visitors. This legislation has earned has earned buy-in from nearly every sector of the community that will be affected by its passage. That buy-in entails significant compromises forged by multiple groups, none of whom received all that they wanted, but the vast majority of whom received substantially what they needed to support the end result.

Three times, in 2006, 2008, and 2009, the Doña Ana County Commissioners supported both the process and promise of wilderness and NCA designation for important lands in the county. The acreage to be protected as wilderness in this bill is lower than originally envisioned, but it remains impressive. The legislation does represent a broad consensus. Protecting our wilderness is securing our community's future.

One area it will benefit is economic growth and opportunity. If you ever come to Las Cruces, you will see the Organ Mountains on many business marquees from land developers to local auto mechanics. Our magnificent mountains are a strong signature for the entire valley. Our robust growth is fueled largely by the attraction these natural areas provide. I believe businesses are increasingly concerned about the quality of life and view favorably the nearness of the protected public lands when siting operations. This is especially true of the high tech industry. These businesses are looking for an environment that will help them attract and maintain a motivated, energized work force, a place where they can raise their families. Knowing that the public lands and landscapes they treasure will be protected, this is the promise that wilderness and national conservation area designation holds to our community. That is why the High Tech Consortium of Southern New Mexico and the Hispano Chamber of Commerce de Las Cruces have thrown their support behind Senator Bingaman and Senator Udall's efforts.

The other benefit of this legislation for our community is increased ability to plan, ability and clarity to plan. For decades now the lands in the Organ Mountains-Desert Peaks Wilderness have been in limbo. That makes it difficult to plan for the future growth from multiple standpoints. In 2007 Doña Ana County and the city of Las Cruces jointly entered into a planning process known as Vision 2040. This process, with dozens of public meetings and other opportunities for public input, will help set community priorities for the next 3 decades. Knowing that some lands will be permanently protected makes our job much easier.

Support for this legislation is widespread and prevalent throughout Doña Ana County. I do take strong exception to the statement made by opponents of this act that wilderness is primarily used by affluent Anglos. As an Hispanic American representing a community whose Hispanic population nears 50 percent in the most Hispanic State in our country, this assertion by local wilderness oppo-

nents is factually incorrect. Hispanics enjoy strong traditions of family, community, love of the land, and environment. We are sportsmen and conservationists, businessmen and leaders who enjoy our public lands and New Mexico wilderness areas as much, if not more, than anyone else. Upon passage of S. 1689, we will all enjoy these wilderness areas right in our own backyards.

I'm getting short on time, so thank you again for the opportunity to speak to you today on behalf of this incredible legislation, and I stand ready for any questions, Mr. Chairman.

[The prepared statement of Mr. Butler follows:]

PREPARED STATEMENT OF OSCAR VÁSQUEZ BUTLER, VICE-CHAIR, DOÑA NA COUNTY BOARD OF COMMISSIONERS, LAS CRUCES, NM

S. 1689

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to speak in favor of S. 1689, The Organ Mountains—Desert Peaks Wilderness Act, introduced by Senators Jeff Bingaman and Tom Udall. My testimony represents my own personal strong support for this important conservation initiative, as well as that of the entire Board of the County Commission for Doña Ana County, which unanimously passed a resolution in support of The Organ Mountains—Desert Peaks legislation on September 22, 2009.

Mr. Chairman, I highly commend Senator Bingaman and his colleague Senator Udall for their good work, diligence and dedication in developing this far-reaching, well-thought-out proposal to protect forever some of the most scenic and environmentally important lands in Doña Ana County and, indeed, the entire State of New Mexico. Senator Bingaman has championed this proposal over many years, taking his time to ensure he reached out to all interested parties, listened to their concerns and recommendations, and developed a broad-based piece of legislation that represents a very reasonable compromise that will protect our cherished lands and the rights of the people to enjoy them.

Senator Bingaman listened to his constituents—those who love and cherish these lands—and developed, through a collaborative process, a solid piece of conservation legislation. Adjustments were made in both the scope and policies contained within the proposal and, while not everyone is 100 percent satisfied, I believe everyone was heard by the Senator.

Mr. Chairman, the legislation before the Subcommittee today represents what can be accomplished through the true spirit of cooperation and compromise. I can assure you that the vast, vast majority of the citizens of Doña Ana County and the State of New Mexico support Senator Bingaman and Udall's efforts. From sportsmen to local businesses, horsemen to hikers, there is a consensus that these special lands deserve the protection this legislation will provide.

Mr. Chairman, let me take this opportunity to tell you a little about my background and the great County I have the privilege to represent.

I currently serve as the Vice-Chair of the Doña Ana County Board of Country Commissioners, having been first elected to the Board in 2002. I have also served my community in many other capacities, including: President of the New Mexico Association of Counties; board member of the New Mexico Water Dialogue Board and the Lower Rio Grande Water Users' Organization; past chairman and current board member of the South Central Solid Waste Authority and the Doña Ana County Extra Territorial Authority; and past president of the Doña Ana County Water Association.

Doña Ana County is the second-largest populated county of the state's 33 counties, and comprises some 3,800 square miles of territory. I have the great honor to represent the largest commission district, District 1. The County has a population of just over 200,000, but is expected to continue to grow to over 300,000 by 2015. The county seat, Las Cruces, is considered to be one of the fastest growing communities in the United States.

As a result Mr. Chairman, our communities know full-well the difficulties involved in managing development and growth, and we are particularly aware of the importance of protecting open space. In fact, it is these very lands that have rooted our ancestors to this area and serve to draw new citizens every day. Our way of life is tied to the majestic landscapes and way of life that this legislation seeks to protect.

Mr. Chairman, pristine natural areas provide unique opportunities for recreation and tourism that contribute to the local economy. Additionally, I believe businesses are increasingly concerned about quality of life, and view favorably the nearness of protected public lands when siting operations. That is why over 200 local businesses, along with the Hispano Chamber of Commerce de Las Cruces, and the High Tech Consortium of Southern New Mexico have endorsed this conservation effort. The areas offer excellent opportunities for hiking, hunting, camping, climbing, horseback riding and, perhaps most important, quiet solitude for our citizens to enjoy and relax in when the work day is done.

The Organ Mountains-Desert Peaks Wilderness Act will promote future growth by securing the special quality of life our County has to offer. Doña Ana County and the City of Las Cruces are cooperatively working together on a joint plan known as Vision 2040. This comprehensive analysis of our future needs as our population continues to grow will inform many facets of our land-use planning processes, including transportation options and economic development. Senator Bingaman and Senator Udall's legislation provides us with much needed clarity on public lands conservation and will help the Vision 2040 process, ensuring our community's growth is well planned and prepared for.

In fact, Doña Ana County has long recognized the important opportunities protecting our local wilderness areas offers. In February of 2006, we passed a resolution supporting protection of regional wilderness study areas and additional public lands prized by our community. In 2008, we again passed a similar resolution in support of preserving our most sensitive public lands. And, throughout the development of this legislation, we have worked closely with Senator Bingaman and now Senator Udall. Thus, our unanimous resolution passed on September 22, 2009, in support of the Organ Mountains-Desert Peaks Wilderness Act was the culmination of years of effort.

The nearly 359,850 acres of public land the bill will protect (259,000 acres as wilderness and over 100,000 acres as a National Conservation Area) includes rich grasslands in the Potrillo and Uvas Mountains, petroglyph sites and riparian areas in Broad Canyon, crucial watersheds, and the iconic spires of Las Cruces' signature scenic attraction—the Organ Mountains. These lands also possess great ecological value, with the Organ Mountains perhaps being the most botanically diverse mountain range in New Mexico, with approximately 870 plant species. The area is rich with wildlife, including pronghorn antelope, mule deer, mountain lions, quail, and numerous other bird species.

Perhaps Senator Bingaman said it best when he noted that, "The Organ Mountains are among the many scenic landscapes in Doña Ana County that define Southern New Mexico and the rich culture of its people." That is why I am here today to testify before the Subcommittee, Mr. Chairman—-to ensure that these majestic, culturally important, environmentally sensitive lands that make up our community will be protected and properly managed for this and future generations to enjoy in all their splendor.

Again, I offer my deep appreciation to Senators Bingaman and Udall for their outstanding work on behalf of this fine effort to protect an area very dear to me and the citizens of Doña Ana County. And, thank you, Mr. Chairman, and the Members of the Subcommittee, for your attention to my statement in Support of the Organ Mountains—Desert Peaks Wilderness Act.

Mr. Chairman, I am also submitting several documents for the record, including three different resolutions passed by the Doña Ana County Commission supporting protection of regional wilderness areas, a list of supporters of this Act, opinion editorials from the Mayors of Las Cruces and Mesilla and the Chair of the Doña Ana County Commission, as well as from local sportsman leaders, and editorials from the Las Cruces Sun News and Albuquerque Journal endorsing the Organ Mountains-Desert Peaks Wilderness Act. This concludes my written testimony.

Senator WYDEN. Thank you very much, Mr. Butler.

We're running into a little bit of a logistics challenge with some votes coming up at 4 p.m. So in the great bipartisan tradition of this committee, we have worked it out so that when you have completed, Dr. Schickedanz, your testimony, Senator Bingaman and Senator Udall would like to ask you some questions briefly, and the New Mexico Senators and I will have to leave. We're going to turn this over to Senator Murkowski to run the rest of the hearing.

I just want all of you to know that the subcommittee chair will be following up closely on all your views. We feel badly. This time of year things get a little hectic.

So we'll go now to you, Dr. Schickedanz, and the questions from Senator Bingaman and Senator Udall. Please proceed.

STATEMENT OF JERRY G. SCHICKEDANZ, PH.D., CHAIRMAN, PEOPLE FOR PRESERVING OUR WESTERN HERITAGE, LAS CRUCES, NM

Mr. SCHICKEDANZ. Thank you, Mr. Chairman. I've practiced my 5 minutes and, unless I get scared and revert back to my Okie drawl, I should be done in time.

Mr. Chairman and members of the committee: My name is Jerry Schickedanz. I am Chairman of the People for Preserving our Western Heritage, a coalition of 791 businesses and organizations in Doña Ana County, New Mexico. The organization was formed in November 2006 after a series of meetings among Federal lands stakeholders organized by the county of Doña Ana and the city of Las Cruces to establish a consensus on proposed wilderness designations for ten local areas.

The mission of People for Preserving Our Western Heritage is to preserve, promote, and protect farming and ranching and the rural heritage of our western lands. We support permanently preserving and protecting the Organ Mountains and the other special areas of our county.

We believe there are viable alternatives to Federal wilderness designations that can be used to protect our land, our natural resources, and our open space. We encourage and believe in beneficial and balanced stewardship of our Federal lands, which requires an accurate understanding of the facts.

Senators Bingaman and Udall introduced S. 1689, the Organ Mountains-Desert Peaks Wilderness Act. Upon reviewing it, we feel there are some issues that were overlooked. We believe: One, that not all the lands proposed for wilderness designation meet the wilderness standard;

Two, there is a need to develop new land protection designations;

Three, that border security needs to be considered very carefully; and

Four, that language concerning grazing needs to be placed in a higher level in the bill.

Doña Ana County in the Southwest has been used for food production since the earliest record of man in the valley. There has been livestock in the area since 1598, when Onate crossed into now present day New Mexico. These lands have been used for the continuous production of primary wealth. Wildlife has been set aside since the 1920s and inventoried and protected under the Wilderness Act of 1964.

Initially, these lands met the strict interpretation of the Wilderness Act that included 5,000 acres of roadless area free of sight and sound of man, and were essentially untrammelled. Currently there is over 100 million acres of land protected in Federal wilderness in the United States

Lands being considered now don't meet those criteria. We're trying to protect lands under the Wilderness Act with the gold stand-

ard of protection. However, these lands don't meet the gold standard of wilderness character.

There are other ways to protect lands. Citizens of Doña Ana County and the People for Preserving Our Western Heritage agree on the need for protection. We just don't agree on the method. We have suggested a rangeland protection area designation as an alternate method of land protection. We feel it is time to develop a new land protection designation that is not as restrictive as the wilderness designation, to correspond with lands that are not meeting the gold standard of wilderness.

We have grave concerns about giving wilderness designation to lands adjacent to the border, with all the inherent security issues such as illegal trespass, illegal transport of drugs and of people, land desecration, while putting life and limb in serious jeopardy. We have outlined in detail problems in Arizona with wilderness designation and the problems that law enforcement and border control encounter and the unfortunate situation that has evolved.

We feel that grazing needs to be elevated in the bill to the same level of purpose as is given to other protected designations, such as cultural, geological, historical, etcetera.

For these and many other concerns listed in my written testimony, we feel there needs to be further dialog and negotiation between Doña Ana County citizens and this committee. Mr. Chairman, Senator Bingaman, and members of this committee, this legislation will have a major impact on 560 square miles of Doña Ana County and on the over 200,000 citizens who reside there. We strongly suggest this committee hold a field hearing where the land and the people exist so that all issues and interests can be fully aired and discussed with the folks most affected.

I brought with me signatures of 15 ranchers who ranch on 80 percent of the lands slated for wilderness and NCA, who object to the bill as it's currently written. I also have a list of 791 business organizations in Doña Ana County and adjacent counties who also object to the bill as being currently too restrictive. I would like to place those into the record if I might.

Senator WYDEN. Without objection, it will be done.

[The prepared statement of Mr. Schickedanz follows:]

PREPARED STATEMENT OF JERRY G. SCHICKEDANZ, PH.D., CHAIRMAN, PEOPLE FOR PRESERVING OUR WESTERN HERITAGE, LAS CRUCES, NM

S. 1689

INTRODUCTION AND BACKGROUND

I am Jerry G. Schickedanz, Chairman of People For Preserving Our Western Heritage (PFPOWH), a coalition of 791 businesses and organizations in Doña Ana County, New Mexico. The organization was formed in November of 2006, after a series of meetings among federal lands stakeholders organized by the County of Doña Ana and the City of Las Cruces to establish consensus on proposed wilderness designations for ten local areas.

The mission of PFPOWH is "To preserve, promote and protect the farming, ranching and rural heritage of our western lands."

We support permanently preserving and protecting the Organ Mountains and the other special areas in our county. We believe there are viable alternatives to federal "Wilderness" designation that can be used to protect our land, our natural resources and our open space. We encourage and believe in beneficial and balanced stewardship of federal lands which requires an accurate understanding of the facts.

COMMUNITY EXPECTATIONS

As the result of the many meetings with the stakeholder groups, PFPOWH concluded that no existing land use designations in use by the federal government provides for protection of the land while meeting the concerns and expectations of our community. Community expectations for the management of our public lands are as follows:

1. Retention of open space.

Almost everyone is committed to the preservation of our open space.

2. Provision for planned economic and population growth.

The population of Doña Ana County is going to grow. That growth will require some federal and state lands to be included within the scope of land use planning. Prohibiting the sale of public lands cannot be used as a tool to restrict the growth of local communities. FLPMA promises that to us.

3. Unrestricted application of Homeland Security and law enforcement activities.

No prudent leader should tie the hands of law enforcement on or near the Mexican border.

4. Prevention of unlawful use of off road vehicles.

The ranchers were the first and foremost advocates of this, but they were not alone. Every group and every stakeholder representative supported the prevention of unlawful off-road vehicular traffic.

5. Continued access for all segments of the public.

The USDA's 2007 Forest Service "National Visitor Use Monitoring Report" indicates a continued decline in visits to Wilderness areas by members of the general population. Currently only 3.1% of visits to our national forests are into Wilderness areas, and 94.5% of those visitors are white. In other words, Wilderness is for rich, white people.

6. Perpetuation of traditional ranching operations.

There is a growing understanding that intact ranch operations are the best mechanism to maintain the viability of open space in the West.

7. Access for flood control and water capture projects.

Doña Ana County is part of a desert ecosystem. Most of our annual rainfall occurs during the months of July, August and September. Sudden flood causing downpours are common. Our local Elephant Butte Irrigation District has initiated innovative measures to control those flood waters, protecting the populated areas from damaging floods by directing the runoff into the irrigation distribution and drain canal system where it recharges the Rio Grande aquifer and supplements irrigation water under the Rio Grande Compact. Those initiatives are at risk by overly restrictive federal lands legislation.

8. Enhancement of wildlife and rangeland health.

Scientific study has confirmed the improvements to plant and wildlife communities that result from prudently managed livestock grazing programs. Virtually all of the permanent water sources available to wildlife in Doña Ana County, other than the Rio Grande, are the result of livestock water facilities developed and paid for by livestock operators.

9. Fidelity of Wilderness.

Most of the proposed Doña Ana County Wilderness areas do not meet the fidelity standards of wilderness. William L. Rice, Deputy Chief of the Forest Service and NRCS (retired), wrote a column in which, he says, "In order for Wilderness designations to remain significant, the original premise of Wilderness must be held inviolate (Exhibit B)*

PROPOSED NEW LAND DESIGNATION

RANGELAND PRESERVATON AREA

National Conservation Area Revealed as Rangeland Preservation Area

Implicit in this testimony is a process that developed extensive discovery of facts and also educated and built a coalition that recognized a wide variety of factors which impact the area today as well as the future. In building the near 800 business and organization pledges of support, a land designation was sought to provide the long term protection of wilderness, but to also elevate into the designation factors of human involvement with the land. There was no federal designation of land that accomplished that. As such, the idea of Rangeland Preservation Area (RPA) was conceived.

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*All exhibits have been retained in subcommittee files.

Under the RPA concept, the lands would be withdrawn from all forms of disposal, the mineral leasing laws and the mining laws, just as they are in wilderness. Off highway vehicle traffic would be prevented, with certain exceptions made for law enforcement, flood control projects and range improvement projects. Surface management would be based on multiple use principles with an emphasis on retaining open space.

PFPOWH heard from Senator Bingaman that it would be hard to pass any new land designation. This meant that if any alternative designation was to be considered it would most likely be a National Conservation Area (NCA) designation. This testimony may not alter that realization, but, it does honor the position and the commitment of a coalition that remains adamant that there is a local aspect of this process that needs to be recognized as legitimate. As such, the NCA approach will be couched in terms that inspired and grew from a group of stakeholders that allows productive utilization of lands with appropriate limitation and the recognition that it is time to elevate the presence of human stewards to laws that affect communities and industries across this country. It prescribes the allowable uses at a local level, which may be modified from ecosystem science discovery. It differs from Wilderness by recognizing the presence of human activities, past, present, and future, in a resourceful and positive manner.

Why Rangeland Preservation Areas Versus National Conservation Areas

There are a number of reasons that PFPOWH vigorously recommend a new land designation, but two reasons stand apart.

The first is rangeland health and the need to acknowledge and benefit from the advancement of range stewardship and science. There is not a federal designation, administrative or legislative, that elevates "rangeland" health and improvement to the wording in the law. For too long, the antagonistic assault on the grazing of livestock and "extractive industry" endeavors on western lands has been unchecked and even advanced by Congressional action. Our country is on the threshold of a series of shortages promulgated by actions that threaten our security and our liberty. We must adopt a different approach. Rangeland health issues must be elevated to a new level of importance that preserves and enhances the natural health of the land.

The second point is the fact that there is not a single purpose or point of recognition in federal land management procedures and policies that relates to the social fabric of human endeavors. Humans have been tied to the stewardship of livestock in this county since 1598, when Onate crossed the river at what is now El Paso with several thousand head of domestic livestock. The West needs a land designation that engages rather than disengages stakeholder relationships with federal land management agencies. Social fabric issues must be elevated to points of the law. A new, different approach must be conceptualized and implemented.

It has been argued that BLM will not accept and Congress will not enact a new and unique land management designation such as RPA. That argument denies the fact that Congress has already created four unique land management designations that are a part of the National Conservation Area (NCA) category within the National Land Conservation System. Congress has developed new and innovative ways to assist the automobile, banking and housing industries, why not the livestock industry?

Why Rangeland Preservation Areas Here and Why Now

Perhaps for the first time, a stakeholder group has conceptualized an idea that would engage and enhance federal land user relationships in the West. That idea of RPA responds to the plea that is coming from every corner of the West . . . to find some means to engage, rather than destroy, historic stakeholder relationships with federal land management agencies.

At the local level in Doña Ana County, New Mexico, we believe it is possible to create a relationship among New Mexico State University, the United States Department of Agriculture (Jornada Range), the Bureau of Land Management, Homeland Security, New Mexico Game and Fish, the Department of Defense, the ranching community, and the conservation community with the specific intent of creating a model that can serve as a world standard for sustainable rangeland health and productivity. The pieces are all in place. The results could be techniques and practices that improve native ranges in a way that allows for utilization of our natural resources while protecting our environment and the fabric of our culture. We have a rare opportunity to create a model the West and the world can emulate. Through this effort, our county could become one of the foremost destinations in the world to study and learn of substantive measures to maintain a robust and healthy balance in RPA ecosystems.

More than 790 organizations and businesses in Doña Ana County have joined a coalition of PFPOWH supporters who recognize the potential benefits of the RPA proposal as a viable alternative to Wilderness designations to preserve the federal lands in Doña Ana County. They recognize that the wholesale designation of Wilderness areas in this county would be dangerous, ill conceived, and not in the best interest of our citizens.

Neither multiple use nor Wilderness designation can satisfy all nine expectations that came from this process. No existing federal land designation can satisfy all the expectations. RPA designation would exceed any other designation in meeting these expectations.

EXPANSION OF OTHER FACTORS THAT AFFECT THE LEGISLATION

The summary of community expectations that was presented above was derived from an extended process. There were specific factors that were considered in each expectation. Among the most important factors were the following:

- Border and Homeland Security
- Range Improvements
- Water Projects
- Energy Corridors
- Rail Line Access
- Renewable Energy Projects
- Mines
- Oil and Gas Leases
- Rights-of-Way
- Grazing
- Wilderness Degrading Infrastructure
- Renew New Mexico and Stewardship Projects-Current
- Renew New Mexico and Stewardship Projects-Future

BORDER AND HOMELAND SECURITY

Border and Homeland Security is the most important aspect of all discussion of the proposed legislation. Wilderness on or near the Mexican border is dangerous, it is illogical and it affects every American.

MOU Discussion

In 2006, the Departments of Homeland Security, Agriculture, and Interior signed a Memorandum of Understanding (MOU) that set out the process for the Border Patrol to access federal lands for the purposes of tracking, surveillance, interdiction, establishment of observation points, and installation of remote detection systems along the United States border with Mexico. For something as important as national security, why would the Border Patrol be constrained beyond the 60 foot "Roosevelt Reservation" directly adjacent to the border and be under the oversight and control of Federal land managers within the National Park Service, the U.S. Fish and Wildlife Service, the Forest Service, the Bureau of Land Management and the Bureau of Indian Affairs? The answer was that, when Border Patrol activities impacted designated federal wilderness where mechanized entry was not allowed by the Wilderness Act of 1964, land management goals and missions between the Border Patrol and the federal land management agencies were at full odds and the conflict escalated dramatically.

The problem became so intense that in 2003 Senator Kyl (R-AZ) demanded that "unnecessary restrictions" be "dumped" from national park land along the Mexican-Arizona border. Finally, in March of 2006, the Secretaries of Homeland Security, Interior and Agriculture signed the agreement. The question is did it work?

In a 2009 document submitted by the Park Service to Congress, there is a paragraph on page 15 which addresses that question directly. It reads, "With the increase in Border Patrol agents in the monument, there is a direct correlation to more impacts on resources from enforcement operations since under the 2006 MOU they have access under specific situations with mechanical means to the monument to include wilderness areas. These events lead to enormous challenges between agencies as we attempt to manage these resources."

Repeated questions by Doña Ana County citizens to Senator Bingaman's staff about the assurances that the Arizona conditions will not be repeated in New Mexico brought repeated references to Border Patrol responses that there is an MOU in place to deal with access. PFPOWH is convinced by the exhaustive research that such an expectation is erroneous and dismissive of the facts in Arizona. In no case will an MOU supercede legislation. In no case will the Border Patrol be effective if it has to submit written requests for access for issues other than hot pursuit, and

in no case will local law enforcement agencies even have access to request allowances. On page 9 of the MOU, Section V.F. reminds all that the MOU is only an agreement among the agreeing agencies.

Moreover, the MOU is symbolic of the dilemma that all agencies have faced with border wilderness. It came into being because of conflict, and the conflict in missions continues between Border Patrol and the Park Service resulting with a flow of illegal drug and human smuggling on federal lands adjacent to the Mexican border in Arizona.

Finally, the MOU has never been tested in New Mexico. Poll any Border Patrol agent who has ever been on the New Mexico border and not a single one will say that he or she has had a incident whereby a Wilderness Study Area has restricted any activity relating to interdiction or apprehension, especially any situation that was policed or prohibited by a BLM ranger. Such an incident simply doesn't exist, and, therefore, never has the MOU been forced into action. So, asking a New Mexico Border Patrol representative if he has a problem with the MOU is meaningless. They have never had a problem so how can they respond to a question of whether the MOU causes them any concern. A similar question posed to a Border Patrolman on the Arizona Border in 1990 before the onslaught of human tidal wave action began about wilderness would have yielded exactly the same answer. Those that were there had no idea what a buzz saw it would become.

The Arizona Experience

For hundreds of years the desert of what is now Arizona has been the route of goods coming north from Mexico. The flow of merchandise was created by demand from citizens and settlers of del Norte, the expanse of territory generally north of the 54th Parallel. Over time, the goods became as often illegal as they were legal. Today, the goods passing through the rural, isolated expanse of sand, rock and heat are more often than not, illegal. The circumstances and conditions surrounding the flow are dangerous, and the consequences of stemming the tide must be a national priority.

In the early 1990's human and drug smuggling got so intense in the urban centers of southern California and places like El Paso, Texas, that American citizens demanded that something be done. The Border Patrol responded with a series of operations intending to pinch off the flow of illegal entry in the urban areas and force that flow out into rural areas where interdiction and apprehensions could be done more effectively. Starting in El Paso in 1993 with Operation "Hold the Line," followed by Operation "Gate Keeper" in San Diego in 1994, and concluding with Operation "Safeguard" in Nogales in 1995, the Border Patrol turned up the heat. What they found in El Paso was that apprehensions went down in the city and in the sector as a whole. What they did was working. In San Diego, there was a brief lag followed by the same pattern of decline in apprehensions and interdiction that El Paso experienced.

Where the San Diego and El Paso operations were successful, the Nogales operation failed. What developed was that apprehensions and interdiction sky rocketed as the hordes of illegal immigrants that were turned away in San Diego came to the deserts. Something happened and it happened in a big and unexpected way. Border Patrol retired officials will admit that they were ready for the wild land on the Arizona border, but they were completely blindsided by the restrictions of the federal designated Wilderness that was being administered by the DOI through its Fish and Wildlife Service and National Park Service. While the federal land agencies dug in to enforce wilderness access issues with the Border Patrol, the illegal immigrants found a haven of entry that has become the dominant feature in the movement of human and drug smuggling on the border.

Data will show that all categories of crime not only went up, they exploded. Deaths in Organ Pipe went from only occasional deaths to over 200 per year. Deaths are currently estimated to be 300-500 per year. Where there were no roads, drug cartels made roads. Where there were no trails, human masses trekking northward made trails. National Geographic named Organ Pipe National Monument the most dangerous park in the American system. It got so bad that signs are posted warning travelers not to stop for dead bodies! One retired Border Patrol agent talked about being involved in an operation whereby 19 bodies were recovered in one operation out on the western boundary of the Cabeza Prieta Wildlife Refuge in designated wilderness. The Border Patrol was not allowed to drive to the bodies. They flew, and even then there were ramifications and threats. The agent talked with trepidation of the smell in the helicopter for months following that harrowing event.

Whole industries have grown up opposite the expanse of national park lands supporting the flow of illegal immigrants northward. Buses run around the clock on Mexican Highway 2. Videos are played educating illegal immigrants how to avoid

American Border Patrol activities, how to survive in the wilderness and what to expect. Passengers can halt the buses at any point and commence their treks northward. By Park Service estimates, illegal immigrants outnumber paid park visitors at least ten to one. Border Patrol officials believe that number is at least half of the actual.

Park Service officials at Organ Pipe did a study to quantify the impact on the monument. In a representative one square kilometer area out in the designated Wilderness of the Valley of the Ajos, an unsuspecting family taking an afternoon hike would encounter the following:

- seven illegal rest sites
- 15 sets of illegal vehicle tracks
- 40 sites of illegal trash disposal
- 48 discarded water bottles
- one set of illegal bicycle tracks
- one set of illegal horse tracks
- three illegal abandoned camp fires
- 254 illegal foot trails

The foregoing was all on designated wilderness where mechanized entry is not allowed and where, to this day, the ability of the Border Patrol is constrained by wilderness policy.

The Texas Phenomena

While investigating the Arizona border threat, a High Intensity Drug Trafficking Area (HIDTA) report was found. It revealed information that PFPOWH believes has never been exposed to Congress or the American people. Data from Aerostat summaries was analyzed and set forth in a manner that attempted to quantify radar and drug interdiction events by mile of border. The result of the analysis is as follows:

	CARTEL RADAR CONTACTS	DRUG SEIZURES
TEXAS	06	.02
NEW MEXICO	.11	.30
ARIZONA	.60	.53

(per mile of border)

Why do cartel aircraft radar contacts run one contact per nearly 20 miles of border in Texas while in Arizona they run one per less than two miles of border a rate that is ten times higher than Texas? Likewise, why do drug seizures run one per 50 miles of Texas border while seizures in Arizona run one in less than two miles of border? Three retired Border Patrol officials were asked that question.

The first, Gene Wood, former chief of the McAllen (Texas) sector said, "You've got private ownership of land with a very aggressive citizenry in Texas protecting their property rights. They interact immediately and continuously with the Border Patrol and the Border Patrol has full and unencumbered access to everything, at any time, (and) for any reason."

Next, Richard Hays, former Chief of Flight Operations, United States Border Patrol, responded to why the New Mexico result is intermediate between the Texas and Arizona results. He said, "Like Arizona, there is a domination of federal lands along the border, but New Mexico still has a resident ranching community. Go over into Arizona and nearly the entire border is federally controlled land. The ranchers have been eliminated or so decimated that they can no longer maintain a dominant presence. They are gone from the monuments and the wildlife refuges, and the infrastructure that they built and maintained is gone as well. The Forest Service allotments are so gutted that those folks are in a precarious position, and the Tohono O'odon Reservation and the BIA has no idea how to control the situation.

The third official, Jim Switzer, former Yuma Sector Chief and current chair of the National Association of Retired Border Patrol Officers said, "New Mexico and Texas still have a vested, engaged, and resident population of citizens who will protect their private property rights. Their Arizona counterparts have been largely eliminated. Where there are resident Americans who have property rights at risk, there remains a working relationship with the Border Patrol. If there is activity, the Bor-

der Patrol will be contacted and welcomed. That is not the case where only federal (land) agencies are present.

The Mirror Effect

Mr. Wood, former McAllen Sector chief, prompted a further investigation into something that had started to appear in the investigative process. He said, "In Texas, there is a united front that is committed to protecting the border and eliminating drug running. Interestingly, there is also a strong influence adjacent to the border. Where there is long standing American (land) ownership there is normally a strong Mexican counterpart."

Two issues stand out in that statement. The first is whether or not there is a mirror effect of activity adjacent to the maize of free flowing corridors running north from the border on park lands. The study from Organ Pipe describes that phenomenon exactly. On lands of Organ Pipe's sister park, the Mexican El Pinacate Biosphere Reserve where once pristine lands spread for miles across the desert, a whole infrastructure of businesses has grown up supporting the migration of drugs and humans northward. Colonias, illegal roads, bus stops, filling stations, barber shops, tire shops and trash and destruction of the natural environment have spread across the entire area. American policies have extended the environmental destruction across the border.

As for the issue of mirror images of land ownership, Mr. Wood's comments become even more intriguing. Could it be possible that social implications of the mirror effect exist? The argument that evolved from Mr. Wood's comments has huge implications. It is this. Where a strong American exists on the border normally a strong counterpart exists. The American, protecting his property rights, is a formidable foe. He will not put up with nonsense and the Mexican counterpart knows that. The Mexican (or the American in a reverse situation) is put in a situation whereby he is less willing or inclined to do something that will breach that unwritten relationship. If one of them is removed, however, a new relationship is without boundaries. Time and a personal relationship have not cemented any demand on etiquette or standards. If there is a new party that is inclined to do something illegal or is inclined to submit to a bribe, then all bets are off and a breach in security is at hand.

That is exactly what has happened in Arizona. Drug cartels can simply buy out unopposed, unsupported property owners. The internal policing action is eliminated. Think of the implications. Where there are strong relationships in Texas that exist without additional cost to the American tax payer, they, in large part, no longer exist in Arizona. How expensive is the dismantling of that relationship mechanism? Who knows what the cost to society is, but we do know that the cost of policing action on the 30 miles of Organ Pipe boundary it is now running $1,922 million a year (and that does not include Border Patrol costs on the same 30 miles of border). In the 2009 Park Service document cited herein, that sum appears to be in jeopardy of increasing. The report notes that "in the last six months, the park has seen a significant increase in vehicle based smuggling."

The committee is asked to consider that land agencies and conservation groups alike have waged a war against grazing on public lands. For the first time, there is evidence to show that there are large opportunity costs in removing federal lands ranchers. In Texas, the ranching community continues to provide a costless buffer for American security interests. In Arizona, those folks have been decimated, and the flood gates of human and drug smuggling has been opened without hope of nearby recovery.

The Road and the Railroad Track

In explanations from Senator Bingaman's staff as to the assurances of absolving security risks, the MOU (described herein) and the issue of a buffer added to the south side of the Potrillo Mountain complex for Border Patrol access and interdiction efforts are repeated. Again, retired Border Patrol officials who are not afraid of career issues step forth and talk. It is not the proximity of the border itself to the border wilderness boundary that poses the greatest risk to this nation. It is the proximity of the nearest east west road to the border wilderness boundary that is the danger.

In the Arizona situation, Mexican Highway 2 played an immense role in moving the soft point of entry from urban centers to the desolate wilderness areas of national park lands. The path of that parallel highway to the border varies, but it ranges up to several miles from the border fence itself. Data from the Park Service data indicates that entry points are continuous along the boundary; hence, illegal immigrants are walking north from the highway in a myriad of places and from a large variation in distances. Retired officials remind us that New Mexico Highway 9, the nearest east west road adjacent to the Potrillos is the real risk factor, not

the border. Cartels will probe, and move, and jockey, and adjust and they will find the soft points. On the whole, they will not be sending dope north from Mexico by human transportation. Rather, they will stage the dope and deliver it by vehicle to points along Highway 9. They will then run it north, either by vehicle where a 1.5 to 3 mile buffer is eaten up in less than three minutes, or by starting simultaneously a number of runners going north through the proposed wilderness to points along I10 or to the next stage from I10 north through more proposed wilderness in the Uvas or Broad Canyon areas to stage termination points along Highway 26. Remember, Organ Pipe cannot control mechanized access with 28 law enforcement agents dedicated to law enforcement and an unknown number of Border Patrol officials all protecting 30 miles of wilderness border with Mexico, so how can anyone think that a single BLM ranger and an unknown number of Border Patrol agents halt all entry along the a similar expanse of land with 23 miles of boundary exposure?

Finally, the modernized Burlington Northern Santa Fe Railroad line forms a portion of the Potrillo Mountain complex on the northeast side of the proposed plan. Ask any national security expert what that rail line poses in terms of a national security risk, especially the issue of weapons of mass destruction and there will be a single, united response.

RANGE IMPROVEMENTS

The Doña Ana County wilderness proposal is hard pressed to maintain the fidelity of the original standards of 1964. It would be difficult for anyone to find 5,000 acres of contiguous lands that are largely untrammeled by man. In fact, there four wells, 16 improved springs, one building, 11 corrals, 60 earthen reservoirs, 13 water storage tanks, 31 troughs, and three windmills within the footprint of the proposal (Exhibit C).

In discussions with the BLM in the summer of 2008, two of the permittees asked for preliminary consideration for a series of pipelines and troughs from existing water sources to better utilize lands where cattle must walk three miles to water. The response was inconclusive because the location of the troughs would be within a mile of the footprint of a Wilderness Study Area (WSA). If BLM administration concludes that improvements within a mile of a WSA are going to be subject to stricter wilderness management demands, ranchers affected by Wilderness designation are concerned that the footprint of the designated land affects improvements out to a mile buffer of the boundary. If that is the case, the impacted improvement inventory expands to 20 wells, 19 springs, 11 buildings, 34 corrals, 116 earthen dams, 35 water storage tanks, 85 troughs and 10 windmills.

Data from New Mexico State University and elsewhere confirm that when the temperature reaches 103 F, a cow and her calf, a pair, will drink upwards of 32 gallons of water per day. In this desert environment, such a day is expected. Any steward of the range has nightmares of finding cattle that are standing in front of an empty trough bawling in desperation. Experiencing this event one time will forever impact your tolerance for constraints that limit the ability to maintain adequate water supplies. Every one of those same stewards knows that when such a condition is impacting cattle it is impacting wildlife as well. Monitoring water and water supplies is a daily demand in this desert country. Any limitation of not doing so is not just an economic hardship, it has inhumane consequences.

Using our model prompted by the BLM wilderness buffer management expectation, there are 60 miles of underground pipeline affected by this proposal. If those pipelines cannot be checked by mechanized vehicle, those inhumane consequences are expected. There is no way those miles of pipeline can be checked and serviced by horseback.

In the modern West, labor has been replaced by fewer people constantly in motion. Cattle are driven fewer miles. Calves that were once weaned and driven from their mothers are now hauled. Cattle slated for market are now penned and sorted in distant pastures and hauled to markets from those locations. Water sources are checked and maintained from pickups and ATVs. Roads have become vital to the ranch operations and it is no longer possible to get by with unimproved two tracked roads. In this model there are 481 miles of roads. This is not a rancher driven number. It is from the Doña Ana County census data. When the S.1689 maps are analyzed, the sum of the road mileage is only a fraction of the U.S. census records.

These roads are not just a part of the infrastructure of the ranches. They have become multigenerational access routes for citizens who have deep ties to the land for a variety of wholesome and simple uses. Taking those few freedoms from a county resident is not the blissful salvation that is being advertised. The great majority of the users of these roads are fully in agreement that off-road activities are not

right and they will defend that position. Ranchers find few examples of blatant off-road use by law abiding citizens. Drug runners are another story, and, rest assured, the Arizona experience has demonstrated that drug runners could care less about wilderness constraints.

In addition to the data provided heretofore, the remaining improvements on these lands included 297 miles of fence line, 67 miles of electric transmission lines, and 61 miles of commercial pipelines (gas and oil). From an objective thinker, reading the Wilderness Act and digesting these improvement totals, the true fidelity of wilderness in Doña Ana County, New Mexico, is being stretched beyond measure.

WATER PROJECTS

Elephant Butte Irrigation District is one of the most unique water districts in the nation. The district management and users have not only paid for the district, they have accomplished some very interesting undertakings. They now have the right to capture and reuse storm water within the confines of their district watershed. This greater project requires some very sophisticated flood monitoring equipment that prompts district personnel to prepare facilities to capture and reroute flood waters into their system. The flood monitoring equipment must be installed in areas impacted by wilderness consideration.

Likewise, the system of flood control dams installed many years ago by the Bureau of Reclamation has been turned over to the district for management. These facilities and similar future opportunities must not be constrained by wilderness or NCA constraints for repairs or expansion.

Doña Ana County is a desert. There is no magical source of water. There is no Lake Shasta to drain into an aqueduct to enhance the limited supply of Rio Grande drainage and underground water sources. This is an area that has some distinct relative agronomical advantages and people are going to continue to want to come to the area for all of the reasons it is so popular. As such, water and the supply of water must be one of the two or three most important things in the vision of any leader. Water is vital and every opportunity to enhance the supply of water is not just prudent, it is imperative. No wilderness bill should be used to limit that most important resource.

The Broad Canyon area is the most significant watershed in the county. It is not only important for flood water capture and reuse, it is the most logical area to plan for future water supply impoundment. Off-basin storage has been the option most used in the storage of water sourced from nontraditional sources, when closed, underground basins are not suitable for storage. In Doña Ana County, this might not happen in the next generation, but it will happen. It is not prudent to disallow future citizens the opportunity to pursue projects that will be possible. Broad Canyon is the major, and perhaps the only, area where such undertakings are possible.

ENERGY CORRIDORS

The SunZia energy transmission concept that is envisioned to provide enhanced energy transmission capability from renewable energy projects in New Mexico has huge implications to this county and state. The preferred route from Hatch to Deming, New Mexico passes north of the area impacted by the wilderness proposal, but the alternate route runs right through the Broad Canyon area. If the solar energy studies areas being evaluated by Argonne National Laboratory in conjunction with the BLM determine that the two major areas in southern New Mexico are candidates for solar generation consideration, the routing of that power line will be altered. If wilderness legislation precludes the use of the energy corridor, Doña Ana County runs the risk of being dropped from conceptual projects. That must be avoided.

Likewise, any likelihood of a natural gas pipeline from the Belen area into the southland would come through that same corridor. Altering the routing would push the pipeline at least to the county line. That would have huge implications in the cost structure of the project. Wilderness and NCA designations affect that planning.

RAIL LINE ACCESS

The congestion of the interior of the Mesilla Valley grows every year. There is a matter of safety and traffic flow enhancement centers around the rerouting of the north/ south rail line that currently runs parallel to New Mexico Highway 28 as far north as Rincon, New Mexico Plans to move that line out of the valley feature the Broad Canyon area. This is a simple and necessary adjustment for surface and rail line flows through the area. Wilderness and or NCA designation impact that planning.

RENEWABLE ENERGY PROJECTS

Currently, there is a solar energy project underway in the Santa Teresa area. Additionally, there are two large solar study areas (noted above in the energy corridor section) that might be future sites of solar generation. These areas combine to form a footprint of 73,794 acres. If the study is positive any project will necessarily be impacted on transmission line capacity. It is imperative that wilderness and or NCA consideration in the Broad Canyon not impact negatively on such a concept. Such an eventuality would impact Doña Ana County dramatically.

Likewise, the BLM has served notice that a wind energy study will be done on the western edges of the Goodnight Mountains just west of the county. If that study proves successful the same conditions are likely to occur on the west side of the Rough and Ready Hills and other portions of the Broad Canyon area. Wilderness and or NCA designation would stand to impact that result.

MINES

There are a total of 23 mines in the footprint of the wilderness and NCA proposals. Most of those mines are not active, but all of those mines are subject to safety and mitigation laws and requirements. Like all mines, they also represent increased risk to Superfund findings. Not wanting to run the risk of redundancy, it seems confounding to elevate any land into wilderness status when such a stretch from "lands largely untrammeled by man" must be accompanied by gimmicks to mitigate the impact of man in order to force the designation. If a superfund site is ever found, the prospect of a contractor who still has knowledge and possession of mule teams and Fresno scrapers is likely to be hard to find.

OIL AND GAS LEASES

The 1995 National Oil and Gas Assessment of the South-Central New Mexico Province, prepared by W. C. Butler, discusses hypothetical oil and gas potential. There have been very few wells drilled in the province, so the report is based on the geological history of the area. The report does state "the number and excellent quality of hydrocarbon shows in the few Pennsylvanian and Permian penetrations indicate the probable existence of commercial hydrocarbons" (Pyron and Gray, 1985). The report also states, "The shelf strata of the Orogrande Basin," an area within the province, "have been compared to the contemporaneous highly productive reservoirs of the Delaware Basin of west Texas. Mississippian through Permian formations of the Delaware Basin has a cumulative production of more than 3 BBO and 5.0 TCF of nonassociated gas" (Robertson and Broadhead, 1993).

According to information obtained from the National Integrated Land System, Doña Ana County has had a long history of oil and gas leases on public lands. Most of these leases have never been developed and, as a result, have expired. oil and gas companies have to make decisions on which leases to explore and develop based on various logistical and economic criteria. As the price of oil and gas increase and as technology advances make evaluation and development more cost effective, development of these energy resources may occur. Currently, there are ten authorized oil and gas leases which are partially or wholly contained in the proposed Wilderness and NCA boundaries. These leases cover over 15,000 acres. As we have discussed in other areas of this testimony covering energy development, designation of Wilderness and NCA would significantly affect the exploration and development of these important and much needed potential oil and gas reserves.

RIGHTS OF WAY

According to the National Integrated Land System, the BLM has entered into rights of way agreements for one pending solar energy project, 36 road and utility and 12 oil and gas pipeline projects which are included in the areas in the proposed Wilderness and NCA boundaries. The National Integrated Land System has a disclaimer which indicates for various reasons the system does not contain all agreements. Maps which have been produced which include both line data and agreement data indicate that there should be many more agreements, but the data that is available clearly shows that there are a significant number of pre-existing rights created under these agreements which will be impacted by the designation of Wilderness and NCA. The Wilderness Act includes language that precludes the use of any mechanical equipment. How will any maintenance or replacement of equipment under these agreements occur? These pre-existing rights need to be included in the purposes section of the NCA legislation, as litigation or adjudication will be required every time someone wants to exercise their rights.

GRAZING

We have concerns on the ability of ranchers to continue their family operations should this bill become law. Those concerns apply to both proposed designations: wilderness and national conservation area. With respect to wilderness, much is made of the Grazing Guidelines (House report No. 101-405). When Congress had the foresight to adopt those provisions, most wildernesses were in the high country. In many instances, those high country allotments had natural water, natural boundaries and were seasonal operations only. The allotments addressed in this legislation occur in the desert. There are no natural waters or boundaries and the operations are year round. Based on these factors and discussions with BLM, we have no confidence the guidelines as they exist will be sufficient and the ranching community will suffer the consequences.

With respect to national conservation areas, our concerns are equal footing for grazing, the consistency language, the "where established" limitation and the ability to maintain range improvements and standard ranching operations. For further discussion of these issues, see Exhibit D.

WILDERNESS DEGRADING INFRASTRUCTURE

The proposed wilderness areas included in S. 1689 are not free of the noticeable imprint of man which the Wilderness Act of 1964 required. These areas have been inhabited by man since recorded history and have been heavily impacted since Onate came to the territory in 1589. These impacts have been discussed under the above sections: range improvements, water projects, energy corridors, rail line access, renewable energy projects, mines, oil and gas leases and rights of way. Each of these impacts degrades wilderness characters to different levels in each of the proposed wilderness and NCA areas. The impacts show up dramatically in the series of maps in Exhibit E—Desert Peaks Wilderness Area Evaluation. The maps show the impacts as each type of infrastructure is overlaid on the footprint of the proposed wilderness areas. The last map in each set show the cumulative impact of these improvements and infrastructure and demonstrates what we feel are over whelming reasons to protects these lands with a designation other than wilderness. They are worthy of protection, but don't fit the gold standard of wilderness. Exhibit F is the Potrillo Mountains Wilderness Area Evaluation and Exhibit G is the Organ Mountains Wilderness Area Evaluation.

RENEW NEW MEXICO AND STEWARDSHIP PROJECTS, CURRENT

The Renew New Mexico undertaking, largely promoted through the guidance of BLM State Director, Linda Rundell, is finding a very positive acceptance by a large cross section of stakeholders. This partnership project is an aggressive plan to restore our state's grasslands, woodlands, and riparian areas to healthy and productive conditions. Since its inception in 2005, Restore New Mexico has become the model for rangeland conservation in the western United States. This year, 2009, the project will reach the 1,000,000th acre in partnership activities.

One of the most apparent components of the project is the eradication of creosote. Creosote is the equivalent of sage brush to the southern tier states and it is found in large reaches of Doña Ana County. It can only be eliminated by stewardship projects that include herbicide and then a regimen of fire. By strict measure of the Wilderness Act, such activities are not allowed in wilderness.

In conjunction with brush control, water projects that serve to better utilize range for both livestock and wildlife are being undertaken. These complimentary projects are being driven largely by EQIP partnership contracts. Such projects installed by mechanized means will not be allowed in wilderness.

As a matter of interest, there are over 200 water installations on federal lands ranches on the west side of Doña Ana County from the Mesilla Valley to the county line where the majority of S.1689 is centered. Only one (1) of those water sources is a permanent, natural source of water. The remainder are there because of cattle. Wildlife are impacted every bit as much as cattle in this dry environment. If those waters and projects that enhance the supply and distribution of those water sources are negatively impacted by wilderness, inhumane consequences can be expected.

RENEW NEW MEXICO AND STEWARDSHIP PROJECTS, FUTURE

The guiding factor in the Restore New Mexico brush control planning is slope. Creosote grows naturally on shallow soils overlaying caliche deposits. Where Creosote stands have expanded into deeper soils is the primary target area for control measures. Slope is a defining factor in whether or not projects can be expected to work. Most of the areas being considered for wilderness are good candidates for

brush control, but some are not. As such, there is less likelihood that future projects can or will be undertaken. Likewise, water distribution supporting the outcome of the brush control measures will be limited on more severe slopes. In fairness to wilderness consideration, this factor must be considered.

STAKEHOLDER MEETINGS

From the stakeholder meeting process (Exhibit A) that took place in 2006/2007, the recommendations from the position papers written by the eight stakeholder groups can be summarized as follows:

3 Organ Mountain WSA's—Received a near unanimous vote for wilderness
Mt. Riley and Aden Lava Flow WSA's—Received 5 votes (slight majority) for wilderness
West Potrillo Mountains WSA—Received 4 votes against wilderness
Robledo Mountains WSA—Received 5 votes against wilderness
Broad Canyon (currently under Multiple Use Management)—Received 6 votes against wilderness
East Potrillo Mountains (currently under Multiple Use Management)—Received 6 votes against wilderness
Organ Mountains South unit (currently proposed for NCA)—Received 4 votes for NCA
Organ Mountains North unit (currently proposed for NCA)—Received 3 votes for NCA

It can be concluded from this citizen input that there was strong support for wilderness in the Organ Mountains. The rest of the lands were not strong candidates for wilderness and a preference for returning the majority of the land back to multiple use management or National Conservation area management was prevalent.

SUMMARY

I appreciate the opportunity to be able to present to the Committee information and concerns on behalf of People For Preserving Our Western Heritage. I trust that the Committee will consider the need for an alternative land protection designation, seriously evaluate the real border security threats to the local ranch families and the communities in southern New Mexico and recognize the value of having productive ranch enterprises contributing to the first line of defense in rural America.

We strongly believe in protection of the Organ Mountains and surrounding desert peaks. We do not believe that all of the areas proposed should be wilderness; they should be protected with another designation. We feel that Senator Bingaman and the Committee have an opportunity to protect lands and at the same time recognize the importance of history that has become part of the landscape in Doña Ana County.

Mr. SCHICKEDANZ. I thank you for the opportunity to appear before the committee and I stand ready to answer any questions.

The CHAIRMAN. Thank you, doctor.

Senator BINGAMAN.

Senator WYDEN. Thank you very much, Mr. Chairman, for accommodating our schedule.

Let me thank both Commissioner Butler and Dr. Schickedanz for taking the time to come and talk to us about this bill.

Commissioner Butler, let me ask you first of all whether the designation of new wilderness and national conservation areas as we contemplate in this bill would in any way in your view limit or impede the city of Las Cruces or the county's ability to develop and grow as they intend to over the coming years?

Mr. BUTLER. Senator, members, of this committee, no, it won't. Actually these designation areas, wilderness areas, are the magnet, are the attraction to Las Cruces. No more than the Lincoln Memorial or the Washington Monument, These particular designated areas are the very thing that attract business, attract tourists, attract residents and retirees to the area.

So this is a big plus for Las Cruces. In fact, it will help motivate growth and development of the area. It will be an economic stimulus package for us.

The CHAIRMAN. Thank you very much.

Dr. Schickedanz, let me ask you. Your group has proposed a new rangeland preservation area designation. You testified about that as an alternative to the new wilderness and national conservation area designations that we have in this bill. There seems to be agreement—your group seems to agree that the areas should be withdrawn from mining and oil and gas development and that off-road vehicle use should be limited, just as we proposed. The main difference seems to be related to surface lands, use of the surface, especially grazing. Am I accurate in that description so far?

Mr. SCHICKEDANZ. Mr. Chairman, Senator Bingaman, yes. I think we disagree probably on the access or the timing of access. The grazing standards that were developed in I think 1990 or 1994 as a supplement to the Wilderness Act provide for occasional use, but we have not found anybody that will describe what "occasional" is. The local and State director don't want to make a statement on what "occasional" is. So in the desert Southwest, where water is very important to livestock operations, being able to check those waters, to check pipelines, becomes very important. If "occasional" is going to be a year, that's too long. Many times daily checking of some of those pipelines so that livestock do have water—so the "occasional" is what we're interested in.

The CHAIRMAN. So you would like it clarified that the occasional use that you would be permitted under this legislation would be as required in order to ensure that there's adequate water for livestock?

Mr. SCHICKEDANZ. Yes, sir.

The CHAIRMAN. Let me stop with that. I know Senator Udall also has questions. Again, thank you both for being here.

Senator WYDEN. Senator Udall.

Senator UDALL. Thank you, Chairman Wyden.

Thank you both for being here. Commissioner Butler, you've been in public service a while. I talked about in my testimony, Senator Bingaman talked about in his, about the coalition that backs this. I only mentioned a few of the groups, but there is extensive and widespread support, with the Southwest chapter of New Mexico Quail, Doña Ana County Associated Sportsmen, Back Country Horsemen, League of Women Voters. The list goes on and on.

Have you ever seen in your public service such a broad support for this piece of legislation or any other piece of legislation down there?

Mr. BUTLER. Senator Udall and members of this committee, no, I haven't. In fact, I really take my hat off to your staff, Senator Bingaman, who walked through this community, walked through our rural areas, had these meetings, had extensive meetings, hundreds of meetings with these various groups.

I can assure you that even the groups mentioned by Mr. Schickedanz—that there are many individuals within those organizations that support wilderness. That's what I've seen to date and that's why I'm here to date, that when they see the consensus that has been built—and I'm sure that there are some concerns with the

opponents. But the consensus that has been built in Doña Ana County regarding wilderness and the NCAs, it's unbelievable.

Senator UDALL. Thank you.

Mr. Schickedanz, this issue of occasional use in grazing. These areas, a significant part of this area has been managed as wilderness study for over 25 years. It's been in wilderness study. Have you found that working with BLM and interpreting that term "occasional," has it worked out? Have there been problems?

Mr. SCHICKEDANZ. OK. Mr. Chairman and Senator Udall, the areas have been managed under wilderness study areas.

Senator UDALL. Which is treated just like a wilderness.

Mr. SCHICKEDANZ. Almost, except the access. Under the wilderness study areas they're able to use some of the roads and trail that goes to the various improvements. When it becomes wilderness those will no longer be available unless they're specifically identified and allowed. So that's where we differ on what "occasional" use becomes under the Wilderness Act.

So again, I think that raises the issue that we would like to see the lands protected, but under a less restrictive utilization of access.

Senator UDALL. Thank you. I know you've given extensive testimony here and I look forward to working with Senator Bingaman and the committee to see if it's possible to resolve some of your concerns. Thank you very much.

Senator WYDEN. I thank both of my colleagues. With apologies to Mr. Mallott and Mr. Claus, we will follow up on your views.

With that, we're going to turn it over to Senator Murkowski. Senator Murkowski, you proceed as you would like with the vote coming up and what you can get in before the vote and what you feel is necessary, if it's required afterwards.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Senator WYDEN. Why don't we also excuse our 2 New Mexico witnesses.

Senator MURKOWSKI. I have no questions of the New Mexico witnesses.

Senator WYDEN. OK. Thank you all.

Senator MURKOWSKI [presiding]. Gentlemen, what we can do, I'll just keep an eye on the vote. But I'd like to try to get comments from both of you before I have to go off. I understand that there will be two votes, so I'm going to try and time it so that we can do two for one and I'm not gone from the hearing room for too long.

But with that, Mr. Mallott, if you want to lead off.

STATEMENT OF BYRON MALLOTT, BOARD MEMBER, SEALASKA CORPORATION, JUNEAU, AK

Mr. MALLOTT. Thank you, Senator Murkowski.

With reference to the comments that were made by the administration witnesses and their desire that the Tongass Futures process continue and that it will be important in their deliberations on an ongoing basis, I just want to mention for the record that I am a member of the Tongass Futures roundtable and I have participated in most all of the meetings that have taken place.

I have submitted for the record detailed testimony on the Sealaska land entitlement legislation. I'm prepared to answer any

questions that you may have. I want to spend a few moments talking about ANCSA because that is key to the purpose and the philosophy of the legislation before us. ANCSA, the Alaska Native Claims Settlement Act, its policy action of Congress kept us on and gave Alaska's Native peoples some of their own lands to retain.

The focused public policy imperative at the time, which I believe has been amply met, was on economic development. The lands will allow us to continue that public policy. It also gave us an opportunity to pursue a larger, a more whole future tied to that land and its seamless connection to the other lands in the Tongass Forest. It has been said often that every acre in the Tongass is precious to someone. Every acre to Native peoples in the Tongass is our homeland. No matter what else happens, no matter how that acre is treated, it is our homeland.

There are some 20,000 descendants today of the historical traditional people of the Tongass—Tlingits, Haidas, and more recently Tsimshians. One of the things that I think and I'm pursuing in the Tongass Futures roundtable process is that public policy should acknowledge that the Tongass is a Native homeland, that simple statement with no strings attached.

When I think about it, Senator, the Tongass National Forest was created in 1906. So in 2056 there will be the 100th anniversary. At that time it would seem to me that we'll either have a forest that is recognized for its environmental circumstance, its sensitivity, the accomplishments that have been made there—that will be possibly sufficient. But I think that when we look back at the Tongass at its centennial to be able to say that this is a Native place, that it is the homeland of the first peoples, that their efforts to share and be part of all of those that came later were done in good will on the basis of respect and a desire to come and to work together would be the best kind of way to celebrate this incredible national vision.

I think it would also, looking at this piece of legislation which finalizes our land entitlements, also be able to be pointed to as an example at that time in our history that ANCSA itself was also a success.

Thank you.

[The prepared statement of Mr. Mallott follows:]

PREPARED STATEMENT OF BYRON MALLOTT, BOARD MEMBER SEALASKA, CORPORATION, JUNEAU, AK

S. 881

Mr. Chairman, Members of the Subcommittee and Committee:

My name is Byron Mallott, and I am a Board Member for Sealaska Corporation, as well as a former President and CEO. I am from Yakutat, Alaska, and I am Shaadei-ha-ni (Clan Leader) of the Kwaashk'i Kwáan. My Tlingit name is K'oo deel taa.a. Accompanying me today in the hearing room is Chair Albert Kookesh, Vice Chair Rosita Worl, Director Clarence Jackson, President and CEO Chris McNeil, and other executives of Sealaska.

Thank you for the opportunity to testify on behalf of Sealaska Corporation regarding S. 881, the "Southeast Alaska Native Land Entitlement Finalization Act," or what we refer to as Haa Aaní in Tlingit, which in English roughly translates into "Our Land". Haa Aaní is the Tlingit way of referring to our ancestral and traditional homeland, the place of our ancestors, the foundation of our history and culture, and the way that we identify where we are from. Sealaska is the Alaska Native Regional Corporation for Southeast Alaska—one of 12 Regional Corporations es-

tablished pursuant to the Alaska Native Claims Settlement Act ("ANCSA"). Our shareholders are descendants of the original Native inhabitants of Southeast Alaska—the Tlingit, Haida and Tsimshian people. Our ancestors once used and occupied every corner of Southeast Alaska and our cultural and burial sites can be found throughout the region. This legislation is a reflection of the significance of Our Land to our people and its importance in meeting our cultural, social and economic needs.

We consider this legislation to be the most important and immediate "economic stimulus package" that Congress can implement for Southeast Alaska. Sealaska provides significant economic opportunities for our tribal member shareholders and for residents of all of Southeast Alaska through the development of our primary natural resource—timber. Sealaska and its subsidiaries and affiliates expended over $45 million in 2008 in Southeast Alaska. Over 350 businesses and organizations in 16 Southeast communities benefited from spending resulting from Sealaska activities. We provide over 363 full and part-time jobs with a payroll of over $15 million. Including direct and indirect employment and payroll, Sealaska contributed 490 jobs and approximately $21 million in payroll.

We are proud of our collaborative efforts to build and support sustainable and viable communities and cultures in our region. We face continuing economic challenges with commercial electricity rates reaching $0.61/kwh and heating fuel costs sometimes ranging above $6.00 per gallon. To help offset these extraordinary costs, we work with our logging contractors and seven of our local communities to run a community firewood program. We are also the primary contributor of cedar logs for the carving of totems and are now working with the communities to provide cedar carving planks to schools and tribal organizations. We are collaborating with our village corporations and villages to develop hydroelectric projects.

The profits from our timber program support causes that strengthen Native pride and awareness of who we are as Native people and where we came from, and further our contribution in a positive way to the cultural richness of American society. The proceeds from timber operations on our lands have allowed us to make substantial investments in cultural preservation, educational scholarships, and internships for our shareholders and shareholder descendants. Through these efforts we have seen a resurgence of Native pride in our culture and language, most noticeably in our youth, who are constantly exploring what it means to be Native today. Our scholarships, internships and mentoring efforts have been successful beyond our wildest dreams, with our corporate shareholder employment above 80% and shareholders filling the most senior positions in our corporation. None of this would have been possible without the passage of ANCSA, which, in some ways, remains a promise unfulfilled.

Congress enacted ANCSA in 1971 to recognize and settle the aboriginal claims of Alaska Natives to the lands that we have used historically for traditional, cultural, and spiritual purposes. ANCSA allocated 44 million acres of land to Alaska's Native people, to be allocated among and managed by 12 Alaska Native Regional Corporations and more than 200 Village Corporations. Although ANCSA declared that the land settlement "should be accomplished rapidly, with certainty [and] conformity with the real economic and social needs of [Alaska] Natives," it has now been more than 35 years since the passage of ANCSA and Sealaska has not yet received conveyance of its full land entitlement.

Sealaska asks your support for the enactment of S. 881 because it:

- allows Sealaska to finalize its ANCSA land entitlement in a meaningful way that fulfills the purposes of ANCSA;
- will redress inequitable limitations on Sealaska's land selections by allowing it to select its remaining land entitlement from designated federal land outside of the original and inadequate designated withdrawal areas;
- allows for Alaska Native ownership of sites with sacred, cultural, traditional and historic significance to the Alaska Natives of Southeast Alaska;
- creates the opportunity for Sealaska to support a sustainable rural economy and to further economic and employment opportunities for Sealaska shareholders and other rural residents;
- provides a platform for Sealaska to contribute to the Southeast Alaska economy, a region that is struggling overall, especially in our rural Native villages; and
- provides real conservation benefits in the region.

In sum, this legislation resolves the long-outstanding Sealaska entitlement in a manner consistent with Congress's stated objective to act through ANCSA to promote economic development, and enables the federal government to complete its statutory obligation to the Natives of Southeast Alaska. In fact, completion of ANCSA conveyances was recently recognized by Congress as a priority through the enactment in 2004 of the Alaska Land Transfer Acceleration Act (P.L. 108-452).

There is a compelling, equitable basis for supporting passage of this legislation. First, the original ANCSA withdrawals demonstrated a lack of understanding of the geography of the region, and a series of later congressional actions further undermined the quality of the lands that were available for selection by Sealaska. As just one example, over 44% of the area within the withdrawal areas is covered with saltwater. Other factors that have severely limited the availability of lands to Sealaska are discussed in the "findings" section of our legislation. Second, there is no dispute that Sealaska has a remaining land entitlement. This legislation does not give Sealaska a single acre of land beyond that already promised by Congress. Third and finally, Sealaska has attempted to work closely with industrial users, conservation organizations, Native institutions, and local communities to craft legislation that provides the best possible result for the people, communities and environment of Southeastern Alaska. One thing has become extremely clear in our effort to resolve Sealaska's land entitlement—that every acre of Southeast Alaska is precious to someone. Moreover, what is important or valuable to one group may not be important or valuable to another. Simply put, with the vast array of interests in Southeast Alaska, there is no way to achieve an absolute consensus on where and how Sealaska should select its remaining entitlement. However, we truly believe that this legislation offers a good solution that builds on our engagement with all regional stakeholders, and we remain committed to work with everyone to refine the selections and the terms of the legislation.

OUR ANCSA LAND ENTITLEMENT AND SELECTION LIMITATIONS

ANCSA provides a land allocation to Sealaska pursuant to Section 14(h)(8) of the Act. Our right to this land entitlement is undisputed. The only remaining issue is "where" this land will come from. Based on Bureau of Land Management projections for completion of the 14(h)(8) selections, as well as our own estimates, the total entitlement could be up to 85,000 acres of land remaining to be conveyed to Sealaska. Uniquely, ANCSA limited Sealaska land selections to withdrawal areas surrounding certain Native villages in Southeast Alaska. The problem is that the ability to select land from the withdrawal areas that meets Sealaska's traditional, cultural, historic or economic needs is limited, and certain of those lands now available to Sealaska would more appropriately remain in public ownership. In fact, the remaining valuable timber areas within the selection areas are predominantly old growth and roadless areas with important public interest values.

ANCSA selection limitations preclude Sealaska from using any of its remaining ANCSA entitlement to select from outside of current withdrawal areas places of sacred, cultural, traditional, and historic significance that are critical to facilitating the perpetuation and preservation of Tlingit, Haida and Tsimshian culture and history. Our Native Places are not simply "real estate" we would like to own. These are places that are important for the perpetuation of our cultures and the preservation of our stories and histories and that we intend to protect, in collaboration with the local tribes, in perpetuity.

In sum, selection from the withdrawal areas would limit Sealaska's ability to meet the purposes of ANCSA—to create continued economic opportunities for the Native people of Southeast Alaska—or to gain ownership of our Native Places.

LEGISLATIVE SOLUTION PROVIDED BY S. 881

While original withdrawal limitations make it difficult for Sealaska to meet its traditional, cultural, historic and socioeconomic needs, these original withdrawn lands are not without significant and important public interest value. For example, approximately 85 percent of those lands now designated for withdrawal by Sealaska are classified by the U.S. Forest Service as designated roadless areas. A significant portion is Productive Old-Growth forest (some 112,000 acres), with over half of that being Old Growth Reserves as classified in the Tongass Land Use Management Plan. This legislation would allow these lands to remain in public ownership to be managed consistent with the Tongass Land Use Management Plan.

The legislation would allow Sealaska to:

- Select a majority of its remaining entitlement from an alternative pool of land, which is largely second-growth forest, and 71 percent of which is already roaded as a result of previous Forest Service timber development;
- Use a portion of its entitlement to gain title to important sacred, cultural, traditional and historic sites that are critical to the preservation of Native history and culture, and to advance Native social and cultural programs. These sacred, cultural, traditional and historic sites are relatively small in size, but are invaluable to our people;

- Select certain lands for purposes of Native enterprise that are primarily for activities with limited land use impacts and would include cultural programs, small-scale tourism/eco-tourism, and alternative renewable energy development, which would allow Sealaska to diversify its economic activities in the region and provide job opportunities for its tribal member shareholders and other residents of Southeast Alaska. Sites developed for green energy would help to relieve the villages of the crushing burden of high-cost diesel generated electrical power.

This bill does not establish the final entitlement acreage for Sealaska, leaving the final determination to the iterative process established under Section 14(h) of ANCSA. However, this Administration does have the authority to work with Sealaska to settle the final acreage, and Sealaska is willing to engage in that discussion prior to final enactment of the legislation.

BENEFITS OF THE LEGISLATION TO OTHERS

The benefits of this legislation extend far beyond Sealaska and its shareholders. Despite Sealaska's small land base in comparison to all other Regional Corporations, Sealaska has historically provided significant economic benefits to not only Sealaska Native shareholders, but also to the other Native Corporations throughout Alaska. Pursuant to a revenue sharing provision in ANCSA, Sealaska distributes more than half of all revenues derived from the development of its timber resources—more than $315 million between 1971 and 2007—to the other Native Corporations. By making selections outside of the designated withdrawal areas, Sealaska will be able to sustain its resource development operations by acquiring a mix of old growth and mature and advanced second growth, enabling it to provide continued economic opportunities for the Native people of Southeast Alaska and economic benefits to the broader Alaska Native community through revenue sharing. Sealaska's timber business provides critical support to the broader Alaska Native community, and for that reason, Sealaska has the strong support of the Alaska Federation of Natives, the Regional Corporation CEOs, and the Tlingit and Haida Indian Tribes, among other important Native entities.

The role of Sealaska in the Southeast Alaska economy is undisputed. Sealaska's timber operations provide significant positive economic impact to the region, including continued utilization of the timber harvesting sector and creation of jobs in some of the poorest rural Native communities in our region. For that reason, Sealaska has the support of the Alaska Forest Association and many Native villages in its efforts to complete its ANCSA land entitlement.

We also see a benefit to the conservation community; in fact, Sealaska's land legislation strategy was in part driven by national and local conservation organizations' stated public goals of "protecting roadless areas", "protecting old growth reserves" and creating alternate economies for Southeast Alaska. Instead of taking old growth, roadless areas in the original withdrawal areas, Sealaska would commit through this legislation to taking a majority of its remaining entitlement from areas that are already roaded, encompassing significant second-growth timber. Moreover, Sealaska would use nearly 9,000 acres of its remaining entitlement to gain title to sacred, historic, traditional and cultural sites, and Native futures sites, on which commercial timber harvest or mineral development would be prohibited. Southeast Alaska tribes and Native Village and Urban Corporations have passed resolutions in support of this legislation because they recognize the need to preserve our sacred areas and culture, and to create local, sustainable, diversified economies. This legislation gives them the opportunity to join with Sealaska to do both.

Lastly, movement toward completion of Sealaska's ANCSA land entitlement conveyances will benefit the federal government. This legislation allows Sealaska to move forward with its selections, which will ultimately give the Bureau of Land Management some finality and closure in the region. Completion of Sealaska's ANCSA conveyances will also give the U.S. Forest Service some finality with respect to land ownership and management in the Tongass National Forest because there will no longer be large portions of the forest encumbered by Sealaska's land selection rights.

HAA AANÍ SUSTAINABLE FOREST MANAGEMENT PROGRAM

Sealaska has a responsibility as a Regional Corporation to ensure the cultural and economic survival of our communities, shareholders and future generations of shareholders. Sealaska also remains fully committed to responsible management of the forestlands for their value as part of the larger forest ecosystem. At the core of Sealaska's land management ethic is the perpetuation of a sustainable, well-managed forest to produce timber and to maintain forest ecological functions. Significant portions of Sealaska's classified forest lands are set aside for the protection of fish

habitat and water quality; entire watersheds are designated for protection to provide municipal drinking water; and zones for the protection of bald eagle nesting habitat are established for every nesting tree.

Sealaska re-plants, thins and prunes native spruce and hemlock trees on its lands, thereby maintaining a new-growth environment that better sustains plant and wildlife populations, and better serves the subsistence needs of our communities. In fact, Sealaska has invested a great deal of resources in improving its forest sustainability program, including investing in ongoing silviculture research, and reaching out to organizations like the Forest Stewardship Council to ensure best possible management practices. Our harvest to date is a combination of approximately 60% selective harvest and 40% even aged management. All of Sealaska's even aged second-growth forest that is ripe for precommercial thinning is managed accordingly, thereby creating healthy young forests that provide substantial wildlife habitat for deer and other animals. Sealaska maintains a silviculture program that rivals the best of programs implemented by the U.S. Forest Service or private landowners.

Our sustainable harvesting program will continue into the future through implementation of good forest management practices and completion of our Haa Aanϕ land selections, which will provide Sealaska with a mix of old growth and more mature second growth timber. Our harvesting program and investment in good forest management provides jobs for our shareholders and others in the region, and helps maintain the ecological value of our forests.

In asking for your support for this legislation, we implicitly agree to assume a major economic risk by foregoing assured revenue from the harvesting of old growth timber on original withdrawal lands. We are also removing nearly 9,000 acres from our timber base by selecting Cultural sites and Native Futures sites subject to timber harvest restrictions. Lands available to us under this legislation (upon which timber harvest would be allowed) are largely second-growth forest stands, development of which would require Sealaska to enter riskier, emerging markets. We are, however, committed to investing the time, money and hard work in progressive management of second growth stands, to capture alternative economies from forest management and to ensure that our place in the timber industry remains a sustainable, although realigned, component of the region's economy.

Finally, Sealaska is committed to using its land base to create alternative economies, revenues, and jobs through forest management strategies that include engagement in markets for the purchase of ecological services. To that end, we are monitoring developments related to climate change and carbon sequestration and incorporating this effort into our forest management and strategic plans.

DIVERSIFIED ECONOMIES

The proposed conveyance of sacred and cultural sites and the Native Futures sites offers new economic, cultural, and educational opportunities for our region. Our legislation would allow Sealaska to pursue a more diversified economic strategy and would support new jobs by empowering Sealaska to preserve and share with others the richness of Southeast Alaska's natural and cultural history. Both the forest ecosystem and the people it nourishes define the Tongass, which has supported the Native people for 10,000 years. By declaring that Southeast Alaska is both a "Native" place—a place that protects and supports Native communities and cultures—as well as a "scenic" place, we protect it and we proclaim its value to the world.

Sealaska is embracing a healthy, alternative paradigm for the cultural and economic revitalization of our Native and rural communities by selecting sacred and cultural and Native Futures sites as part of this legislation. As part of our commitment, Sealaska has established the following principles for the use and management of these sites:

- Sacred sites. These sites will be selected and managed to ensure an active Native role in the preservation and celebration of the rich Native fabric and history of Southeast Alaska. The sites are purely for sacred, cultural, historic and anthropologic preservation, research and education. Any site improvements would be in alignment with the historic and cultural purpose for which a site was selected.
- Native Futures sites. These sites will be selected and managed to promote recreational tourism activities with minimal land use impacts. A few of these sites could be developed for their tidal or small hydroelectric potential, as sources of much needed alternative energy for the region.

GLACIER BAY NATIONAL PARK

Legislation introduced on Sealaska's behalf during the 110th Congress proposed the conveyance to Sealaska of a handful of sacred, cultural, traditional and historic sites in Glacier Bay National Park, based on precedent for such transfers to Indian Tribes in National Parks in the lower 48 states. As a result of concerns expressed regarding these potential conveyances, Sealaska asked the Alaska Congressional delegation to adjust the legislation to provide merely for "cooperative management" of the sacred and cultural sites located within Glacier Bay. Cooperative management would ensure Native use and management of this handful of very significant sacred and cultural sites within Glacier Bay, regardless of future changes in Park management. This language does not propose to negate the existing Memorandum of Understanding between the Park and the Huna Indian Association. As with all elements of this legislation, Sealaska remains open to a continued dialogue on this matter to address any remaining concerns.

TIME IS OF THE ESSENCE

Timing is critical to the success of the legislative proposal before you today. Without a legislative solution, we are faced with choosing between two scenarios that ultimately will result in dire public policy consequences for our region. If S. 881 is stalled during the 111th Congress, Sealaska will be forced to either terminate all of its timber operations within approximately two years for lack of timber availability, resulting in job losses in an area experiencing severe economic depression, or else Sealaska must select lands that are currently available to it in existing withdrawal areas. If forced to select within the existing boxes, development will inevitably occur in many undisturbed intact watersheds and "inventoried roadless" areas replete with old growth forests. We believe that Sealaska's land entitlement legislation is more consistent with President Obama's commitment to preserving more roadless areas, while immediately stimulating rural economies.

If Sealaska were to terminate all timber operations, this Native business, which serves as the largest regional private employer in Southeast Alaska, would be forced to eliminate jobs that are critical to Alaska's village economy, and this in the middle of the greatest recession since the Great Depression. This result would be in exactly the opposite direction that President Obama and the Congress seeks to move the national economy.

OUR FUTURE IN THE REGION

Our people have lived in the area that is now the Tongass National Forest since time immemorial. We will continue to live in this region because it is the heart of our history and culture. The Tongass is rich and diverse in cultural history, and there continue to be Native people here trying to live and survive in a subsistence and cash economy. We agree that areas of the region should be preserved, but we also believe that our people have a right to reasonably pursue economic opportunity to survive in the world as it is today. This legislation represents a sincere and open effort to meet both the interests of Alaska Native shareholders and the public. Sealaska believes that after full debate and close scrutiny, its aspirations to meet both its rightful land selection rights under ANCSA and the public interest in the Tongass will be recognized as both forward thinking and positive.

Lastly, it is important for all of us who live in the Tongass, as well as those who cherish the Tongass from afar, to recognize that the First Peoples of the Tongass—Tlingits, Haidas and Tsimshians—are committed to maintaining not just the flora, fauna and biological ecology of the Tongass, but to preserving this place as the land of our ancestors, with all that means in spirituality, values and beliefs. We have nowhere else to go and wish for no other place. The Tongass is our home. We, therefore, look forward to a reasoned, open, and respectful process as we attempt to finalize our ANCSA land entitlement.

Gunalcheesh. Thank you.

Senator MURKOWSKI. Thank you, Mr. Mallott. I appreciate your testimony.

Mr. CLAUS.

STATEMENT OF BOB CLAUS, COMMUNITY ORGANIZER, SOUTHEAST ALASKA CONSERVATION COUNCIL, ACCOMPANIED BY BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK

Mr. CLAUS. Thank you, Senator. I appreciate the chance to be able to speak in front of the committee. Thank you.

I have a strong personal commitment to the people and the places of Southeast Alaska. I have served as an Alaska State trooper for over 15 years in the island and I continue to work with the people of the island. I've built strong relationships with many of the 5,000 people who live in the Native villages, the fishing towns, and the former logging camps who would be most impacted by Senator bill 881.

This bill is a lands bill, but it's really about all of the people in Southeast Alaska. In this part of America all of us depend on the public forest lands for work, play, and food. The lifestyle of rural Southeast Alaska is incomprehensible to most Americans. There are no stoplights, McDonalds, or Walmarts. People build and heat their homes with wood they take from the forest. They eat berries and deer from the woods and they fish in the stream and the oceans. Some of my friends have been living like this for 10,000 years and others for only decades.

This bill would turn the areas around their homes over to the Sealaska Corporation. As I talked to people on the island about this bill, I met no one, not one person, who was in favor of this legislation who is not directly employed or a contractor of the Sealaska Corporation. I cannot speak strongly enough to convey the level of emotion expressed in opposition to this bill.

I spoke to a Sealaska shareholder from Hydaburg who told me that as island residents he and I shared a common way of life based on hunting, fishing, and gathering. He said Sealaska Corporation had devastated his island lifestyle by clearcutting and that the corporation does not care about us, the people who still live close to the land.

The costs of this bill outweigh the public benefit and the people of Prince of Wales recognize that. The small communities closest to the lands selected in this bill have written formal letters or resolutions opposing the bill. 98 percent of the people in Point Baker and Point Protection signed a petition opposing the bill. A shopkeeper asked me: How can we continue as a community if Sealaska takes our forest?

SEACC supports Alaska Natives getting the lands rightfully owed to them. But we question the fairness of the bill. One way to measure fairness is through the resource value as measured by timber and existing infrastructure. This is not a value for value exchange. Over 70 percent of the selection area is cave and karst land, a wonder of the world. This land, currently protected by the Federal Caves Resource Protection Act, contains thousands of caves that remain largely unexplored. These caves were discovered only in the 1990s by crews of volunteer adventurers. They found unique sites, which changed the way that we understand the peopling of the Americas.

Clearcut logging as practiced by Sealaska damages karsts and caves and State regulations governing private logging offer no protection. These world treasures should remain federally protected.

This bill allows Sealaska to cherrypick the best of the Tongass, to the detriment of all other users. Sealaska has chosen the most productive, easily accessible timber stands. SEACC supports the microsale timber program on Prince of Wales Island and a responsible level of timber harvest to support the small mills there. This bill threatens the ability of those programs to continue. The Native future sites represent the very best sites in all of Southeast Alaska for tourism and energy-related development. Some are in direct conflict with existing small businesses and all of them block future investment by any other party, tribes, village corporations, or private businesses.

One small cove selected by Sealaska is the site of a fully permitted floating lodge, family owned and operated for over 30 years. This existing lodge brings millions of dollars into the local economy and this family business is threatened by this bill.

SEACC and other conservation organizations, timber operators, government officials, community members, and the Sealaska Corporation have been working together toward a comprehensive solution for the Tongass National Forest that could finalize Sealaska's entitlements while respecting the other shareholders in the region. SEACC remains committed to a bigger, broader solution that addresses the interests of Sealaska, respects the cultural as well as the economic needs of all of the people of Southeast Alaska.

We look forward to working with members of the committee, Sealaska, and all the other stakeholders to promptly achieve a solution that benefits all of us. Thank you.

[The prepared statement of Mr. Claus follows:]

PREPARED STATEMENT OF BOB CLAUS, COMMUNITY ORGANIZER, SOUTHEAST ALASKA CONSERVATION COUNCIL, ACCOMPANIED BY BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK

Mr. Chairman and members of this Subcommittee:

My name is Bob Claus and I am a community organizer for SEACC based on Prince of Wales Island. With me today is Buck Lindekugel, our Conservation Director who can help answer any detailed questions you may have. Thank you for the opportunity to testify before you today and I respectfully request that my written testimony and accompanying materials be entered into the official record for this Subcommittee hearing.

Founded in 1970, today SEACC is a coalition of fourteen local citizen volunteer conservation groups in twelve Southeast Alaska communities, from Craig on Prince of Wales Island to Yakutat. SEACC's individual members include commercial fishermen, Native Alaskans, small timber operators and value-added wood manufacturers, tourism and recreation business owners, hunters and guides, and Alaskans from all walks of life.

SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable use of our region's resources. Southeast Alaska contains magnificent old-growth forests, outstanding fish and wildlife habitat, important "customary and traditional" or subsistence use areas, excellent water and air quality, unsurpassed outdoor recreation opportunities, world class scenery, internationally and nationally significant cave and karst resources, and provides a unique way of life for hardy, independent people who choose to call it home.

The Alaska Native Claims Settlement Act (ANCSA) set up a framework for settling the aboriginal claims to land of Alaska Natives by establishing village and regional corporations with the right to select and receive title to 44 million acres of

land and receive payment of nearly one billion dollars. Sealaska is one of 12 regional corporations formed under ANCSA to receive land and money.

SEACC supports completion of Sealaska Corporation's remaining land entitlement under ANCSA. We respect the history and traditions of the Tlingit, Haida, and Tsimshian people who are Sealaska Corporation's shareholders. It is not necessary, however, for Congress to take any action for Sealaska to complete its remaining ANCSA land entitlement. We oppose S.881 as introduced because of the significant changes to ANCSA and other federal laws it proposes and its impact to the Tongass National Forest and the communities and residents that depend on it. We fear that S.881 will not redress any inequities but create new ones among forest users and communities within Southeast Alaska and with other regional corporations across Alaska.

Neither can we ignore the significant social, economic, and ecological impacts caused by intensive and unsustainable logging of old-growth lands currently owned by village corporations and Sealaska and surrounding Native villages.[1] Nothing in S.881 binds Sealaska to adopt and follow balanced and sustainable logging practices on the economic development parcels in the future. We have heard eloquent statements from Sealaska directors and officers of the importance of the corporation to the regional economy and its desire to provide good jobs for shareholders. Yet, Sealaska's interest today in investing in the rural economy seems to nm counter to its practice over the past twenty-five years of promoting the export of logs, and jobs, from Native corporate lands in Southeast Alaska.[2]

In our testimony opposing Congressman Young's initial legislative proposal on this issue in November 2007, H.R. 3560, we promised to maintain open communication with Sealaska. When we submitted comments to Senator Murkowski on 5.3651, the precursor to S.881 that she had introduced in September 2008, we reaffirmed this commitment.[3] We have since worked directly with Sealaska and others to reach a fair resolution of this matter and to identify a pool of possible lands for conveyance to the corporation that maintains the integrity of the Tongass National Forest. While we have made some progress, we have more hard work in front of us.

Changing the way Sealaska's lands entitlements are completed should be done in a manner that maintains the integrity of the Tongass National Forest and all it stands for—multiple use and sustained yield, the commercial, recreational, customary and traditional use of fish and wildlife, recreation, and tourism. Whether you view this legislations a controversial reformulation of long-settled ANCSA settlements or a more benign exchange of lands, a fair and equitable resolution should also ensure that the ecological integrity of our nation's largest National Forest remains intact. Any bill relating to the Tongass National Forest should include durable protections for key lands for salmon production, wildlife habitat, and community uses. Such an approach would complete Sealaska's remaining land entitlement, address the interests of all Americans in securing the long-term integrity of the entire Tongass, and make Southeast Alaska a model of sustainable fisheries, natural abundance, and community health in the 21st century.

S.881 DOES NOT "FINALIZE" SOUTHEAST ALASKA NATIVE CLAIMS TO THE TONGASS NATIONAL FOREST BUT STARTS A CHAIN OF FUTURE EXCEPTIONS THAT MAY UNRAVEL LONG SETTLED ALASKA NATIVE LAND CLAIMS.

S. 881's sponsors entitled this bill the "Southeast Alaska Native Land Entitlement Finalization Act." While a worthwhile goal, this bill does not and will not "finalize" Native land claims on the Tongass National Forest.

On April 2, 2009, three weeks before introduction of S.881, Senator Murkowski introduced S.784, a bill to recognize and settle "certain claims" under ANCSA. See 155 CoNG. REC. 54315 (daily ed. Apr. 2, 2009) (statement of Senator Murkowski). This bill would allow five (5) communities in Southeast Alaska that failed to meet one or more of the criteria set by Congress for a community to qualify for village status under ANCSA to form "urban" corporations. The bill would further grant

[1] See Bluemink, Sealaska to reduce logging by 25 percent, Juneau Empire (Nov. 15, 2005). The story reveals that 20 years after it started its intensive logging program the corporation realized its "timber resources are much smaller than previously thought," and intended "to petition federal officials to provide it with more valuable timber land than it is currently entitled to." Attached to this testimony as Exhibit 1; see also, Exhibit 2 (a photo of Sealaska Corporation lands on Dalt Island near the Hydaburg).

[2] See Sealaska's corporate history on the web at http://www.fimdinitnniverse.corn/companv-histories/SealaskaCorporation.

[3] A copy of these preliminary comments was submitted to Committee staff for inclusion in the record for this hearing. These comments are referred to hereinafter as "SEACC's Preliminary Comments to Senator Murkowski on S.3651."

each corporation 23,040 acres of land from anywhere in the Tongass National Forest, including designated Wilderness and Legislated LUD 11 lands; nearly 180 square miles of public lands.[4]

We recognize that the Native people who are asking for recognition via S. 784 have long histories and traditions in this region. We are sensitive to their concerns, but we must vigorously oppose proposals which attack the Tongass as a result. We have directly expressed our willingness to work with these groups, if they are recognized, to develop settlement options that would not sacrifice a sustainable future for the entire region, and we remain committed to doing so.[5]

If these communities become eligible, then Sealaska's remaining entitlement under Section 14(h) of ANCSA would be reduced by approximately 25,000 acres. We have previously shared our position on this issue with Sealaska.[6]

Lastly, in 2004, Congress enacted a law to facilitate completion of the transfer of lands in Alaska pursuant to ANCSA, the Alaska Statehood Act, and other laws. See Alaska Lands Transfer Acceleration Act (ALTAA), Pub. Law 108-452, 118 STAT. 3575 (Dec. 10, 2004). Why was the issue about whether it was appropriate for Sealaska to select its remaining entitlement outside of the existing ANCSA withdrawals on the Tongass National Forest addressed during Congressional deliberations over ALTAA?[7]

S.881 CHANGES THE RULES FOR CONVEYANCE OF ANCSA ENTITLEMENT LANDS TO REGIONAL CORPORATIONS

As of nearly a year ago, the Department of Interior's Bureau of Land Management (BLM) has conveyed approximately 291,000 acres of Sealaska Corporation's share of the Section 14(h)(8) allocations, which is 354,389.33 acres. This leaves a remaining entitlement of approximately 63,615 acres.[8] BLM has also conveyed an additional 560,000 acres of subsurface rights to Sealaska. These conveyances have made Sealaska the largest private landholder in Southeast Alaska.

Today, about 3 decades after selecting available lands within the areas withdrawn by Congress, Sealaska wants to change the rules set by Congress.

S. 881 DROPS THE LIMITATIONS IMPOSED BY CONGRESS ON WHERE REGIONAL CORPORATIONS MAY SELECT THEIR LANDS UNDER SECTION 14(H)(8)

Section 14(h) of ANCSA set aside 2 million acres for 5 types of Native claims; cemetery sites and historical places, Native groups, "urban" corporations formed by Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for certain Native allotments.[9] Any of the 2 million acres not needed for those specific claims was to be divided among the 12 regional corporations on the basis of population under Section 14(h)(8) as a land-base for economic development and benefit to all the regional shareholders.

S.881 authorizes Sealaska to select its remaining "economic development" land under Section 14(h)(8) from a pool of approximately 79,000 acres located outside the withdrawal areas identified in ANCSA. Specifically, Section 3 removes the requirement in ANCSA that Sealaska select its land entitlement from lands withdrawn for, but not selected by, village corporations in Southeast Alaska under Section 16 of

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[4] Although S.784 was referred to this Subcommittee, it is not a subject at today's hearing. We therefore reserve the opportunity to comment further on this proposed legislation at this time. We provided the Subcommittee with materials from the Department of Interior and Department of Agriculture on similar legislation that was introduced in the House of Representatives in 1997 for the record.

[5] Our most recent correspondence with representatives from these communities was in 2005. Although we advised them of our continuing commitment to further discussions, we did not receive any response from them. A copy of this correspondence has been provided to the Subcommittee for the record.

[6] See Letter from Anderson, SEACC Executive Director to Harris, Sealaska Vice-President, Resources (May 22, 2003). A copy of this correspondence has been provided to the Subcommittee for the record.

[7] Possible conflicts between this legislative effort and the Alaska Lands Transfer Acceleration Act were noted in our H.R. 3560 testimony and in SEACC's Preliminary Comments to Senator Murkowski on S. 3651, supra note 3, at 7.

[8] See Letter from Lloyd, BLM's Alaska State Office to USDA Forest Service, Alaska Regional Office at 2 (Oct. 9, 2008). A copy of this letter has been provided to the Subcommittee for the record.

[9] In 1988, six regional corporations, including Sealaska, chose to relinquish some of the acres previously allocated for cemetery and historical sites to increase the separate allocation for lands under Section 14(h)(8). See supra note 3, SEACC's Preliminary Comments to Senator Murkowski on S. 3651 at 2. Sealaska Corporation Resolution No. 84-87 (June 20-21, 1984) referenced in those comments was submitted to the Subcommittee for the record.

ANCSA.[10] In S.881, Sealaska has targeted some of the most productive forest land remaining on the Tongass National Forest from which to select these lands. The charts below, infra at p.7, show how Sealaska has cherry-picked some of the best lands on the Tongass for selection, under S.881.

PARCELS OF LAND IDENTIFIED BY SEALASKA DO NOT FOLLOW THE RULE FOR REASONABLY COMPACT TRACTS APPLIED TO PREVIOUS REGIONAL CORPORATION LAND SELECTIONS

While the number of acres identified for selection and conveyance under S.881 appears small compared to the size of the Tongass National Forest, the hundreds of parcels of varying sizes identified by Sealaska for conveyance are spread out across the entire Tongass National Forest. The lands Sealaska seeks conveyance of are made up of a number of individual small parcels, as opposed to the larger blocks of reasonably compact tracts applicable to previous selections by all the regional corporations under ANCSA. See 43 C.F.R. § 2653.9(a). Many of the sacred, cultural, and historical sites identified by Sealaska for conveyance in Section 3(b)(2) of S.881 are located within designated Wilderness and Legislated LUD II lands.[11] With very few exceptions, the proposed Native future sites under Section 3(b)(3) of S.881 are located adjacent to highly popular areas used by local community members for recreational, commercial and subsistence purposes.

S.881 CREATES A NEW CATEGORY OF OUT-OF-THE-BOX WITHDRAWAL SELECTION'S NOT ENJOYED BY OTHER REGIONAL CORPORATIONS

As noted above, Section 14(h) of ANCSA provided a total of 2 million acres to be selected by the regional corporations from specified categories. Section 3 of S.881, however, creates new categories of land selections not available to the other regional corporations. These include "Places of Sacred, Cultural, Traditional, and Historic Significance," "Traditional and Customary Trade and Migration Routes," and "Native Future Sites," identified by Sealaska on maps it prepared, dated March 9, 2009, and respectively entitled Attachments B, C, and D to S.881.

Unlike cemetery sites and historical places conveyed to Sealaska under Section 14(h)(1), no definitions or criteria have been adopted or proposed for sacred, cultural or traditional sites.[12] Nor does S.881 define what qualifies as a Trade and Migration Route or Native Future Site. Will authorizing Sealaska to select from new categories of lands not available for selection by other regional corporations, increase pressure for similar treatment by other regional corporations? Will these new circumstances slow down the prompt resolution of land selections for all regional corporations?

S. 881 ALLOWS ECONOMIC DEVELOPMENT OF CULTURAL SITES WITHIN GLACIER BAY NATIONAL PARK

Under ANCSA, Congress did not allow for the selection and conveyance of culture sites within National Park System units. See Section 11(a)(1), Pub. L. 92-203, 85 Stat. 696, codified at 43 U.S.C. § 1610(a)(1). While Section 3(c) of S.881 prohibits conveyance of any of the 12 sites identified by Sealaska in the Glacier Bay National Park, it requires the National Park Service to manage all Park resources cooperatively with Sealaska. This new requirement opens Park resources to economic development in a manner inconsistent with maintaining park values.[13] By giving such rights to Sealaska, S.881 opens the door wide to requests from other Regional Corporations asking for the same prerogatives in other National Park units in Alaska.

S. 881 REMOVES EXISTING PROTECTION FOR CULTURAL AND HISTORICAL SITES AFFORDED UNDER EXISTING LAW

Section 4(g) of S.881 terminates the restrictive covenants regarding cultural or historical values imposed on lands previously conveyed to Sealaska by BLIVI. These covenants prevent a regional corporation from authorizing mining or mineral activity of any type or "any use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place." See 43 C.F.R. § 2653.11(b).

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[10] Section 14(h)(8)(B) of ANCSA, 43 U.S.C. 1613(h)(8)(B); see also 43 C.F.R. § 2653.9(a)(limiting lands available for Sealaska's selection to those originally withdrawn by Section 16 of ANCSA but unconveyed.).

[11] The former designation was chosen by Congress in the 1990 Tongass Timber Reform Act, Pub.L. 101-626, to assure that lands with high value fish and wildlife habitat were managed in perpetuity to retain their wildland character

[12] See 43 C.F.R. § 2653.0-5, 2653.5 (2008).

[13] See Letter from Lindekugel, SEACC to Elton, Dept. of Interior's Senior Advisor for Alaska Affairs (August 12, 2009). A copy of this letter has been provided to the Subcommittee for the record.

Section 4(e) of S.881 subjects sacred, cultural, and historic sites conveyed to Sealaska to a covenant prohibiting any commercial harvest or mineral development. While these restrictions are necessary and appropriate, they are by their terms narrower than existing covenants imposed to protect the values of the area as a cemetery site or historical place. As written, the restrictions may not prevent development or uses of the land may degrade the values of the areas. Will treating Sealaska differently, both in the future and retroactively, result in other regional corporations seeking the same treatment?

HOW WILL SEALASKA OBTAIN AND MANAGE ACCESS TO SACRED, CULTURAL AND HISTORICAL SITES IN DESIGNATED WILDERNESS?

Sealaska wishes conveyance of numerous sites it has identified on lands previously designated by Congress as Wilderness. Given the scale of the maps prepared by Sealaska identifying these sites, it is impossible to determine how near these sites are to shoreline, or how easily the sites can be accessed. Will the means and level of access sought by Sealaska, as well as the uses permitted under Section 4(f) of S.881, protect the natural and other values of these lands?

SEALASKA'S OUT-OF-WITHDRAWAL SELECTIONS FOR ECONOMIC DEVELOPMENT LANDS DISPROPORTIONATELY TARGET THE MOST ECOLOGICALLY PRODUCTIVE LANDS IN SOUTHEAST ALASKA

The pool of lands from which Sealaska is seeking for timber development possess some of the highest biological values represented by salmon, deer, black bears, big-tree old-growth, and estuaries on the Tongass National Forest.[14]

The total number of acres in the pool of lands identified by Sealaska shrunk from over 95,000 acres initially proposed in 2007 under H.R. 3560 to just under 79,000 acres in S.881. Despite this reduction in total acres, the ecological productivity of the lands sought by Sealaska for intensive clearcut logging is proportionally higher in 2009, with nearly 47,000 (59.2%) of the acres inventoried as big tree forest. See Exhibit 2* (attached). This is illustrated in the charts below, created using existing Forest Service data for Prince of Wales Island.

A substantial majority of the lands target by Sealaska on North Prince of Wales, Kosciusko, and Tuxekan Islands also contain world-class karst and cave resources. See Exhibit 4, attached. Karst terrain occurs on water-soluble bedrock such as limestone, dolomite, or gypsum. It is characterized by underground water drainage, sinkholes, pits, and caves. These well-drained soils support some of the most majestic old-growth forest on the Tongass. As it turns out, approximately 71 % of the lands identified for conveyance by Sealaska are underlain by karst. The forest canopy protects the thin soils atop karst from eroding directly into the soluble rock below. Past and proposed clearcut logging on these fragile soils disrupt the natural hydrology, harm cave formations that hold information of thousands of years of climate change, and alter sediments that hold keys to understanding patterns of human migration into the Americas as well as paleontological clues to our past. Eleven (11) years ago, the Forest Service discovered human remains in On Your Knees cave on North Prince of Wales Island. DNA testing determined that these human remains were 10,300 years old. The oldest human remains in Alaska have been found in this cave system, and it has not yet been fully explored or mapped. See FOREST SERVICE RETURNS ANCIENT HUMAN REMAINS TO TLINGIT TRIBES, Juneau Empire (Oct. 21, 2007).[15]

LANDS IDENTIFIED BY SEALASKA FOR LOGGING DEVELOPMENT WILL HAVE DEVASTATING IMPACT ON LOCAL COMMUNITIES AND FOREST USERS

One of our proudest national heritages is the freedom that Americans enjoy to access and use our public lands, anyplace and anytime. The lands sought by Sealaska will curtail public access and use of public lands and resources. The uncertain scope of the permitted activities and location of the easements proposed in S.881 raises

[14] Schoen, John and Erin Dovichin, eds. 2007. The coastal forests and mountain ecoregion of southeastern Alaska and the Toneass National Forest. Audubon Alaska and The Nature Conservancy, 715 L Street, Anchorage, Alaska. This complete report is available online at: httpliconserveonline.org/workspaces/akcfm. See also Exhibit 3, a map comparing Landscape Scale Density of Oldgrowth Forests 1950's—2005 on the southern portion of the Tongass National Forests with the land pool proposed for selection by Sealaska in S.881.

*All exhibits have been retained in subcommittee files.

[15] This story can be found on the web at http://www.juneauempire.cordstories/102107/loc 20071021021.shtml.

concerns, as does the unfettered authority given Sealaska to control access and use of the easements and adjacent lands.[16]

Prince of Wales Island is populated by about 5,000 people, spread out among 11 communities. Some of these settlements are Native villages, some fishing towns, and some former logging camps rebuilding themselves into viable communities. Residents of Prince of Wales Island are heavily dependent on the Tongass National Forest and its abundant resources for work, play, and food.

Many residents of these communities closest to the lands threatened by S.881 question how they can continue their shared way of living close to the land if Sealaska takes their forest. This feeling of ownership of our national forests is one of the greatest freedoms enjoyed by Americans. Many wonder if the existing timber industry will be able to transition away from old-growth logging if Sealaska receives the oldest young-growth on the forest.

The small communities of Edna Bay, Naukati, Thorne Bay, Point Baker and Port Protection have written formal letters or resolutions opposing this bill, and these are the communities closest to the transfer areas. Hundreds of island residents have signed petitions opposing the bill.

Residents of the rural communities on Prince of Wales have long used all the lands proposed for selection by Sealaska on North Prince of Wales Island and Kosciusko Islands for subsistence hunting, fishing and gathering. Without the legal requirements for public oversight and involved participation provided these rural residents under Title VIII of the Alaska National Interest Lands Conservation Act on public lands, they will have no voice on how these "private" lands are managed by Sealaska nor will Sealaska be obligated to minimize impacts to subsistence resources and uses from its management.

The community of Hydaburg has long fought to safeguard lands surrounding Keete/Nutkwa and Kassa Inlets and Mabel Bay. Sealaska has targeted these traditional lands for the short-term economic benefits associated with clearcut logging and round log export to Asian markets. Former Senator Tim Wirth's 1989 Tongass Timber Reform Act, S.346, prohibited logging on these lands, but they were ultimately left unprotected in the final compromise legislation in1990.[17] Hydaburg and SEACC have consistently advocated for long-term protection for these lands ever since.

IS THE EXCHANGE OF 327,000 ACRES OF LAND AVAILABLE FOR CONVEYANCE TO SEALASKA FOR ABOUT 60,000 ACRES OF PUBLIC LANDS A FAIR DEAL?

As noted above, some characterize S.881 as a simple exchange of lands. ANCSA allows for such exchanges but with an important caveat; exchanges "shall be on the basis of equal value . . . " 43 U.S.C. § 1621(h). Under Section 4(b) of S.881, Sealaska will relinquish all the lands remaining available for selection and conveyance within the Congressional withdrawal areas upon completion of the conveyances under the bill. In terms of mere numbers, the 327,000 acres that will be returned to Forest Service management far exceeds the amount of land Sealaska will receive under S.881. In terms of value, however, the relinquished lands do not hold a candle to the lands Sealaska will receive.

The accounting provided by S.881 does not consider the value of the public-financed infrastructure on the lands Sealaska seeks. These parcels contain approximately 200 miles of roads. These roads provide vital all-weather access for subsistence activities, as well as basic services like emergency healthcare and law enforcement.

Thank you for the opportunity to provide these preliminary comments on this proposed legislation.

Senator MURKOWSKI. Thank you, Mr. Claus.

They have called the roll, but I think I've got some time. So I'm going to start with some questions, and then we'll have to take a short break.

Mr. Mallott, I would like you to address the issue of the Tongass Futures Roundtables. You indicated as you began your testimony

[16] For additional questions concerning the easements proposed in Section 4 of S.881, see supra, note 3, SEACC's Preliminary Comments to Senator Murkowski on S.3651 at 3-5.

[17] See S. Rep. No. 101-30, Pt.1, at 3 (1989)(text of S.346); see also 136 Cong. Rec. S7740—S7744 (daily ed. June 12, 1990)(statement of Senator Tim Wirth in support of "the Johnston compromise" between S.346 and H.R.987, the House-passed Tongass Timber Reform Act of 1989).

here today that you are a participant and have been since the outset. Mr. Jensen's comments are that the administration is clearly looking to what is taking place or the dialog that is in process and perhaps this proposal that was placed out there this past week.

How do you see Sealaska's entitlement legislation, the bill before us, fitting in with the Tongass Futures roundtable consensus-building process? How does this fit together?

Mr. MALLOTT. After 3 years of effort, at its last meeting just in the last week the Tongass Futures roundtable had presented to it by a working committee the conceptual draft of what is called the grand solution. The Tongass has had several grand solutions, as you know, in its history. I can't comment on the details, but among its provisions would be a transfer of land by some mechanism to the State of Alaska. There would be the addition of significant wilderness. There would be at least one or more new classifications of land within the Tongass.

I think that any thinking person would recognize that this is a multi-year process, that if it were to be approved by the Tongass Futures roundtable at its next meeting, which it surely would not, that it would take probably 5 or 6 years for us to get to a point where some or all of it were to be made into law, because almost all of it would require action by this Congress.

The Sealaska Land Selections Act, as you pointed out, is ready now. We have had some 150 meetings with communities, institutions, significantly affected individuals within the Tongass. For example, contrary to a comment just made which would leave a different implication, the principle organizations in the community of Hydaburg have acted to support this legislation.

We have made clear in the Tongass process that we very much desire and will act as aggressively as possible to make sure that our bill, which is significantly different from what the Tongass is trying to achieve in that it is a settlement of our land claims and that it is based upon prior existing obligations—in spite of that, Sealaska has continued to work very extensively with every interest, both at the table and in the communities of Southeast, and will continue to do so.

Senator MURKOWSKI. The question some have asked me is, well, if Sealaska has waited for 38 years to get their final conveyance and if in fact there is this process under way through the Tongass Futures Roundtable, what is another few years of waiting? Can you describe for the record what the economic situation is in the region and address why it doesn't make sense to wait multiple years for resolution of this issue?

Mr. MALLOTT. A significant reality that Sealaska faces and the overall timber industry within the Tongass has faced is that the available marketable timber to us and to the industry is fast declining, that the overall timber industry in Southeast is already only a shadow of its former self and at a point where, if it is to be sustained, additional harvestable, marketable timber needs to be made available to the overall industry. Sealaska is impacted by that.

Senator MURKOWSKI. Is it not also accurate that it's not just Sealaska, but through the 7 [i] distributions other Alaska Native

corporations throughout the State would also be impacted through that loss of revenue source?

Mr. MALLOTT. Yes, Senator. I was going to end by saying that Sealaska itself in about 2 years would have to begin winding down its timber operations. That would end, amongst other things, the 7 [I] payments which have been made to the 12 other corporations under that section of ANCSA, which obligates us to share 70 percent of the revenues from the development of ANCSA resources.

Sealaska since its inception of harvest on ANCSA lands has distributed some $300 million to the other regional corporations and its loss would be a significant matter both to our survival and to theirs long-term.

Senator MURKOWSKI. I appreciate you saying that.

I do need to excuse myself, so we will take a brief at-ease. Hopefully we'll be back in 5 minutes.

[Recess from 4:14 p.m. to 4:33 p.m.]

Senator MURKOWSKI. We seem to be losing some of our crowd, but not the interest. I appreciate your indulgence as we accommodated the vote. The good news for me is that we are finished voting, so I can stay with you for the rest of the afternoon.

Mr. Mallott, I have a whole series of questions, but I don't want Mr. Claus to feel like I'm not giving equal time.

Before we broke I asked about the economic impact and why it doesn't make sense to delay beyond the 38 years that Sealaska has already gone through. Mr. Claus, you have indicated that you live there as part of the island community, have a great understanding of the region and the local economies. If we're unable to pass the legislation with Sealaska and to do so in a timely manner, Mr. Mallott has indicated what the economic impact to Sealaska would be. But I think we also appreciate that to the Southeast economy, the timber aspect is something that is of great import.

Can you tell me if in fact we aren't able to resolve this, if in fact Sealaska sees the decline, as Mr. Mallott has suggested, what then becomes of an already shrinking and struggling southeastern economy?

Mr. CLAUS. First off, Senator, I very much appreciate your sense of urgency and understand that this is an important issue and that it does have to be addressed in a timely fashion. SEACC and the other people that we know are willing and able to talk about these issues in virtually any venue, whether that's the roundtable or in discussions with Sealaska itself or other small groups that are working on this issue. We also feel that this is an urgent issue.

As far as the economy goes, Mr. Mallott was eloquent in his description of the move toward a second growth industry . This will take time as far as retooling. There's other legislation pending for those kind of activities. I think all the stakeholders need to be represented to address both that economic move toward a second growth industry and to address Sealaska's entitlements.

Senator MURKOWSKI. I recognize your point, but I think we also understand that moving to this second growth transition, the proposal that Sealaska has advanced is one that, lays out how they accomplish that transition there.

Let me ask, Mr. Mallott, because it's been suggested by Mr. Claus and certainly the administration witnesses that everyone is

willing to sit down and have further negotiations. In my opening comments, I suggested that there might be some movement or some removal of the bill as it relates to Glacier Bay National Park. How willing is Sealaska to sit down, not only with our staff, but with others, to work out whatever modifications may be needed to settle some of the remaining concerns?

Mr. MALLOTT. Speaking as a board member and having worked closely with our management during this entire process, I believe Sealaska has already demonstrated that it is willing to be responsive to both the folks who live in the forests, our shareholders, who also have raised issues with portions of this bill, with environmental organizations. We've briefed the Tongass Futures roundtable twice on the legislation, as I've mentioned, have had some 150 meetings throughout the course of the past several years.

This bill is a very different bill than it was when it was introduced in the last Congress, and Sealaska is committed to continuing to work with all the parties to try to expeditiously as possible resolve issues with the bill so that ultimately it can be expeditiously resolved also by Congress.

Senator MURKOWSKI. I have heard nothing but statements of goodwill about working towards final resolution and it is certainly my intention to push us all in that direction so that we do have a final, expeditious result and it is one that has a level of equity to the shareholders and does take into account a struggling economy.

I wanted you to respond, Mr. Mallott, to the issue that was raised by both of the administration witnesses that somehow this sets a precedent. I told them that this was in fact a unique circumstance here with Sealaska. But can you elaborate further? Are there any differences between the Sealaska circumstances and those of other ANCSA corporations? Do we need to be fearful that all the others are going to be coming back and saying that in fact they should be able to seek further redress?

Mr. MALLOTT. Senator Murkowski, the legislation has been briefed with the regional corporation CEOs group, which meets on a regular basis to discuss a full range of ANCSA issues, including, and they're hugely sensitive to this, issues that might create precedent.

We also know that ANCSA is very much a living document. It has been amended many, many times. In those meetings that I just mentioned, there has been no inkling of opposition. Every Native corporation or Native institution that we have asked for the opportunity to both explain and then to seek their support for this bill, that support has been provided.

In the Act itself, Sealaska selections come from a different and almost technical administrative section of the Act, which is completely separate from those sections of the Act from which all other ANCSA corporations make their selections.

I have heard absolutely nothing from within the Native community and those interests who might otherwise raise these issues of possible precedent other than what I heard today by the government witnesses.

Senator MURKOWSKI. Let me ask about another suggestion that came up during the commentary. This undercurrent that if

Sealaska gets to pick timber lands from this proposed selection pool that somehow you're able to cherrypick, and that it somehow negative for the rest of those who are in the timber industry in Southeast. Can you speak to that as an issue? Is this something that the timber industry are opposing in Sealaska's proposal?

Mr. MALLOTT. The principal organizations that represent the timber industry in Southeastern Alaska support this legislation and I believe they are formally on record as doing so.

The notion of cherrypicking is one that surprises me. Quite frankly, Senator, it is Tongass Futures roundtable and the discussions that took place there that led us to take the actions at the board level which set internal policy for Sealaska to seek this legislation. The notion that the industry itself should move to building a long-term sustainable industry built around no more old growth, but the harvest of second and renewable growth timber, the areas that Sealaska as a consequence has included in our bill are lands that have already been harvested or almost all of which has been previously harvested by the United States Forest Service.

The issues of karsts and some other environmental issues are there and we would have to deal with those and are willing again to work with agencies and with other institutions in order to make the right decisions. In our legislation, for example, both in partial response to this question and to one you asked just prior, this bill contains very significant public access provisions, which was quite frankly hard for the board to make when we look at these as Native homelands. But in recognition of the issues that were raised, public access is included around and within these selection areas where local communities and individuals have indicated their importance.

Sealaska also felt that it was incredibly important and necessary to move out of our existing withdrawal areas in order to protect sacred sites. If we stay within our withdrawal areas only and finalize our entitlements through existing administrative processes, as you've indicated, that will take some time, even in spite of the legislation that was passed several years ago to accelerate the process. But more than anything else, it would place in jeopardy in our judgment collectively as a board many, many sites that are sacred to our people and that we believe at this time and place are appropriate to be made available for selection, because the Tongass today is a very different place than it was 40 years ago, at a time then that we thought that the Federal protection would be sufficient; that the growing impact and utilization and recreation and tourism and other uses of the forest have made clear to us that somehow we need to have a significant voice and hopefully ownership of those sites which are most important to us, and we cannot do that if we stay within our withdrawal areas.

Senator MURKOWSKI. Let me ask you that, Mr. Claus, because it appears that SEACC is taking a position in opposition of these Native sacred sites. Is that correct?

Mr. CLAUS. We believe that there's a conflict. From just talking to tribal members of the four tribes on Prince of Wales Island—and I in no way can speak for the tribes or don't intend to—but I think there is an issue to be resolved between the tribes and the ANCSA

corporations as to who should have control over those issues or those particular sites.

The objection that some have to the cultural sites is development of them and the removal of the covenants, as the administration witnesses testified to earlier.

Senator MURKOWSKI. Let me ask the question about the environmental impacts, because I believe it was Ms. Burke, and also Mr. Jensen, but I believe that Ms. Burke spoke to the fact that Sealaska, they can always select from the remaining acres of the original selection pool. Her comment was there was essentially sufficient land to select from.

My point, and Senator Begich made it as well, within that area there's a significant percentage that may be under water. There's a significant percentage that is located in municipal watersheds and that are in areas where there is productive old growth.

The fact is that you could select in those areas, but wouldn't there be greater environmental impact, to wildlife, within those areas? Why not encourage a better pool of economic lands to select from? That's where Sealaska has gone with this. By saying we're not going to allow for an expansion, you must select from within, you are essentially going counter to the initiative certainly of SEACC, which is enhanced protection of the environment.

Let me ask Mr. Claus to answer and then I'll let you jump in, Byron.

Mr. CLAUS. Thank you. As far as the specific environmental impact to areas inside the box, for lack of a better term, I would have to get back to you or back to the committee on those in specific. In general, I'm not sure that's a fair question, either inside the box or outside the box.

We've been working with, for the past 6 months or so, in direct negotiations with the Sealaska Corporation about moving these areas, potential areas, around so they have less impact on the other communities of Prince of Wales Island and talking very specifically about where those areas ought to be. Many of those are outside of the existing ANCSA areas.

So yes, we have been working on thinking about moving to places that will minimize impacts to communities and maximize environmental protections for old growth in sensitive areas.

Senator MURKOWSKI. Mr. Mallott, if you can speak to that, because from all that we can discern with the expansion of the selection pool what is happening is a greater facilitation of lands that have already been harvested. So we're talking about second growth. We are not in fact going after some of the more environmentally sensitive areas with this expanded selection.

In fact, it is probably more environmentally balanced than if you were to select within the box. Is that correct?

Mr. MALLOTT. Yes, it is. If the board had not begun the discussion of a powerful desire to protect sacred sites, the discussion of moving outside existing withdrawal areas might not have resulted. That would likely not have taken place also if not for the Tongass Futures roundtable process, where long-term harvest of already roaded and accessed and harvested areas by the Forest Service might be made available to be responsive to the Tongass Futures'

almost consensus aspiration that that be the future of the timber industry.

In our withdrawal areas are some of the last remaining significantly unroaded and old growth watersheds in the Tongass. In the Tongass land use management plan—my numbers may be off, but some 60,000 acres of our withdrawn old growth able to be selected by Sealaska is identified as important to the overall balance of timber stand futures in the Tongass.

We thought, quite frankly, Senator, we were doing everybody a favor. We could have stayed within our boxes and had significant old growth harvest, for which we have the ability, as you know, in law to market. We are not prohibited from doing that. We could sustain on an ongoing basis without having to diminish our current harvest levels to any consequence. We could work with the Forest Service to use that old growth availability to help create a sustainable timber industry for a longer term future.

But we also agree as Native peoples who are stewards of our lands and of future lands that it makes sense to avoid continuing clearcut harvesting of old growth timber. But there needs to be an alternative both for the existing non-Native timber industry as well as for our industry. We believe that what we have identified and include in our bill is both responsible to the environment and it is responsive to the needs of the long-term timber industry.

It is, quite frankly, both the choice and the gamble that Sealaska is willing to take. We will have to diminish our timber harvest very significantly even to sustain it and then ramp up at a period longer in the future than would otherwise be the case if we selected within the withdrawal areas.

Also, within the withdrawal areas are a number of community intact watersheds which Sealaska would not select in any case, which would impact negatively our ability to create the kinds of blocks and rational selections that would allow us to sustain any kind of timber industry into the future. We could select those watersheds and plan to harvest them, but that would just create another Tongass crisis.

Senator MURKOWSKI. I appreciate the explanation because I think it goes to the heart of what we're doing here today. Sealaska within the ANCSA provisions, within the law, has the ability to be more aggressive from an economic development perspective. But I think out of respect for the land and out of respect for finding that balance, this is why you are looking outside of the withdrawal areas to provide for a level of protection, as stewards.

That's the last question that I want to ask you, Mr. Mallott, and that is the issue of stewardship. There has been a little bit of undercurrent that perhaps in the past Sealaska has not been the best managers in previously selected lands. I would just ask you for the record to tell us about Sealaska's commitment to sustainable forest stewardship. You have given us a little information, but if you could just describe further and how you'll work to ensure that the Native subsistence needs are also met through that.

Mr. MALLOTT. Thank you for a meaningful opportunity, because Sealaska and other Native corporations who have engaged in timber harvests over the years in the Tongass have had to deal with those accusations. When we began harvests some 25 and more

years ago now, there were no meaningful standards either for the Forest Service or for ourselves for the kind of timber harvests that would be required into the longer term future. That is, forest management practices that were more nuanced than that necessary for large-scale harvest of pulpwood, for example, which was the reality at the time with the two long-term contracts.

It was Sealaska as much as any other institution or person who advanced the idea of developing forest harvest practice standards that the legislature of Alaska could adopt, which would help guide our harvest practices. Sealaska has, at least for the past 20 years and very significantly in the past 15 years, engaged in very considerable silvaculture on those lands that we've harvested, not just in thinning and pruning and other kinds of practices, but even in planting new trees in order to expedite and to ensure growth on steep slopes or steeper slopes than would otherwise allow for reasonable growth in our areas.

Sealaska has spent literally millions on silvaculture, has contracts with leading forestry experts at universities, for example Oregon State, which has one of the best forestry programs in the country. The board and management are absolutely committed to the idea and practice it on the ground of being very, very responsible stewards.

Senator MURKOWSKI. I appreciate the comments from both of you. I will conclude by asking either of you if there's anything that you would like to add that I haven't addressed, or if you feel there needs to be a rebuttal, Mr. Claus. I haven't peppered you with as many questions, but I will give both of you an opportunity to provide some final comments if you would like. Mr. Claus?

Mr. CLAUS. Thank you. The concerns that I hear from the people who are living on Prince of Wales Island is primarily about past practice and what they see out their front windows, what they see when they go boating, what they see when they drive the roads is shocking and disturbing to people.

I can take Mr. Mallott at his word. I can take the Sealaska Corporation at their policy today that they intend to do better in the future with these lands that would be transferred. But that's not in this legislation. They can change that. They could have another board meeting in another 5 years and change that again.

If there were a way to make this part of the legislation, then maybe we should be discussing how that goes on. Right now we have their assertion, which I believe that they will follow through on, and I certainly appreciate that their practices will change. But the concerns in the community is about what they see every day, about how Sealaska operates. These are ongoing timber operations. They're not necessarily all historical.

Senator MURKOWSKI.

The CHAIRMAN. Are you suggesting, Mr. Claus, that Sealaska has been engaging in any violations of either Federal or State laws or regulations?

Mr. CLAUS. No, Ma'am.

Senator MURKOWSKI. Mr. Mallott, did you care to follow up?

Mr. MALLOTT. Yes. I think it's important to note that, particularly on Prince of Wales Island, which is really the significant portion of the Tongass Forest that we are speaking of, that much of

Sealaska's harvest areas are not visible from most view planes; that those harvests near communities are either United States Forest Service or some other entity.

That's not to say that Sealaska did not engage in clearcutting. In order to be profitable and to really in many instances practice the best silvaculture in the Tongass National Forest, clearcutting has been an important methodology. But at the levels and on old growth that have been the practice in the past, we fully agree that we are moving away from that paradigm. That is one of the principal reasons for this legislation.

I would just like to say, Senator Murkowski, that we very much appreciate your leadership and your interest in this legislation.

Finally, I was handed to me this afternoon a number of additional letters and documents* in support of this legislation. I'd like to be able to submit them for the record also.

Senator MURKOWSKI. We will include them as part of the record.

I thank both of you. I wish that the chairman and the ranking member of this subcommittee had been able to hear your testimony and the responses to the questions. I think it was extremely helpful in just laying out why we are here. I think it was very helpful in hearing the comments that there is a genuine effort on the parts of all the stakeholders that in fact we finally, after close to 4 decades, resolve this issue of land conveyance for the Sealaska shareholders.

So I will be working with Senator Wyden, Senator Barrasso, and Senator Bingaman to ensure that we are able to reach a resolution. I would encourage those of you with Sealaska, I know that there's been a great deal of reach-out and I appreciate that. When we first had discussions about this, we said you're going to have to do a lot more communication in the smaller communities. It's important that we continue with a high level of dialog even as we move through this process.

But I thank you for taking the time to travel long distances to be here, all of you, because I noted there are those behind you that are not local residents as well, and I appreciate your input, and we will be working with you.

With that, we stand adjourned.

[Whereupon, at 5:06 p.m., the hearing was adjourned.]

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*Additional letters and documents can be found in Appendix II.

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF BYRON MALLOTT TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Does Sealaska have a duty as a corporation to generate a profit from the lands it would receive under ANCSA or this bill? Please explain.

Answer. Sealaska Corporation was created as authorized by Congress under ANCSA, and ANCSA's Declaration of Policy at Section 2(b) of the Act stated that "the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives . . . ". Further, in Section 7(d) of ANCSA, Congress declared that incorporators for each of the specified geographic regions, "shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act." This language and the corporate structure specified in ANCSA have been interpreted to require economic development and initiative for the purposes of earning a profit for the benefit of the Native shareholders and the regions in which they live.

Sealaska is organized under the laws of the State of Alaska as a for-profit corporation and does, in fact, pursue opportunities to develop natural resources on many of the lands it owns. The development of natural resources was contemplated in ANCSA, as evidenced by Section 7(i) of ANCSA (requiring the sharing of revenues from natural resource development). Moreover, one of the areas in which the Joint Federal-State Land Use Planning Commission for Alaska, as established in Section 17 of ANCSA, was directed to make recommendations was in the area of "economic growth and development" to ensure compatibility with other land management interests. See Section 17(a)(7) of ANCSA.

Sealaska profits are distributed to tribal member shareholders and many shareholders also benefit from Sealaska's economic development activities through jobs, subcontracting opportunities and scholarships. Sealaska, and many other regional corporations, have also moved beyond the congressional mandate by establishing a non-profit arm to pursue social and cultural missions. The Sealaska Heritage Institute is funded from the profitable activities of Sealaska Corporation, and its mission is to save and revive our Native languages, arts, and to further educational initiatives. Sealaska supports the Native community in many ways, providing scholarships to our Native youth and delivering firewood to our elders. While we are a for-profit entity, as Congress mandated, to simply characterize Sealaska, or any other Alaska Native Corporation, as just another for-profit corporation, as some have, constitutes a near dismissal of one of the support systems created by Congress for Alaska's Native community.

Some of the lands received by Sealaska under S. 881 would be developed for their timber potential. The timber would be sold in U.S. and international markets, creating profits that would ultimately benefit our Native community, and through the provisions of 7(i) and 7(j) of ANCSA, 100,000 Alaska Natives throughout our state. Many from our communities consider this legislation to be the most important and immediate "economic stimulus package" that Congress can implement for Southeast Alaska. Sealaska and its subsidiaries and affiliates expended over $45 million in 2008 in Southeast Alaska. Revenues from timber harvest are reinvested in our forests through our silviculture program so area forests will be sustainable for not only timber, but for wildlife, subsistence and other non-timber forest dependant resources. Over 350 businesses and organizations in 16 Southeast communities benefited from spending resulting from Sealaska activities. We provided over 363 full

and part-time jobs with a payroll of over $15 million. Including direct and indirect employment and payroll, Sealaska created 490 jobs and $21 million in payroll.

We are proud of our collaborative efforts to build and support sustainable and viable communities and cultures in our region. We face continuing economic challenges with commercial electricity rates reaching $0.61/kwh and heating fuel costs sometimes ranging above $6.00 per gallon. To help offset these extraordinary costs, we work with our logging contractors and seven of our local communities to operate a community firewood program for the benefit of all community members, and special efforts are made to deliver split wood for the needy. We are also the primary contributor of cedar logs for the carving of totems and are now working with the communities to provide cedar carving planks to schools and tribal organizations. We are collaborating with our village corporations and villages to develop hydroelectric projects.

Question 2. Section 22(f) of ANCSA authorizes the Secretary [of the Interior] and the Secretary of Agriculture to enter into exchanges with the Alaska Native Corporations "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Has Sealaska considered finalizing its selections and then using this exchange [authority] under ANCSA to address some of the concerns raised in your testimony?

Answer. The committee references 22(f) of ANCSA; however, there are two provisions authorizing land exchanges—section 22(f) of ANCSA and section 1302(h) of ANILCA. Both have nearly identical language and allow for exchange of Native lands, interests therein or Native selection rights. An abbreviated description of the language follows:

> The Secretary, the Secretary of Defense, the Secretary of Agriculture, and the State of Alaska are authorized to exchange lands or interests therein, including Native selection rights . . . for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged: Provided, that when the parties agree to an exchange and the appropriate Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

The Southeast Alaska Native Land Entitlement Finalization Act, S. 881, does not propose a land exchange. The legislation proposes only to designate an alternative pool of land from which Sealaska would select its remaining entitlement under ANCSA. The Sealaska bill conforms to the directive of ANCSA to provide an equitable entitlement to Alaska Native people. For the reasons set forth below, a fair, equitable and timely solution is not likely to be reached by forcing Sealaska to complete its ANCSA selections inside the existing withdrawals and then engage in an administrative exchange.

In fact, for many years Sealaska did pursue options to complete an administrative exchange of lands that the Native Corporation had already received pursuant to ANCSA, including lands deemed by many to have significant national interest values, and concluded that a fair and adequate exchange of current land holdings could not be achieved. Sealaska does not wish to take title, under the current provisions of ANCSA, to additional ANCSA lands that have significant public interest and environmental value on the chance that it might complete a fair and equitable solution through the administrative process.

Moreover, even when Sealaska pursued an administrative land exchange with the Forest Service, Sealaska still expected that any exchange would necessitate the concurrence of the Congress, both to ensure continuing congressional oversight over the implementation of ANCSA and to avoid litigation that has historically frustrated administrative exchange efforts.

Our efforts to implement an administrative exchange (with expectation of ultimately pursuing congressional ratification) began in 1998. For various reasons, Sealaska's efforts to pursue an administrative land exchange failed, largely for the following reasons:

> 1) Differences in the national policy priorities among federal agencies and between national, regional and local level offices;
>
> 2) Differences in policy objectives between Sealaska and the Forest Services—for example, Sealaska hoped to exchange municipal watersheds back to the Forest Service to be protected. Under the Federal Land Management and Policy Act of 1976, the Forest Service is charged with ensuring the provision of water from national forests to meet municipal water needs. Under the Tongass Land Management Plan (TLMP), however, the Forest Service included a provision es-

tablishing that exchanges to acquire municipal watersheds are inconsistent with the TLMP;

3) The continuous revolving door of Forest supervisors and staff who made supportive statements about reaching a fair and equitable settlement through a proposed land exchange, but were unable to pursue resolution during their time at the agency;

4) Concerns about the litigation related to land exchanges, including a lawsuit against a forest supervisor (in the southwest) for an administrative land exchange;

5) The USDA prerequisite that any exchange must follow the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) procedures for appraisal of withdrawn and selected lands. The Yellow Book process is so difficult that, to our knowledge, no exchanges of the order of magnitude of what we are trying to accomplish has occurred under the Yellow Book rules; and

6) Many of the lands that Sealaska currently owns (or could own), and has expressed a willingness to exchange, have exceptional "public interest values"—such as fishery and spawning habitat, municipal watersheds, and old growth roadless areas—but these values are not considered under the existing land exchange appraisal process.

The administrative process for completing exchanges for even smaller land exchanges can require several years and formidable transactional costs. For land adjustments of the scale needed to properly fulfill Sealaska's ANCSA entitlement, the time and costs required are prohibitive.

Nearly all sizable land exchanges that have been successfully completed between federal agencies and Alaska Native Corporations have been completed through the legislative process. There is nothing unique or precedent-setting about adjustments of provisions regarding Sealaska's land entitlement to fulfill ANCSA purposes. There have been at least 25 ANCSA land adjustments for several Native corporations, all of which were completed through the legislative, not administrative, process, including:

- Klukwan Village Corporation, Pub. L. 94-456, 90 Stat. 1934 (1976).
- Cook Inlet Region, Inc., Pub. L. 95-178, 91 Stat. 1369 (1977).
- Shee Atika, Inc., Goldbelt, Inc. and Kootznoowoo, Inc. (Admiralty Island), among several other Corporations, Pub. L. 96-487, 94 Stat. 2409 (1980).
- Haida Village Corporation, Pub. L. 99-669 (1986), as amended by Pub. L. 101-626 (1990) and Pub. L. 102-415 (1992).
- Sealaska Split Estate Exchange, Pub. L. 102-415 (1992).
- Kake Tribal Corporation, Pub. L. 106-283.

A legislative solution will save millions of dollars that would be expended in an attempt to complete the proposed adjustments administratively. The Forest Service administrative land exchange process incorporates approximately 70 steps, including a feasibility analysis; a NEPA process; land appraisals according to Yellow Book standards; and many other cumbersome procedures. The appraisal process required for an administrative land exchange is particularly cost-prohibitive and unreliable for Southeast Alaska lands:

- Alaska land sales available for use in comparative sales are restricted to size and quality.
- Market data is limited or non-existent
- There are a limited number of sales in Alaska
- Supply limitation of available land in market place prohibits evaluation of demand.
- Cost of timber and mineral appraisals for large tracts is prohibitive and time sensitive.

Just the feasibility report, required to initiate the administrative exchange process, includes the following elements:

1. Discussion of the exchange proposal
2. Forest Plan Compliance Review/Public Benefits Summary
3. Title Evidence
4. Boundary Management Review
5. Federal Land Status Report
6. Water Rights Analysis
7. Valuation Discussion
8. Identification of Issues and Public Support

The administrative exchange process is sufficiently cumbersome and—as a practical matter—dysfunctional that we are not aware of more than a few large land exchanges being completed in the western U.S. in recent years without legislation to ratify or implement them. Those exchanges that have been legislated have received ample, adequate review and stakeholder participation through the legislative process to be successful. Such exchanges are implemented without the impracticable delays and costs associated with the administrative process and any subsequent administrative appeals and litigation that are often generated by small groups of activists even for smaller exchanges, despite majority consensus that the exchange is in the public interest. The agencies are not adequately staffed to properly process exchanges in a timely and adequate manner, in Alaska or elsewhere.

Thirty years ago Congress stated that,

> . . . It is imperative that the Natives receive their land as quickly as possible. Time is of the essence. Preparation of an environmental impact statement under the NEPA is unnecessary and not warranted where implementation of the ANCSA of this Title is involved.

S. Rep. No. 96-413, 96th Cong., 1st Sess. (November 14, 1979) at 292. Despite this command, the administrative regulations encumber the administrative land exchange process with a plethora of lengthy, costly NEPA and other bureaucratic requirements that hinder any sizable land exchange effort and result in a prohibitively prolonged and expensive process, with small likelihood for success.

RESPONSES OF BYRON MALLOTT TO QUESTIONS FROM SENATOR BARRASSO

Question 1. There has been some suggestion in the testimony that the selection of additional sacred and cultural and Native Futures sites by Sealaska Corp. could increase the cost of Forest Service land management in the Tongass by fracturing land management patterns. How would Sealaska address this issue to prevent that from happening?

Answer. Your question requires a brief explanation of the dilemma that forced Sealaska to seek this legislation—without legislation, Sealaska would be forced either to select timber lands from within the original ANCSA withdrawal areas, causing significant environmental and community impacts, or, shut down all timber operations and negatively impact rural communities and the economy of Southeast Alaska.

Sealaska has an unfettered right to select its remaining approximately 75,000 acres of ANCSA lands to which it is entitled from within the original ANCSA boxes. It is undisputed that Sealaska Corporation has an unfettered right to select forestland that is virtually all roadless and old growth from within the withdrawal boxes. These selections would have negative impacts on local communities, including their watersheds and recreational and subsistence use areas.

The Sealaska bill proposes an alternative: the legislation would permit Sealaska to select its remaining entitlement lands from outside of the ANCSA withdrawal boxes. The proposed alternative land pool from which Sealaska could select under the proposed legislation does in fact include forestland suitable for timber development. However, the bill commits Sealaska to selecting a great deal of second growth, instead of old growth. In fact, the legislation ultimately would preserve 30,000 acres of roadless old growth timber.

The Sealaska bill would permit Sealaska to select 3,600 acres of land as sacred and cultural sites, and 5,000 acres of land as Native futures sites. Specifically, Sealaska would select 206 sacred sites and more than 40 "Native futures sites". No timber development would be permitted on sacred sites and Native futures sites. Because Sealaska would be permitted to select these sites in lieu of timberlands, the legislation reduces overall timber development by 8,600 acres.

Your question addresses the cost to the Forest Service of the provisions in the Sealaska bill that would permit Sealaska to select sacred and futures sites in lieu of land for timber development. The 5,000 acres designated by the proposed legislation as Native futures sites would be utilized for ecotourism, cultural activities, and renewable energy sites. By selecting these sites, Sealaska bill preserves old growth roadless forestland while helping to strengthen the economies of rural villages (by locating futures sites near rural Native communities). For this reason, Sealaska believes there is a significant public benefit to conveying the Native futures sites to the Alaska Native community, despite the fact that the Forest Service would have to account for the 5,000 acres of Native futures sites its management of the 17 million acre Tongass National Forest.

Sealaska would also receive 206 sites that represent the some of the most important sacred sites recognized by Tlingit, Haida, and Tsimshian people of Southeast

Alaska. It is worth noting here that Congress tasked the regional Alaska Native Corporation in 1971 with identifying, selecting, and preserving sacred and cultural sites under ANCSA; in that sense, Sealaska is fulfilling the mandate of Congress, and ANCSA, in this legislation. However, again, it is true that the Forest Service would need to account for these sites in their management of the Tongass.

Notably, regardless of whether Sealaska selects within the existing ANCSA withdrawal boxes or outside of those boxes, Sealaska will select its remaining entitlement lands from within the Tongass National Forest. In other words, by selecting Native entitlement lands, whether under existing law (ANCSA) or the proposed legislation, Sealaska's land selections will require the Forest Service to adjust the implementation of the land use plan for the Tongass to account for such selections. However, under the proposed legislation, the Alaska Native community will benefit because 206 sacred sites will be returned to the Native community. Under the proposed legislation, the Alaska Native community will benefit because 40+ Native futures sites will be made available to the Alaska Native community for development as ecotourism sites and renewable energy sites, or simply to have the sites (some of which are traditional village areas) under Native ownership. Under the proposed legislation, the Alaska Native community will benefit because Sealaska will select forestland on the road system, lowering timber harvest costs, benefiting Sealaska's Native shareholders and employees, and substantially benefiting the Alaska Native economy. Finally, under the proposed legislation, the public will benefit, because more than 30,000 acres of roadless old growth forestland will be preserved. We are more than happy to provide you with additional maps and background that confirm these conclusions.

We would also note that Sealaska is committed to working with the Forest Service to ensure that management issues or concerns between and among the two entities are limited. Moreover, we are committed to maintaining dialogue or developing agreements to ensure there are few, if any, management conflicts for our respective lands and shared boundaries.

Question 2. Mr. Mallott, if this land bill does not go forward, what will your corporation do to complete the selections are you permitted to make under the Alaska Native Claims Settlement Act? What would be the impact on the region of those actions?

Answer. Sealaska harvests timber on some of the land to which it has received title under ANCSA. However, Sealaska has avoided harvesting tens of thousands of acres of forestland now under Sealaska ownership because those lands have significant public interest values.

Sealaska is now at the end of availability of timber on existing Native lands previously designated by the Corporation as appropriate for timber harvest. If Sealaska is to maintain its timber rotation—that is, if Sealaska is to continue to provide timber jobs in rural Alaska Native communities with unemployment ranging well above 20-30 percent—Sealaska must either: (1) receive those lands designated under the proposed legislation for transfer to Sealaska; (2) select and harvest roadless old growth lands from within the existing ANCSA withdrawal boxes, which would require expensive road building and reduced economic benefit to the Alaska Native and Southeast community, as well as more roads in the forest; (3) shut down all timber operations on Sealaska lands, with grave impacts to the local economy; or (4) harvest environmentally sensitive lands already under Sealaska ownership. The last three alternatives are bad alternatives. However, the economic situation in Southeast Alaska is dire. Sealaska cannot wait for a legislative solution that may come in 2, 5, or 10 years; Sealaska is faced with real world constraints that demand a solution by the end of the 111th Congress. Sealaska seeks a solution through this legislation that will result in social, cultural, economic, and environmental benefits to the Alaska Native community and to the Southeast Alaska region.

We are more than happy to provide additional details regarding the Sealaska legislation that support these conclusions.

RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Section 403 of Public Law 108-452, the Alaska Land Transfer Acceleration Act ("ALTAA"), was required the Alaska Native Corporations to submit priorities for finalizing land conveyances within three and a half years of the date the legislation was enacted. Did Sealaska Corporation submit its priorities for selection as required by that law?

Answer. Yes. On June 10, 2008, Sealaska submitted priorities for approximately 140,000 acres of selections to comply with the deadline to file final land selection priorities under Section 403(a)(2) of ALTAA.

Question 2. Can you please provide the Committee with a map that illustrates the existing ANCSA withdrawal areas in Southeast Alaska, the 170,000 acres within those areas that have been selected by Sealaska for possible conveyance, and any lands that Sealaska has prioritized for conveyance pursuant to section 403 of ALTAA?

Answer. Yes. The map has been sent to the Committee.

Question 3. Can you explain the remaining process for finalizing Sealaska conveyances in accordance with ANCSA and ALTAA? Please specify which party is responsible for each action that remains in that process and whether any actions are dependent on an earlier action in order to proceed.

Answer. To complete the process for finalizing Sealaska conveyances, Sealaska would need to inform the BLM that it would like conveyance to its prioritized Alaska Native Claims Settlement Act (ANCSA) selections currently on file with the BLM. This notification is necessary due to Sealaska's June 10, 2008, letter requesting that conveyance work be held in abeyance pending the outcome of S. 881.

Once Sealaska notifies the BLM that it would like to proceed with the conveyances, the agency would initiate the 90-day public process to identify public easements to be reserved pursuant to Section 17(b) of ANCSA. The BLM would request from the U.S. Forest Service (FS) a list of any third party interests the FS created to ensure that the title BLM prepares would be subject to such interests for the life of the interest.

Once the 90-day public process is completed, the BLM would issue an administrative decision to convey the lands that would contain a 45-day appeal/grace period. The decision would be published in the Federal Register and in the local newspaper nearest the lands for four consecutive weeks.

At the end of the 45-day appeal period, the BLM would then issue a title document in the form of an Interim Conveyance (IC) for the un-surveyed lands in the absence of an appeal. The IC would transfer all of the Federal government's right, title, and interest in the described real property to Sealaska.

To finalize Sealaska's conveyance, the BLM would complete surveys and issue confirmatory patents for the lands previously conveyed by ICs, thus fully transferring Federal lands out of Federal ownership.

Question 4. It is my understanding that Sealaska has chosen not to proceed to finalize its entitlement under ANCSA, resulting in the process being indefinitely postponed. Is that correct? If so, how long has the Sealaska conveyance process been on-hold as a result of Sealaska's choice not to proceed?

Answer. Yes. On June 10, 2008, Sealaska submitted priorities for approximately 140,000 acres of selections to comply with the deadline to file final land selection priorities under Section 403(a)(2) of ALTAA. Sealaska stated in the incoming document filed with the BLM that the corporation was pursuing Federal legislation that would allow it to receive its unfilled 14(h)(8) land entitlement from vacant, unappropriated, out-of-withdrawal Federal lands in Southeast Alaska. The letter further indicated that if the legislation were successful, the prioritized land selection would no longer be necessary. Thus, BLM will not proceed until notified by Sealaska.

Question 5. Approximately how long would it take from the date that BLM received a request from Sealaska to proceed with the conveyance process for the BLM to convey the land under ANCSA to Sealaska for economic use?

Answer. It would take approximately nine months for the BLM to issue a title document in the form of an IC for the un-surveyed lands in the absence of an appeal. This form of title would allow Sealaska to use the land for economic use. This process is described in more detail in the response to question number 3, above.

Question 6. Did Sealaska ever submit an application under section 14(h) of ANCSA (regarding conveyance of existing cemetery sites and historical places) for any of the land identified by S. 881 for conveyance to Sealaska?

Answer. All but five of Sealaska's Sec. 14(h)(1) cemetery/historical sites originally filed under ANCSA have been adjudicated and closed. It is unclear whether any of the five remaining parcels are identified in S. 881.

Question 7. Would any of the sites identified for conveyance to Sealaska pursuant to S. 881 qualify as existing cemetery sites or historical places under section 14(h) of ANCSA?

Answer. To our knowledge, examinations of the sites in S. 881 have not been conducted, so we do not know whether or not they meet the regulatory criteria.

Question 8. ALTAA established a schedule to finalize cemetery and historical site selections, and mandated that any applications for such sites that were submitted after the close of that process were to be invalid and must be rejected. Did Sealaska Corporation submit an application for the historical and cultural sites it is seeking through this bill in accordance with ALTAA?

Answer. No, Sealaska did not file any requests pursuant to Sec. 204 of ALTAA. Sealaska filed selections for cemetery and historical sites before the ANCSA regulatory deadline of December 31, 1976, in 43 CFR 2653.4(b). The ALTAA provided that eligible applications-of-record at the time ALTAA was enacted on December 10, 2004, could be conveyed notwithstanding acreage allocations. The provision also applied to any of the 188 closed applications that were determined to be eligible and reinstated under Secretarial Order (SO) No. 3220. Sealaska applications were not part of the list of 188 in the SO, so the corporation did not need to file an application.

Question 9. How many of the 170,000 acres selected by Sealaska for possible conveyance from within the ANCSA withdrawal areas are under salt water?

Answer. None of the 170,000 acres of land selections is under salt water because Sealaska selected lands, not water. Sealaska's land selections included both upland and coastline areas. However, Sealaska has expressed concern over their selections since all of the land is not prime upland that meets their socio-economic, cultural, sacred, traditional and historical criteria.

Question 10. How many of the acres prioritized by Sealaska pursuant to section 403 of ALTAA are under salt water?

Answer. None.

Question 11. Section 22(f) of ANCSA authorizes the Secretary of the Interior and the Secretary of Agriculture to enter into exchanges with the Alaska Native Corporations "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Has the Department used this authority to exchange land or selection rights with any Native Corporations?

Answer. Yes, the Secretary of the Interior has entered into exchanges and agreements, many of which had enabling legislation and parties in support of them.

Question 12. Would an exchange pursuant to section 22(f) resolve any of the precedential concerns raised by the Department?

Answer. Yes, but only if a mutual agreeable exchange could be reached. We defer to the Department of Agriculture Forest Service on matters related to FS lands.

RESPONSES OF MARCILYNN A. BURKE TO QUESTIONS FROM SENATOR MURKOWSKI

ON S. 881

Question 1. Could you explain your testimony that allowing Sealaska Corporation to accept National Historic Preservation Act funding would have "wider" implications. Since Native corporations already are treated as tribes for program funding purposes under the definitions in Section 4 of the Indian Self Determination and Education Assistance Act, can you be specific as to BLM's concerns over the act?

Answer. Section 5(e)(2) of S. 881 would confer status to Alaska Native Corporations under the National Historic Preservation Act that Native Alaskan tribes would not have. The Department has concerns about the inequity that would create.

Question 2. You speak in your testimony to the "undesirable precedent" of allowing Sealaska to substitute new lands for past selections. But Sealaska's areas for selection were unique in Alaska in 1971 because so much of the land was tied up by long-term timber sale contract areas. Could you explain what other Native corporation has equal selection problems, except perhaps Cook Inlet that has already remedied its selection issues?

Answer. The BLM is not aware of equal selection problems for other Native corporations wherein there is sufficient acreage that was prioritized by the ALTAA deadline, but a corporation now asserts the available land is not suitable to meet its entitlement. In addition, every Native corporation, with the exception of the two inland Native corporations, Doyon Ltd. and Ahtna, Inc., have significant amounts of water within many of their withdrawal areas. All Native corporations have lands within their withdrawal areas that have limited economic development potential.

S. 940

Question 1. What is the total value of land and shared receipts that have been given to Nevada or other political divisions of that state by the BLM over the last decade?

Answer. The BLM has conveyed approximately 53,271 acres over the last decade to the State of Nevada or its political divisions. The table below shows these conveyances in four categories, and the approximate acres and revenue received for each category of conveyance.

Conveyance Category	Approximate Acres	Approximate Revenue Received
1) Administrative conveyances at Fair Market Value (FMV)	604 acres	$3,558,500
2) Lands conveyed under Recreation & Public Purposes Act	5,517 acres	$22,125
3) Legislative conveyances at FMV	13,980 acres	$44,849,700
4) Legislative conveyances at no cost, or at less than FMV	33,173 acres	$475,000
Total	53,271 acres	$48,905,325

The BLM did not conduct appraisals and has not estimated the value of the lands conveyed at no cost or at less than fair market value (FMV), in accordance with legislation (conveyance type (4) in the table above). These conveyances occurred over a ten-year period during which real estate values fluctuated widely, and the FMV at the time of conveyance would be difficult to reconstruct. The value of $475,000, shown in the right-hand column, reflects the approximate revenue received for the legislated conveyances that were directed to occur at less than FMV.

The following are the shared receipts under the Southern Nevada Public Land Management Act from enactment (October, 1998) though October, 2009

State of Nevada (for Education)	$151,755,825.45
Southern Nevada Water Authority	$287,635,953.50
Clark County Department of Aviation	$ 9,225,695.45
TOTAL	$448,617,475.50

Question 2. What is the estimated value of the lands to be conveyed by S. 940 if it were to be signed into law?

Answer. The BLM has not conducted appraisals of the lands that would be conveyed under S. 940. The following estimates are based on a cursory review of current comparable land values in these general areas.

- The present estimated value of the proposed transfer of approximately 40 acres for the College of Southern Nevada is $4 million ($100,000 per acre).
- he present estimated value of the proposed transfer of approximately 2,085 acres for the University of Nevada, Las Vegas is $166.8 million ($80,000 per acre).
- The present estimated value of the proposed transfer of approximately 256 acres for Great Basin College is unknown due to the lack of readily-available comparables.

Question 3. If the Committee amended the bill to: 1) remove the ability of the colleges to put commercial and private buildings on the land; 2) cherry-stemmed the carpenters canyon road out of the conveyance; and 3) removed the area around the BLM fire station and helipad, would that make this bill acceptable to the BLM?

Answer. In general, there are several options for addressing the BLM's concerns with S. 940, and we would like to work with the sponsor to identify the best solutions. In accordance with our testimony, an amended bill should consider the following:

1) Because S. 940 would convey public lands at no cost, the BLM testified that S. 940 should be amended to ensure the land uses allowed under the bill are consistent with the uses allowed under the Recreation and Public Purposes Act (R&PP). The BLM's regulations, found at 43 CFR 2740, define the uses that may occur on lands conveyed or leased under the R&PP. The regulations state that "use of lands or facilities for habitation, cultivation, trade, or manufacturing is permissible only when necessary for and integral to, i.e., an essential

part of, the public purpose." The BLM recommends that Sections 4 (c)(1) and 4 (d)(1) of the bill be amended to be consistent with these regulations and the R&PP. Please see the response to Question 5, below, for suggested legislative language.

2) Carpenter Canyon Road provides important public access to FS and BLM-managed lands. Several options exist for maintaining public access on Carpenter Canyon Road. These options include removing the road from the conveyance or rerouting the road as part of a development plan for the parcel. The BLM would like to work with the sponsor to determine the best option for retaining public access on Carpenter Canyon Road.

3) Federal safety regulations require a minimum of 500 feet on all sides of the BLM Helipad to remain clear of any obstacles over six feet high. This safety requirement could be met through careful site planning and development on the conveyed parcel, or by removing this area from the proposed conveyance.

Question 4. How many acres should be removed from the 256 acre Great Basin College to provide an adequate safety-zone buffer at the BLM helipad located within the lands S. 940 would convey?

Answer. Removing 20 acres immediately adjacent to the Helipad would provide a needed 500-foot safety buffer.

Question 5. Finally please provide maps and any "minor boundary changes" or language modifications you desire to be made to boundaries to the Committee within two weeks.

Answer. The BLM has not identified any boundary changes for the parcels that would be conveyed under S. 940.

While BLM notes the conveyance occurs under its administrative process, the Committee could consider amending Sections 4 (c)(1) and 4 (d)(1) of the bill as follows to ensure consistency with the R&PP Act and BLM's regulations.

SEC. 4

(c) USE OF CONVEYED LAND.—

(1) IN GENERAL.—The land conveyed under subsection (a) shall be used for educational or other public purpose consistent with the uses allowed under the Act of June 14, 1926 (commonly known as the "Recreation and Public Purposes Act") (43 U.S.C. 869 et seq.), and the regulations found at 43 CFR 2740.

(d) REVERSION.—

(1) IN GENERAL.—If the land conveyed under subsection (a) ceases to be used for the public purpose for which the land was conveyed, the land shall, at the discretion of the Secretary, revert to the United States.

S. 1272

Question 1a. Given that the majority of the BLM lands within this proposed legislation are within the Oregon & California Grant Lands and that law requires the BLM to share 50% of the receipts from management with the O&C counties; Despite the current district land management plan that puts this area off limits to timber management, what is the current inventory of timber volume and its current value estimated to be?

Answer. The current standing inventory of timber volume within the 6,104 acres proposed for wilderness designation on BLM-administered lands is estimated to be approximately 340 million board feet. None of these areas has been included within planned timber sales of the next 4-5 years, so determining the current value of the timber that could be harvested sustainably from these stands would require the evaluation of various factors, including logging costs and fluctuating market conditions that are not present at this time.

Question 1b. Does the BLM remain committed to share 50% of any receipts it receives from wilderness related activities from this land with the county if this legislation is signed into law?

Answer. At present, no leases exist in this area that would generate fee receipts after designation. Overall, the potential for Federal fee revenue generation within the area proposed for wilderness is very limited.

Question 1c. In your testimony you mentioned that 752 acres of the S. 1272 proposal are outside the wilderness on adjacent BLM lands. How are those acres managed at this time? Are they designated for timber harvesting and if so, what is the average annual volume that could be removed and what is its estimated value?

Answer. The 752 acres that are outside of the proposed wilderness boundary, but within the corridor of the proposed Wasson Creek Wild and Scenic River, are managed under the Northwest Forest Plan as Late Successional Reserves and are des-

ignated as critical habitat for the threatened and endangered northern spotted owl and marbled murrelet. Under such designations, the area is managed for conservation values rather than commercial timber production. Total standing volume within these 752 acres is estimated at approximately 28 million board feet.

Question 2. Finally please provide maps and any "minor boundary changes" or language modifications you desire to be made to boundaries to the Committee within two weeks.

Answer. The BLM provided a map to Committee staff with the BLM's minor boundary modification recommendations. The BLM has no language modification recommendations.

S. 1689

Question 1. Will you assure us that any existing utility corridors will be available for future utility lines in the NCA's and Wilderness Areas included in this bill in such a manner that the process will be no more difficult than existed prior to the designation of the NCA?

Answer. There are no utility corridors within the wilderness areas proposed for designation under the bill, and no utility corridors within the Desert Peaks NCA. There are several existing utility corridors within the proposed Organ Mountains NCA, and under section 4(c)(2)(D) of S. 1689 the right-of-ways within these corridors may be renewed, upgraded, and widened. While there may be increased public scrutiny of processing right-of-ways within existing utility corridors within an NCA, the BLM would process any applications for utility corridors in the same manner as would occur if the area were not a NCA. This process would include NEPA analysis exploring alternatives for other locations, and identifying the impact to other resources.

Question 2. Will you assure us that any existing water developments and pipelines will be available for future water developments and pipelines in the NCAs and Wilderness Areas included in this bill in such a manner that the process will be no more difficult than existed prior to the designation of the NCA?

Answer. Under S. 1689, grazing would continue within the two NCAs and newly designated wilderness. Within the NCA, grazing and grazing developments, including water developments and pipelines, would be administered in the same manner as non-designated BLM lands consistent with the purposes of the NCA. Within the wilderness areas, grazing would be administered under Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101-405). The maintenance of facilities existing prior to designation as wilderness (including water developments and pipelines) is allowed. The construction of new water developments and pipelines may be authorized for the primary purpose of wilderness resource enhancement or protection. Such a determination would be made through the NEPA process.

Question 3. Will you assure us that any existing road and transportation corridors will be available for future road and transportation corridors in the NCAs and Wilderness Areas included in this bill in such a manner that the process will be no more difficult than existed prior to the designation of the NCA?

Answer. Any valid existing rights would continue after designation. No new roads are permissible within wilderness areas. The BLM will approve the use of routes to access inholdings within wilderness where they existed at the time of designation, and by the means that were used by the inholder at the time of designation. The routes may not be improved to a condition more highly developed than existed at the time of designation. Within the NCAs, the bill directs the BLM to designate roads for motorized vehicle use which have been determined necessary as part of a management plan. Under the provisions of section 4(c)(2)(B)(ii) of S. 1689, new roads may be established in the NCAs only for public safety or natural resource protection.

Question 4. Will you assure us that any existing communications corridors will be available for future communications corridors in the NCAs included in this bill in such a manner that the process will be no more difficult than existed prior to the designation of the NCA?

Answer. Right-of-ways for communication sites may be renewed in both NCAs, and upgraded or widened in the Organ Mountains NCA under the provisions of the bill, as noted in the answer to question #1. While there may be increased public scrutiny of any new communication site proposals within an NCA, the BLM would process any applications for communications sites in the same manner as would occur if the area were not a NCA. This process would include NEPA analysis exploring alternatives for other locations, and identifying the impact to other resources. There is one existing communication site within the Desert Peaks NCA, and one ex-

isting communication site on the north end of the proposed Organ Mountains NCA. These sites represent valid existing rights.

Question 5. In April of this year, I requested information from the Secretary on all wilderness, Wild & Scenic Rivers and other land set-asides like National Conservation Areas that display both mineral and energy resources. Jerry Schickedanz's testimony displays information similar to what we expect in the maps we requested for the Desert Peaks and Organ Mountains wilderness proposals.

Would you provide the Committee maps for the NCA's proposed in S. 1689 that show all existing roads, water developments, utility corridors, and stock developments?

Answer. The BLM provided these maps to the Committee on November 13, 2009.

Question 6. Many of the areas slated for protected status in this bill are roaded and have a history of wildland fires, particularly much of the Organ Mountain proposals.

a. Please describe the fires that have occurred within any of the areas proposed for Wilderness or NCA status in this bill that occurred in the last decade.

Answer. Over the last decade, there have been several small fires within the Organ Mountains. In 2008 there was a 2,800-acre fire, known as the "Dripping Springs Fire" within the Organ Mountains that was caused by human activity.

b. Please also describe the cost of fighting each of those fires and estimate what they would have cost to fight given what is normally allowed to be used in fire suppression in a Wilderness Area or an NCA.

Answer. Firefighting costs for the "Dripping Springs Fire" were approximately $700,000. Our best estimate is that there would have been no cost differential under S. 1689.

Question 7. Finally please provide maps and any "minor boundary changes" or language modifications you desire to be made to boundaries to the Committee within two weeks.

Answer. As noted in our testimony, the BLM would like to continue its successful restoration efforts in the areas identified for designation. The following language would provide additional clarity: "Consistent with the Bureau of Land Management's wilderness policy, habitat manipulation by chemical or mechanical means may be approved on a project-by-project basis where necessary to correct unnatural conditions resulting from human influence, where such manipulation would enhance the wilderness resource and where natural processes have been unsuccessful."

The BLM is not recommending any additional boundary modifications.

SOUTHEAST ALASKA CONSERVATION COUNCIL,
Juneau, AK, March 4, 2010.

Hon. JOHN BARRASSO,
U.S. Senate, Washington, DC.

Re: Questions for Bob Claus, Southeast Alaska Conservation Council

DEAR SENATOR BARRASSO: On February 25, 2010, staff for the U.S. Senate Energy and Natural Resource Committee forwarded to us your question below and requested our response so that both could be added to the hearing record for the Public Lands and Forests Subcommittee hearing on October 8, 2009. That hearing related to S.881, The Southeast Alaska Native Land Entitlement Finalization Act. Your question reads:

> Mr. Claus, The Tongass used to produce about 450 million board feet of timber a year, but last year produced less than 30 million board feet from federal lands. Is SEACC's concerns with this Sealaska conveyance bill that it will lead to larger total timber harvests in the forest, or is the concern solely that the areas proposed for harvest—the same areas proposed by the Forest Service's most recent land management plan for harvest—are in some way objectionable from an environmental standpoint?

We appreciate the opportunity to respond to this important question and clarify SEACC's concerns regarding S.881. We request that this response and the accompanying report be included in official Subcommittee hearing record for S.881.

Senator, there is no simple "either-or" answer to your question. Our concerns are much broader than whether S.881 will increase total logging levels on the forest. These concerns center on the ecological, economic and social impacts from conveying these particular public lands from the Tongass to Sealaska Corporation. First, management of the subject lands is complicated by the legacy of unsustainable, industrial-scale logging on Prince of Wales Island on both federal and private lands. Second, far weaker management standards apply to logging development on private

lands in Alaska than those adopted for the Tongass National Forest. Finally, removing lands designated for logging on the Tongass from the timber base, increases resource extraction pressures on other public lands because local manufacturers will lose access to any of the timber logged by Sealaska, all of which is exported in the round.

THE LEGACY OF TIMBER-FIRST MANAGEMENT ON THE TONGASS

Industrial-scale logging on the Tongass National Forest began in the 1950's when the Forest Service signed 50-year contracts with the Ketchikan Pulp Company (KPC) and the foreign-owned Alaska Pulp Corporation (APC). The contract gave the corporations public timber in exchange for building and operating pulp mills in Ketchikan and Sitka. These two 50-year contracts-the only ones of their kind in the National Forest System-meant that clearcut logging and road building took priority over all other uses and resources of the forest. Although only a small fraction of the all the forested lands in Southeast Alaska have been cut, intensive logging has systematically targeted the biggest and best trees, and the most productive forest lands, the biological heart of America's temperate rainforest.[1]

The 450 million board feet (MMBF) your question references is from an era long gone, when the Tongass was dominated by the two exclusive, 50-year pulp contracts. In the 1980 Alaska National Interest Lands Conservation Act, Pub. L. 96-487, §705a, 94 Stat. 2371, 2420 (ANILCA), Congress accepted the premise of the Forest Service's 1979 Tongass Land Management Plan that the commercial forest land made available under that forest plan would support a timber supply of 450 MMBF annually. When the Forest Service's timber supply assumptions proved unsustainable, Congress amended ANILCA in the 1990 Tongass Timber Reform Act, PL 101-626, to enhance the balanced use of all renewable Tongass forest resources.

After decades of logging on the Tongass National Forest, and the loss of a substantial amount of its most intact, contiguous big-tree forest, maintaining the ecological integrity of the Tongass requires a far different management approach, a lighter touch, if you will, on the all pieces remaining. Unfortunately, the most recent Tongass Land Management Plan (2008) missed a key opportunity to tackle the timber development legacy on the Tongass. Instead of addressing the challenging economic transition facing local Southeast Alaska communities in the 21st century, the 2008 Tongass Forest Plan continues to rely on an archaic 20th century management model.

Since 1952, approximately 455,000 acres of productive old-growth forest has been cut on the Tongass National Forest.[2] Together, the Alaska Native corporations, including Sealaska, the regional corporation, and 10 village and 2 urban corporations, own and manage nearly 580,000 acres of land within the boundaries of the Tongass National Forest under the Alaska Native Claims Settlement Act. About 301,000 acres of these lands have been clearcut.[3] Nearly 40 percent of all the cut-over lands in Southeast Alaska are on Prince of Wales Island; the same island where Sealaska's has chosen a selection pool of about 95,000 acres from which it hopes to select its remaining timber development lands from.[4]

In our view, the majority of the national forest lands that Sealaska wishes conveyed to it are more important to local communities for the fish, wildlife, and outdoor recreation values they support than for timber values, particularly those lands close to the communities of Hydaburg, Port Protection, Point Baker and Edna Bay. The best way to support these uses over the long term is to manage these lands primarily for conservation, restoration, and stewardship purposes.

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[1] See, Albert 2010, infra note 5 at p.6 (Figure). A slightly enlarged version of this same figure was attached as Exhibit 3 to the Statement of Bob Claus, SEACC Community Organizer on S. 881 (Oct. 8, 2009). Traditionally, the Forest Service uses volume per acre or volume strata to evaluate timber volume for forest planning purposes. The "forest dentisty" approach considers the volume of trees available per square mile. Since logging was the primary justification for nearly all road construction on the Tongass over the last 60 years, a comparison of timber density to road miles provides a useful index for timber quality independent of the tree size.

[2] USDA Forest Service, Alaska Region, Tongass Land and Resource Management Plan Final Environmental Impact Statement, Plan Amendment at p. 3–138 (2008) (hereinafter "2008 Tongass Forest Plan Amendment").

[3] Id. at 3–150.

[4] See Sealaska Corporation's website (http://www.sealaska.com/page/maps___and___materials.html): "On the map, the yellow areas represent 327,000 acres from which Sealaska must currently select its remaining 85,000 acre entitlement. Haa Aani proposes that Sealaska instead withdraw from the green areas on the map--95,000 total acres from which Sealaska will select 77,000." Sealaska has already selected about 171,000 of the 327,000 acres it proposed to relinquish. See 2008 Tongass Forest Plan Amendment, supra note 2, at p. 3–301.

Another way of looking at S.881 is to compare the ecological values associated with the "economic development" lands Sealaska seeks and the lands previously selected by Sealaska within the withdrawal areas set aside by Congress in the 1971 Alaska Native Claims Settlement Act that it proposes to relinquish if this bill is enacted into law. A recent report prepared by The Nature Conservancy helps provide an ecological basis for this comparison.[5] As the report's summary notes:

> This comparison illustrated exceptionally high ecological value within Economic Development lands for large-tree old growth forests, karst forests and deer habitat in comparison with Tongass-wide averages. In the context of current forest condition on Prince of Wales Island, these lands provide significant value for the long-term maintenance of biological diversity in the southern Tongass. In contrast, lands currently withdrawn for selection under ANCSA were comparable with average values throughout the Tongass National Forest (NF).

Sealaska has identified a selection pool of about 95,000 acres that the corporation hopes to select its remaining entitlement from.[6] Nearly half of these acres, however, are located within watersheds that rank in the top 25 percent of ecological values in all Southeast Alaska and within the top 10 percent of forested lands on the Tongass.[7] The report identifies these highest ranked watersheds as including McKenzie Inlet, Calder Bay, Trout Creek, Red Lake, Nutkwa Inlet, Port Protection, Kassa Inlet, Mt. Francis, Mabel Creek and Flicker Creek.

Once conveyed to Sealaska Corporation, these lands will no longer be subject to balanced multiple use management. In the past Southeast Alaska Native corporations have chosen rapid, large-scale clearcut logging and the export of all, or nearly all, of the timber from their commercial forest lands over other options.

The impact from this change in ownership will be felt most dramatically by the people who use these public lands day after day to supply their families with food, make a living, and enjoy a way of life no longer possible anywhere else in America. Lands in this selection pool that should not be conveyed to Sealaska include those parcels on North Prince of Wales, Kosciusko Island, and south of Hydaburg. There are other lands in the pool identified by Sealaska that can provide Sealaska with what they need but also cause the least amount of damage to the lands important to local communities on Prince of Wales for their high value fish, wildlife, and outdoor recreation values. SEACC remains committed to finding a solution that works for Sealaska and all the communities on Prince of Wales Island.

Weak Protections for Fish & Wildlife on Private Lands

Logging under the Amended Tongass Forest Plan (2008) is not the same as logging on private lands under the Alaska Forest Resources and Practices Act, AS 41.17.010—.950. Many of the most significant management standards designed to safeguard valuable fish and wildlife habitat, or internationally significant cave and karst lands, are lost once if these lands are conveyed to Sealaska. For example, in order to provide long-term protection for salmon habitat, Congress imposed mandatory 100-foot no-cut buffers on all salmon and resident fish streams. In response to a request from Congress in 1994, scientists from the USFS' Pacific Northwest Research Station led a federal and state scientific assessment of salmon habitat protection measures on the Tongass. The Anadromous Fish Habitat Assessment concluded that even the mandatory minimum buffers imposed in the Tongass Timber Reform Act would not protect salmon and fish habitat over the long term. In response, the Forest Service adopted standards and guidelines that significantly expanded the minimum size of the no-cut stream buffers in the Tongass Forest Plan. In contrast, under state law, only a variable 66-foot buffer is required, AS 41.17.116(a). High winds routinely result in these small buffers blowing down, resulting in the loss of long-term riparian habitat values.

Unlike the requirements under federal law to maintain biological diversity and viable, well-distributed populations of wildlife, the Alaska Forest Resources and Practices Act lacks any requirement that private landowners take into account the impacts to wildlife from logging those lands. Finally, unlike the Federal Cave Re-

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[5] Albert, David M., The Nature Conservancy, Juneau AK, A preliminary comparison of ecological values associated with Economic Development and Native Future sites proposed under the Southeast Alaska Native Land Entitlement Finalization Act (S. 811) and other lands on the Tongass National Forest (March 1, 2010) (Albert 2010). Please include the accompanying report into the official Subcommittee hearing record for S. 881.

[6] See supra note 4.

[7] See Albert 2008, supra note 5 at p.4.

source Protection Act of 1988,[8] no measures exist under state law to ensure the perpetual protection of significant cave and karst systems from the effects of logging. Given Sealaska's past land management track record, these national and international treasures will be irrevocably damaged and what we can learn from them lost.

Thank you for your careful attention to our response and careful review of the accompanying comparison of the ecological values at stake if S.881 becomes law.

Best Regards,

BOB CLAUS,
Community Organizer on Prince of Wales Island.

BUCK LINDEKUGEL,
Grassroots Attorney.

RESPONSES OF JAY JENSEN TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Section 22(f) of ANCSA authorizes the Secretary of Agriculture to enter into exchanges with the Alaska Native Corporations "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Has the Department used this authority to exchange land or selection rights with any Native Corporations?

Answer. The Department of Agriculture can cite two uses of Section 22(f) of ANCSA, along with Section 1302(h) of the Alaska National Interest Lands Conservation Act (ANILCA), as authority to enter into land exchanges with Alaska Native Corporations. The authority has been used with Goldbelt, Inc. and Sealaska Corporation to resolve access and split estate issues utilizing Section 22(f).

Question 2. Could the Secretary use the exchange authority in section 22(f) of ANCSA to convey land to Sealaska that is outside of the ANCSA withdrawal boundaries and, if so, have the federal agencies discussed this option with Sealaska?

Answer. Section 22(f) of ANCSA provides, in part, that the Secretary of Agriculture is authorized to exchange lands or interests therein, including Native selection rights, with Village and Regional Corporations for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes. Section 22(f) (43 U.S.C. § 1621) could therefore be utilized as authority to exchange land interests with Sealaska that are outside of Sealaska's ANCSA withdrawal boundaries for the purposes stated in the statute.

The Forest Service has consideredan exchange of land interests with Sealaska to address, in part, the conveyance of Sealaska's final entitlement. In August 2002, Sealaska submitted a land exchange proposal to the Forest Service. Sealaska identified a pool of approximately 225,000 acres of federal land to consider as part of an exchange. Sealaska identified approximately 50,000 acres of its selected lands (lands still owned by the United States, but selected by Sealaska under ANCSA) and 48,000 acres of land already conveyed to Sealaska under ANCSA (lands owned by Sealaska). In return for federal lands, Sealaska proposed to: 1) negotiate an agreement regarding its final land entitlement with the Bureau of Land Management; 2) exchange certain conveyed lands and selection rights to the United States; and 3) relinquish its remaining selections within the withdrawal areas.

In April 2003, the Forest Service completed a feasibility analysis regarding the Sealaska proposal. The report found although portions of the proposal were in the public interest, further negotiations would be necessary regarding the specific parcels to be exchanged. Negotiations continued between the Forest Service and Sealaska to address issues, public concerns and modifications identified in the feasibility analysis. Identified in the feasibility analysis were public and community concerns regarding the potential loss of public access, including access for subsistence use; effects on karst and cave resources; the potential reduction in the supply of timber from the forest; loss of old growth reserves and inventoried roadless areas; and the future management of the lands conveyed to Sealaska. The Forest Service and Sealaska negotiated for 14 months over the exchange parcels and the terms of community and public access before negotiations ended in mid-2005.

Question 3. Would an exchange pursuant to section 22(f) resolve any of the precedential concerns raised by the Department?

Answer. S.881 directs the Secretary of the Interior to convey to Sealaska three new categories of lands from the Tongass National Forest: 1) economic development lands, 2) sacred site lands, and 3) Native futures sites. None of these categories of land selections currently appear in ANCSA. Additionally, other Native Corporations

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[8] Pub. L. 100-691, Nov. 18, 1988, 102 Stat. 4546 (16 U.S.C. 4301 et seq.).

are not entitled to make such selections. The Department of Interior is concerned, that if S. 881 is enacted, that it may provide an impetus for other regional corporations to reopen land claims at this final stage in the land transfer program. Section 22(f) could be used as authority for the Department of Agriculture (USDA) to negotiate a land exchange with Sealaska for the purposes stated in the statute. If such a land exchange with the USDA was found feasible and in the public interest, the creation of these new categories of ANCSA selections that others could use as an impetus to change existing selections and entitlements could be avoided. However, discussions with Sealaska regarding its previous land exchange proposal did not result in a successful exchange.

RESPONSES OF JAY JENSEN TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. In your testimony you state that the new selection pool for Sealaska will affect your forest planning process and make it harder for the Forest Service to transition from an old growth to young-growth timber model.

a. Since the Sealaska initial 197,000 acre selection pool was modeled in the recently revised Tongass Land Management Act and since all of the economic development lands are proposed for timber harvest, how will the bill negatively affect TLMP's implementation?

Answer. Under the Tongass Land Management Plan (TLMP), lands identified in the legislation for possible conveyance to Sealaska contribute to the land base and the scientific assumptions on which the TLMP conservation strategy is premised. If the underlying land base changes significantly, then the assumptions, analysis, and strategies included in the plan may no longer be valid. The determinations related to land use designations, adaptive management strategy for timber sales, allowable sale quantity (ASQ), conservation strategy, and standards and guidelines included in the TLMP could all be significantly affected by a conveyance to Sealaska. Even though timber harvest activities on the lands identified as Sealaska's economic development lands were considered in TLMP, the management prescriptions applicable to such activities on private lands are significantly different from TLMP management prescriptions. Consequently, TLMP must account for these differences and consider the cumulative environmental effects from these activities on private lands.

If the underlying land base changes significantly, affecting the assumptions of the land management plan, there would likely be a need to amend the plan accompanied by compliance with the National Environmental Policy Act. Although the proposed legislation states implementation of the bill and the conveyance of lands to Sealaska will not require an amendment or revision of TLMP, this language does not resolve the land management issues that likely will arise regarding TLMP implementation. Regardless of whether an amendment or revision of TLMP is legally required, the significant management assumptions and strategies that form the basis of the current plan would need to be modified if enactment of S.881 occurs, and therefore TLMP could not be implemented as currently intended. If TLMP cannot be implemented as intended, a plan amendment will be needed.

b. Since there are about 277,000 acres of second growth timber in the Tongass greater than 45 years of age and the proposed new Sealaska selection pool contains about 20,000 such acres, how will the bill affect your "young-growth" forestry process?

Answer. Historically, the forest products industry in and around the Tongass was developed and sustained on producing high quality products from old growth timber with the intention of transitioning to young-growth forest products once timber in previously harvested areas was mature, around approximately age 90-100. Recently, there has been interest in the feasibility and financial costs of transitioning the industry to young-growth based production as soon as possible rather than wait for the young-growth to reach maturity. Forest management in young growth to date has consisted of thinning young growth to improve wood quality, growth, stand resilience, and habitat quality. These intermediate treatments represent a significant investment in the forest, as well as providing an opportunity to enter young-growth stands earlier than stands without treatment.

The oldest stands thinned on the Tongass represent the best and earliest opportunity to begin a transition to a young growth industry. The Tongass currently has approximately 135,000 acres of young growth which is greater than 40 years old (Tongass Young Growth Management Strategy, March 2008). There are 51,569 acres young-growth located within Phase 1 of the TLMP Timber Sale Adaptive Management Strategy. In Phase 1, the timber program is restricted to a portion of the suitable land base which excludes moderate and higher value roadless areas.

The proposed Sealaska selection pool targets 44,565 acres of young-growth, with 19,343 acres originating in 1969 or earlier. Of the 19,343 acres, 13,319 lie within

Phase 1 suitable land base. Sealaska's proposed selection of these acres constitutes about 25% of the oldest young-growth within the Phase 1 suitable land base. The proposed selection of these young-growth lands by Sealaska will remove the oldest and most available young-growth acreages within the Tongass. These acres are considered "available" because the 2008 Tongass Land Management Plan only allows commercial harvest to occur in the Phase 1 land base until certain volumes have been harvested for two consecutive years. Because the acres Sealaska has targeted are in Phase 1 and are some of the oldest young growth, they are the same stands the Tongass plans to use to begin the transition and eventual conversion to a young-growth industry. Removing these stands from federal ownership will delay the Tongass' ability to begin this transition.

The investment made by the Tongass in intermediate silvicultural treatments, primarily thinning, has been significant. About 20,721 acres out of the proposed Sealaska selection pool of 44,565 acres of young-growth (approximately 46%) have been thinned at an approximate cost of $500 dollars per acre. Thus, more than $10 million has been invested by the U.S. Government in silvicultural treatments on lands in the proposed Sealaska selection pool.

Additionally, the Forest Service has a long investment in various research projects located within some of the young-growth stands within the proposed Sealaska selection pool. There are approximately eight sites, totaling about 184 acres with established, long term research plots. Most sites were established in the 1970s and are planned for continued monitoring activities into the future. These sites provide significant young-growth data necessary for transition to a young growth industry.

Question 2. In your testimony you state that the new selection pool would harm old-growth habitats. Given that Sealaska returns all of its current 327,000 acre selection pool in return for the 63,000 to 85,000 acres it would receive, and given that Sealaska has 112,000 acres of old-growth in its current pool, compared to just 48,000 acres of old growth in its potential new selection pool, the bill would seem to potentially increase the amount of old-growth in the forest by about 60,000 acres. Could you explain your position further?

Answer. Although the Forest Service has not been able to validate the acreage figures utilized in this question, it recognizes old-growth structural stages have value for many forest attributes which add to the overall landscape diversity for the Tongass National Forest.

The question appears to assume lands in the withdrawal area, selected by Sealaska, but not yet conveyed, will return to Federal ownership under the proposed legislation thereby adding benefits not currently considered. This is not the case. There are no lands for Sealaska to "return" because the lands selected by Sealaska have not left Federal ownership. As such, any benefits from old growth habitat contained in these acres have already been considered under the TLMP and continue to be managed as part of the national forest.

The question also appears to assume more valuable old growth exists on the lands within the withdrawal area than the lands identified for Sealaska selection in the proposed legislation. The lands currently selected by Sealaska in the withdrawal areas generally do not contain significant amounts of economically viable old-growth. These lands are managed primarily for their scenic and recreation values, with fewer acres managed for timber production as allocated under TLMP. Some of the lands identified as economic development lands in the legislation are allocated to timber production in the TLMP. The proposed selection areas also include lands currently managed for scenic view shed, recreation, and old-growth habitat. The proposed selection areas on Prince of Wales, Tuxekan, and Kosciusko Islands include approximately 55,000 acres of productive old-growth. They are within the Phase 1 lands of the 2008 TLMP Timber Sale Adaptive Management Plan and are suitable for harvest, with the exception of portions currently designated as old growth reserves. There are 12 old growth reserves within the above mentioned proposed selection areas. All or part of three of the four old growth reserves on Kosciusko Island would be removed from federal ownership, as would two of the three on Tuxekan Island. These lands represent a significant component of the TLMP conservation strategy area for wildlife. Loss of these old-growth areas would likely undermine the conservation strategy in TLMP and potentially lead to threatened and endangered species listings. Even though timber harvest in the proposed selection areas may have been considered in TLMP, the Forest Service is required to mitigate effects from such activities to avoid species listings, whereas private landowners do not have similar requirements.

RESPONSES OF JAY JENSEN TO QUESTIONS FROM SENATOR BARRASSO

Question 1. In your testimony you say the Department supports completion of the entitlement due Sealaska in the Alaska Native Claims Settlement Act. Given that it's been nearly four decades since the act passed, doesn't it make sense to alter the selection pool to speed selection and conveyance of the final acreage under the 1971 Act? Isn't that especially the case since the original pool was so impacted by the long-term timber contracts in the Tongass National Forest that were in effect then, but which since have been cancelled by your Department?

Answer. The 2004 Alaska Land Transfer Acceleration Act, P.L. 108-452, (the Acceleration Act), addressed issues such as final prioritization of selected lands that hindered timely conveyance. It is important to note that sufficient uplands exist within Sealaska's existing selections to convey its full entitlements under ANCSA and that the BLM is prepared to convey lands to bring Sealaska significantly closer to its full entitlements. It is equally important to note that BLM needs to survey lands in order to convey very close to entitlement so that over-conveyance does not occur; therefore some acreage must be held back for final survey calculations. Any holdback acreage would be done in cooperation with Sealaska and according to priorities on file.

Another factor affecting Sealaska's receipt of its final entitlement under Section 14(h)(8) is the complicated Section 14(h)formula. The total acres remaining under the Section 14(h)(8) pool of lands available to the ten remaining eligible regional corporations cannot be determined until after patents to other subsections in the formula have been completed statewide unless a statutory amendment sets the remaining acreage in the pool and breaks the formula whereby each subsection of the 14(h) formula can be accelerated. Title II of the Acceleration Act addressed certain issues to assist in determining Sealaska's final 14(h) (8) entitlement, but stopped short of setting a remaining acreage; thus adjudication and patent of all the subsections still must occur. The Bureau of Land Management (BLM) has been willing to convey lands to Sealaska based on its projection of final entitlement, but Sealaska requested the BLM wait while Sealaska is advocating for legislation or considering a land exchange with the Forest Service. Sealaska has been advocating for legislation or considering a land exchange with the Forest Service the last ten years.

Most recently, Sealaska and other Regional Corporations were given 42 months from enactment of the Acceleration Act to identify final, prioritized selections. Sealaska identified its final, irrevocable priorities on the last day, June 10, 2008, and in that same transmittal requested its prioritized selections not be conveyed because the corporation was pursuing federal legislation. Sealaska's projected entitlement, based on the BLM's most recent 14(h)(8) estimates, can be conveyed to Sealaska, but the Corporation has asked for delay because the prioritized original selections inside the withdrawal areas would no longer be necessary if legislation is enacted.

Many factors have affected the timely conveyance of ANCSA entitlement, but the existence of the now cancelled long-term timber sale contracts is not one of the factors. Lands subject to timber sale activities were not eliminated from the withdrawal areas from which Sealaska made its selections.

Additionally, ANCSA was enacted in 1971, and the first major amendments were enacted in 1976, including Section 2 of P.L. 94-204. Section 2 requires proceeds derived from contracts, leases, permits, rights-of-way, or easements pertaining to lands withdrawn for selection under ANCSA to be set aside for payment to Native Corporations as the lands are conveyed. The Forest Service set aside proceeds from the timber sales. The original deadline for Sealaska to make its ANCSA Section 14(h) (8) selections was September 18, 1978. The selection deadline occurred two years after enactment of the requirement to set aside proceeds. Proceeds are released after BLM conveys the land. Thus far, Sealaska has received more than $2 million in escrow proceeds from timber sales occurring on lands eventually conveyed to Sealaska. It was not until the Acceleration Act of 2004, that Sealaska was required to file final selection priorities, and when it did, it requested further delay because of proposed legislation.

Question 2. Mr. Jensen, concerning land planning in Southeast Alaska, doesn't most all of the land proposed for timber selection by Sealaska in S. 881 overlap areas proposed for harvesting already in your revision last year of the Tongass Land Management Plan? How will that harm the environment if the areas for ultimate harvest are identical?

Answer. The Forest Service estimates that the breakdown of the broad vegetation types of the economic development land identified on Attachment A to the legislation includes a total of about 107,000 acres of productive old growth, with about 72,000 acres of high volume-old growth. The proposed selection areas on Prince of

Wales, Tuxekan and Kosciusko Islands include approximately 55,000 acres of productive old-growth. These lands represent a significant component of our conservation strategy area for wildlife. Prince of Wales Island has been identified as a biodiversity hotspot by The Nature Conservancy. The U.S. Fish & Wildlife Service has raised significant concerns regarding goshawk endemism (indigenousness) and viability, endemic wolf viability, and viability for other endemic species and lineages. Loss of these old-growth areas will likely affect our conservation strategy in TLMP and potentially result in threatened and endangered species listings.

The selections proposed in this legislation will be managed under the standards and guidelines in TLMP until or unless they are conveyed to Sealaska. Private lands are managed under the Alaska Forest Resources & Practices Act (AFRPA). The AFRPA standards and guidelines used to mitigate impacts to salmon streams, soils, water, wildlife, scenery, karst and other natural resources are less stringent than those found in the TLMP. Consequently, the environmental effects on lands harvested by Sealaska are likely to be greater than the environmental effects from timber harvest activities occurring pursuant to TLMP.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF THE ALASKA WILDERNESS LEAGUE, ON S. 881

Whenever swaths of federal lands are slated to leave the public rolls, there must be a commonsense accounting of the transaction All parties involved in the matter must be getting the fairest, most evenhanded deal possible. Before the ledger can be balanced, it must be made clear precisely what the public is getting in return for what it is surrendering. In the case of the Sealaska land transfers, this means considering the impacts their actions would have on the land that will be removed from federal ownership, as well as the impacts their actions would have on adjacent lands and waters, nearby communities, and existing public uses. Providing durable conservation protections for important areas outside of the Sealaska solution space will begin to provide the fairness the public requires for carrying out this transaction.

A coalition of conservation organizations has developed a Tongass-wide Framework of Conservation Priorities to serve as a blueprint for efforts to build a comprehensive plan for the Tongass, aiming to achieve proper balance while meeting the needs of the resource, and of a variety of users. The framework is based on a set of community and ecological values. In particular, the framework is founded on a conservation assessment of the Tongass completed in 2007 by Audubon Alaska and The Nature Conservancy. The assessment identified the biological values of watersheds across the 22 bio-regional provinces in Southeast Alaska based on the abundance of winter deer habitat, summer bear habitat, nesting habitat for marbled murrelets, spawning and rearing habitat for all 5 species of salmon plus steelhead, large-tree old growth, and estuaries. The analysis and assessment included input from many of Southeast Alaska's and the nation's top biologists and ecologists as well as information and data from scores of agency reports and peer reviewed literature.

Through the extensive study and analysis, the group of scientists and analysts generated a "conservation target" map that identifies the highest ranked watersheds in each region of the Southeast Alaskan coastal temperate rainforest. These target watersheds as well as areas identified as high-value community use areas are the basis of the Framework of Conservation Priorities.

The Framework highlights the fact that many of the Sealaska Corporation's "out of the box" selections occur in areas that are of the highest conservation value. The fact that some of the most productive timber acres on the forest are also some of the highest value in ecological terms has long been a source of contention amongst the various interest groups. If the land transfers in S. 881 were to become law, the lands in question would depart federal ownership, and management would be subject to the regulations of the Alaska Forest Practices Act as applied to private lands. Existing state law simply does not offer the level of protection these most ecologically valuable acres require to remain intact and maintain the productivity that makes them so important in the first place.

While it is clear that the economic zones in S. 881 would be subject to clear cut logging, which certainly presents its own set of challenges, the legislation as currently written says frustratingly little about specifically how the native future sites and cultural sites are to be managed by the Sealaska Corporation. It appears that Sealaska will have near complete autonomy over these transferred lands, without regard to the impacts their management decisions will have on the nearby communities, transferred lands, adjacent lands or existing public uses of these lands.

Yet the problems do not begin and end with the obvious negative environmental impacts. There are also cultural and economic conflicts inherent in the legislation before the Committee. The legislation fails to consider the needs of small, forest-dependent communities all across the region, as well as the needs of the timber industry, the commercial and recreational fishing industries and Southeast Alaska's lead-

ing economic engine, tourism. Failing to take advantage of this opportunity to engage all user groups in the legislative process, passage of S. 881 would only serve to codify conflict.

While the conservation community is seeking to protect the most valuable conservation areas on the Tongass National Forest, we are also not the only stakeholder with something to gain, or subsequently lose. The timber industry is attempting to gain certainty that they will have a supply of suitable wood for the long term. Southeast Alaska's commercial and recreational fishermen are working tirelessly to make sure that the Tongass remains a salmon factory. Subsistence users want to see to it that their backyard grocery store remains open for business. Sealaska wants finally to resolve its entitlements and provide a benefit to its native shareholders.

History cautions against another single-stakeholder answer to the questions facing the management of America's largest national forest. The long-term timber contracts that dominated the landscape of the Tongass for nearly half a century ending in 1997 serve as an important lesson in the future management of the forest. The long-term timber contracts represented a single-stakeholder arrangement that served to leave many on the outside of the Tongass management process looking in. There was no aspect of the forest that the timber contracts didn't touch in a significant way. The implications of those contracts: environmental, cultural, and economic, are still being dealt with today.

With S. 881, the stakeholder has changed, but the legislation will inevitably repeat the same mistakes, creating new conflict and further narrowing the solution space for resolving that conflict. Simply put, equity for all the forest users cannot be created in a vacuum.

S. 881 resolves one set of issues, only to plant the saplings of new problems in fertile soil. This nearly intractable tug of war over areas of common concern requires not another round of ill-suited legislation, but rather what is instead needed is a robust public process that builds ground-up momentum and serves as a legitimate forum for all stakeholders to share in the development of a common solution, suitable to as many as possible. This process is already underway, and it is in this established forum that a workable concept, with broad based regional buy-in may be in the offing.

In this web of bottom lines, consensus may be impossible; but that is not to say a healthy balance is out of reach. No single party will likely ever be entirely satisfied; this is the reality of modern public lands management; but any legislation that moves forward must be crafted in the best interests of, not at great cost to, the collective community of the Tongass.

STATEMENT OF JOHN M. FOWLER, EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION

S. 881

SUMMARY STATEMENT

S.881 includes amendments that would add lands held by an incorporated Alaska Native group, a Regional Corporation, or a Village Corporation established under the Alaska Native Claims Settlement Act (ANCSA) to the National Historic Preservation Act (NHPA) definition of "tribal lands," and therefore have a direct bearing on the review process under Section 106 of the NHPA regarding undertakings in Alaska. These effects may include changes to the review and consultation process on any federal undertaking in Alaska and the role of all ANCSA entities in the broader preservation program.

The ACHP recommends that the committee give further consideration to these effects and solicit an analysis from affected agencies within the Administration regarding the anticipated impacts of these amendments on the role of ANCSA entities, the State of Alaska, federal agencies, and the public in the NHPA; and the role of "Native villages" in the Section 106 process.

BACKGROUND

Title II of the NHPA established the Advisory Council on Historic Preservation as an independent federal agency. The NHPA charges the ACHP with advising the President and the Congress on historic preservation matters and entrusts the ACHP with the unique mission of advancing historic preservation within the Federal Government and the national historic preservation program. The ACHP's authority and

responsibilities are derived from the NHPA. General duties of the ACHP are detailed in Section 202 of the NHPA (16 U.S.C. 470j) and include:

- Advising the President and Congress on matters relating to historic preservation;
- Encouraging public interest and participation in historic preservation;
- Recommending policy and tax studies as they affect historic preservation;
- Advising State and local governments on historic preservation legislation;
- Encouraging training and education in historic preservation;
- Reviewing federal policies and programs and recommending improvements; and
- Informing and educating others about the ACHP's activities.

Under Section 106 of NHPA (16 U.S.C. 470f), federal agencies are required to consider the effects of undertakings, carried out by them or subject to their assistance or approval, on historic properties and provide the ACHP an opportunity to comment on them. Pursuant to rulemaking authority under Section 211 of the NHPA (16 U.S.C. 470s), the ACHP has issued the regulations that implement Section 106 (36 C.F.R. part 800). The ACHP plays an oversight role in the Section 106 process, ensuring that historic preservation needs are considered in light of project requirements. The Section 106 process guarantees that State and local governments, Indian tribes, Native Hawaiian organizations, businesses and organizations, and private citizens will have an effective opportunity to participate in project planning affecting historic properties. Through its administration of Section 106, the ACHP works with these parties to ensure that their historic preservation interests are considered in the process. It helps parties reach agreement on measures to avoid or resolve conflicts that may arise between development needs and preservation objectives, including mitigation of harmful impacts.

S.881 AND THE SECTION 106 REVIEW PROCESS

The ACHP's comments are focused specifically on Section 5(e)(2) of the S. 881 bill that would expand the definition of "tribal lands" under the NHPA. Amendments to the NHPA in 1992 specified that federal agencies must consult with "Indian tribes" in the Section 106 process when the undertaking may affect historic properties of cultural and religious significance to them. 16 U.S.C. 470a(d)(6)(B). The term "Indian tribe" in the NHPA includes Native villages, Regional Corporations and Village Corporations under the Alaska Native Claims Settlement Act (ANCSA). 16 U.S.C. 470w(4).

The regulations implementing Section 106, 36 C.F.R. Part 800, were amended to incorporate the requirement of consultation with "Indian tribes." Some of these regulatory amendments are directly related to whether an undertaking takes place on "tribal lands" as currently defined in the NHPA. Those regulatory amendments, among other things, set forth that a Section 106 agreement involving an undertaking that takes place in "tribal lands" is invalid unless signed by the relevant "Indian tribe." They also require federal agencies to consult with "Indian tribes" on the same basis, or in lieu of, the State Historic Preservation Officer, when the undertaking takes place on "tribal lands." The basis behind providing such consultative rights is the federal government-to-government relationship with, and respect for the sovereignty of, Federally recognized tribes, the only entities that have lands under the scope of the current definition of "tribal lands" (i.e., all lands within the exterior boundaries of any Indian reservation, and all dependent Indian communities). Our understanding is that, presently, the only the lands within Alaska that qualify as such "tribal lands" are those within the Annette Island Reserve. It is also our understanding that, while the federal government has a government-to-government relationship with Alaska Native Villages, it does not have such a relationship with ANCSA corporate entities.

The S. 881 amendment to the definition of "tribal lands" would increase such lands in Alaska by millions of acres and add consultative rights to corporate ANCSA entities in the Section 106 process.

In this regard, we note that there is an apparent discrepancy between the NHPA definition of "Indian tribes" and the proposed amendment to "tribal lands" in S. 881. While the NHPA definition of "Indian tribes" includes "Native villages" under ANCSA, the amended "tribal land" definition under S. 881 removes any mention of Native villages, and replaces them with incorporated Alaska Native groups. We believe further consideration should be given to how this could affect the role of Native villages in the Section 106 process, in comparison with that of the corporate ANCSA entities, were these amendments to take effect.

RECOMMENDATIONS

The ACHP encourages the active participation of Indian tribes, including Native Villages, Regional Corporations, and Village Corporations under ANCSA in the federal preservation program in general and the Section 106 process in particular. S.881 has the potential to expand the effective participation of Indian tribes even further in Alaska.

We recognize, however, that under the S. 881 amendments, a key entity—Native villages—would effectively lack certain Section 106 consultation rights that would now be given to ANCSA corporate entities. The ACHP recommends that the Committee clarify its intent in removing these Native villages from the definition of "tribal lands," but including incorporated Alaska Native groups, so that their respective roles in the Section 106 process may be accurately defined if S. 881 becomes law.

More importantly, the ACHP asks that the Committee allow federal agencies to further study the effects of the mentioned S. 881 amendments to the NHPA and consult with other stakeholders, so that we can more properly advise the Committee on these issues.

STATEMENT OF ALAN STEIN, FORMER DIRECTOR OF THE SALMON BAY PROTECTIVE ASSOCIATION AND PRESIDENT OF THE POINT BAKER ASSOCIATION, ON S. 881

Thank you Mr. Chairman and Members of the Committee for placing this statement into the record for this hearing on S 881.

Many important legal events surround the area that is the subject of this bill and with your indulgence, I am going to provide you with that context, the better to inform your deliberations, so you can see what protections this bill could remove and what injustices would occur.

For it is this area on northern Prince of Wales Island that has spawned two major forest lawsuit battles and the National Forest Management Act of 1976.

In 1793,the British explorer George Vancouver, on board the Royal Navy's Discovery, named the islands you see before you after the first son of King George who was the Prince of Wales. The early explorers called it the Prince of Wales Archipelago and it was for a time the intention of Spain to develop a large harbor on its west coast more expansive than San Francisco Bay.

The island is huge. It takes more than an hour to fly from its southern border at 54 degrees 40 minutes North latitude to Point Baker on its north end at 56 degrees and 20 minutes. It's about a 120-mile trip across our nation's third largest island.

When I first flew over it in 1971, I saw huge tracks of denuded mountain slopes, some over a thousand acres in size. There was no NEPA or any other environmental law to protect these trees save one: the Multiple Use Sustained Yield Act. The emphasis was on Use and not Sustainability however.

When the tiny plane carrying my bride and me to our new homestead flew over the mountains near Salmon Bay Lake we saw a remarkable sight, for our eyes were used to seeing Chicago skyscrapers, not a wilderness forest stretching away to Point Baker across fifteen miles of mountain ranges-about the size of the lakefront of Chicago at the time.

Shortly after I built a cabin, with my own two hands, a decision by the US Forest Service was made to log much of this wilderness. The Point Baker Association formed to oppose the logging. I was sent to Juneau to do something to stop it. I organized a lawsuit and became one of three plaintiffs. Our suit in 1975, Zieske v Butz-a landmark environmental case-resulted in an Alaska Federal Judge issuing an injunction against clear-cutting anywhere on the roughly 400,000 acres of the north end of the island from Red Bay to Calder Bay, roughly the northern area that Sealaska now wants to grab from the public trust, excluding mountain tops and other areas that do not grow trees.

Within that 400,000 acres, the 80,000 acres Sealaska wants now is most of the accessible land, excluding the areas Congress has already designated LUD II in the Tongass Timber Reform Act of 1990-Salmon Bay on the East (20,000 acres) and Mount Calder on the West. These two borders should be expanded to include all the area Sealaska now wants to ravish.

Because they thought Zieske threatened to halt clear-cutting throughout the United States, the timber industry created a hysteria that this would happen, Congress met three months after the injunction was issued, and overturned a statute that had been in effect since 1898 and upon which the injunction was based.

In place of the Organic Act, Congress passed the National Forest Management Act. This despite considerable support from Governor Hammond in his statements

to Congress to protect Point Baker and its surroundings from industrial logging. I testified before this committee then for the creation of buffer strips to protect salmon streams from logging. Congress chose not to create them, despite considerable scientific support. Congress also lifted the injunction and allowed the US Forest Service to cut about half of the marketable timber on the north end.

Thirteen years passed. Industrial clear-cut logging removed about half of the marketable timber, placing clear-cuts so large and numerous that passing satellites recorded this image* in the late 1980s:

TAXPAYER SUBSIDIES FOR BUILT INFRASTRUCTURE

Meanwhile taxpayers subsidized the building of what I would estimate at 150 miles of roads in the area that is subject to this bill. The cost of these roads per mile was between $500,000 to $1,000,000 in 1980s dollars. Expensive bridges were constructed, again subsidized by taxpayers. A logging camp the size of a small town was constructed. All of these taxpayer-paid-for items were made under the assumption that taxpayers would reap the benefits of future development in the form of revenue of future timber sales. In today's dollars, the value of this infrastructure is probably 200 to 300 million dollars. This does not include the millions of dollars in the US Forest Service budget that planned for the infrastructure.

EXISTING CLEAR-CUTS NOW THREATEN WILDLIFE

The effect that 25 years of commercial clear-cuttinghad upon wildlife populations in this area was a 50% reduction of prime deer habitat. Half the trees were cut. This was an unsustainable practice.

In short, because of 25 years of past logging, existing clear-cuts already pose a severe threat to wildlife in the area Sealaska wants to log.

This bill would do nothing but seal their doom. The deer are the soul of this place, the American eagle its spirit, and the raven its voice. Passing this bill will silence the raven, down the eagle, and bring the demise of the deer.

SECOND LAWSUIT OVER LOGGING THIS AREA

In March 1989, the Exxon Valdez went on the rocks. It affected me and almost all Alaskan fishermen like me very deeply. I read an EIS about further clear-cutting in this area and became so angry that I vowed to again take action. I organized the Salmon Bay Protection Association to stop the abuses of clear-cutting near salmon streams and to save the beautiful watershed of Salmon Bay.

The SBPA was the largest organization of commercial fishermen and canneries ever to unite on one environmental endeavor in Alaska. I was voted its director and hired the lawyer who is sitting before you today, Buck Lindekugel, fresh out of law school and ready for his first big case. He got it.

I found new scientific evidence that clear-cutting next to salmon streams causes irreparable harm next to the streams. Irreparable harm is of course the legal standard for an injunction.

Sworn statements of fish scientists were entered into the record of the court case and presented to Congress.

Later in 1989, the Federal District Court in Alaska issued an injunction against logging within 100 feet of salmon streams on the north end of Prince of Wales Island or logging within Salmon Bay. The Forest Service extended the protective injunction to all 2000-plus salmon streams in the Tongass National Forest.

We had proved irreparable harm to salmon streams. We had saved part of a major watershed important to our commercial fleet and to recreational steelhead fishermen.

This second landmark decision, Stein v Barton, became the justification for Congress passing a buffer strip provision in the Tongass Timber Reform Act in 1990, the first federalFederal recognition of the scientific benefits of not cutting timber next to fish streams. Our case had proved the argument. The 100-foot buffer, applied to either side of creek, protects fish from cold and heat, prevents erosion of banks, catches sediment, and most importantly creates the infrastructure of downed trunks that form pools, riffles, and insect density vital for fish survival. Big 150-200 high trees are the architecture of the stream. They are as valuable to the stream when they fall as they are when they provide shade and insects standing.

Sealaska was not happy about the precedent Stein v Barton established, because a State Forest Practices Act being considered by the State of Alaska legislature, which would regulate their logging on their private lands, could have contained the

* Image has been retained in subcommittee files.

same 100-foot protection. Under the State Forest Practices Act which would govern if this bill is passed, the limited protections of the NFMA would be watered down even more.

SEALASKA LANDS NOT REGULATED BY FEDERAL FISH AND WILDLIFE PROTECTIONS—WEAKER ALASKA LAWS APPLY TO SEALASKA LANDS

The same year that Congress created buffer strips, the Alaska legislature, heavily lobbied by the Sealaska Corporation, enacted a buffer strip provision considerably smaller than the 100-foot minimum that scientists had stated, under oath, were necessary, a conclusion which the Federal Court in Alaska accepted when issuing its 100-foot minimum order.

Many in Alaska, including my nonprofit corporation of commercial fishermen, wanted the federal Federal buffer strip size applied to private lands. Sealaska opposed. Sealaska is by far the largest private timber land operator in Alaska.

Sealaska's promotion of less-than-minimum buffer strips under State law is emblematic of how they maltreated their land.

The results of Sealaska's promotion of less-than-necessary stream protections left fish and habitat more vulnerable, in my opinion, to damage.

As a result of Stein v Barton, generations of salmon and trout have had a better chance of survival throughout the Tongass National Forest's more than 2,000 fish streams.

Conversely, generations of fish in creeks flowing on land that Sea Alaska cut ruthlessly have had, again in my opinion, less chance of survival.

REASONS S 881 SHOULD BE KILLED IN COMMITTEE

Compensation to Alaska Natives in ANCSA in 1971 was fair. Natives never occupied all of Prince of Wales Island. They had fish camps in the summer on some streams and hunted. They occupied small villages. ANCSA recognized this by allocating land around the villages. Moreover Natives got one billion dollars in 1971. Sealaska should log these lands they agreed to accept in 1971 and stop coming back to Congress to break a 38 year old deal.

S 881 is a land grab

What is fair is often determined between parties negotiating. The head of the Alaska Federation recently wrote that ANCSA was not fair and indeed Natives considered it their Holocaust. Really.See Juneau Empire 2009.

In 1970, Alaska's Native leaders struck a deal.

It was a fair and just deal then and it is a fair and just deal now.

S. 811 is nothing but a land grab wrapped in an imaginary injustice.

The wealth of lands claimed by Alaskan Natives in 1970 was estimated in the tens of billions of dollars by the Memorandum submitted to Congress on behalf of the Alaska Federation of Natives by Paul Weiss Goldberg Rifkin Warton and Garrison. (See http://www.sealaskaheritage.org/collection/Curry__W/afn__letter.htm).

In 1969, Alaskan Natives were willing to settle for $500,000,000 and 2% royalties on all federalFederal lands. See the 1967 position paper of the AFN on http://www.sealaskaheritage.org/collection/Curry__W/curry__website/17__8__2/002.pdf

Yet ultimately Alaska's Natives settled for one billion dollars and over one hundred million acres of land. It appears the changes in amounts of cash and land bargained for from the late 1960s to 1971 reflect a meeting of the minds through negotiations.

Let us not forget that prior to ANCSA 1971 a federal court extinguished natives claims to aboriginal rights to the land in the Tongass National Forest and damages limited to compensation in money. Seven million dollars in compensation was suggested. Given the one billion ANCSA allocated the examination of the historical record prior to ANCSA shows SE Alaska Native Corporations got a rich deal indeed.

Regardless, it is clear that the Tlingit and the Haida obtained the benefits of the bargain struck in ANCSA and should not now be allowed to alter its terms.

ANCSA specifically set forth the area in which Sea Alaska was to select its land on central portions of Prince of Wales Island. I do not know why Tlingits and Haida wanted to cut the heart out of this one island and this island primarily. But concentrate the cutting they did.

The Tlingit and Haida who had been living in these areas for at least two hundred years (the Kaigani Haida arrived on Dall Island from Canada after the America Revolution partly to trade with sea otter traders and within 30 years just about exterminated all the sea otter in southeast Alaska) well knew how much timber was on that land and accepted the selection areas specified in ANCSA. Byron Mallot

himself was an aide to Senator Stevens around that era. So there was no fraudulent concealment which could serve as a grounds for breaking this deal.

The need to extinguish the protective covenant established in section (h)(1) of ANCSA sought in Section 18 of S 881 is specious and bad precedent for the rest of Alaska. The resources are already protected under Federal law and indeed the Natives were able to cooperative with the excavation of the 9,200-year old human being found in a cave on the northern end of Prince of Wales Island near Pt Baker, even though the connection to living Tlingits has not been established scientifically. Far from being motivated by a desire to protect their cultural heritage, Sealaska is using this grounds as ploy at best to obtain the best fishing and anchorage sites in Alaska perhaps to further efforts to establish tourist lodges or stopovers for the many cruise ships that ply the waters of Alaska. An alternative use would be large land sales for recreational usage now prohibited on national forest lands. The loss of public benefits will at any rate far outstrip any gains in protection of Native cultural sites which are already protected. The balance tips in leaving the lands in public ownership.

ANCSA was embraced and endorsed by almost all of Alaska's Natives. It is not fair 36 years later to claim this deal was not fair, because over those years Congress has made numerous corrections to adjust small problems. But this bill is not just a small adjustment. It is breaking the deal reached in ANCSA and can be seen as nothing but a bald-faced land grab.

FIRST WAVE OF CLEAR-CUTTING BY SEALASKA

Under the leadership of Bryon Mallot, Sealaska and/or eleven Native village corporations clear-cut vast swaths of mountains to generate the revenue for the "renewal" of Alaskan Natives. The great majority of cuts, even for those villages like Angoon and Kluckwan which are over a hundred miles away, were on the Prince of Wales Archipelago.

Under ANCSA each tiny village gained titled to 23,040 acres, more than a quarter of a million acres. Most of this has been clear-cut. Sealaska, which represented the people in the same tiny villages, got an amount which I am sure others at this hearing will represent accurately-a very large amount.

The cost of this renewal was steep for the environment.

About 12 years ago, I flew over the gargantuan clear-cut made by the Gold Belt Village Corporation, on Admiralty Island.

I was aghast. Because although I had logged myself for a short time and flown extensively over the Tongass and spent decades plying the waters, nothing came close to this clear-cut I saw.

It runs from near the top of a glacial carved valley on one mountain down to the creek and high up the side of another mountain.

I wondered at the time if greed knows no shame. This cut is far worse than anything I had seen done and many times larger than 1,000 acres. It would not have been tolerated even before the NFMA passed.

As far as I know, that was the only clear-cut done by Natives on Admiralty.

On Prince of Wales Island, the same sort of mega-clear-cutting occurred many times over, I ran my boat past the huge clear-cuts of the Kassan Village Corporation off east central Prince of Wales. With major disgust, I saw from the air, water, or road the steep sloped cuts of the Village Corporations of Craig, Klawock, Angoon, and Kluckwan, all on the Prince of Wales Archipelago.

I have yet to see and do not look forward to seeing the massive cutting in Chomley Sound on the east side of Prince of Wales.

Even though the majority of Native villages and Sealaska all concentrated their cuts on Prince of Wales Island, this was the deal made in ANCSA.

Sealaska was to make all its cuts in the middle section of Prince of Wales Island and nowhere else on the island-certainly not on the north end.

Now the line created by the 36-year-old law that kept Sealaska from expanding past its allocation area has been crossed by this appeal to Congress to grant one more special interest a turn at the barrel of pork.

Whatever judgment I make of how deplorable it was to cut almost all the trees on the 24,000-acre allotments of the eleven Native villages, many times from the tops of mountains almost down to the shore of the sea-I must acknowledge that Byron had the heavy weight and fiduciary duty of a corporate executive to generate revenue during the first decade of his corporation's existence. Byron Mallot created success financially.

He generated lots of revenue during the first wave of cutting between the 1970s and 1990s. Sealaska then also diversified into other ventures outside of the state,

including casinos in Southern California and one planned North of San Francisco. It was becoming a mature corporation.

Even if Sealaska were to falter, let us not forget what the Alaska Native Federation wanted out of this lands claim was to get away from dependency on the government. That goal was clearly articulated by its lawyers who testified before Congress and is reflected in the statement by their lawyers to Congress long ago.

They wanted a "bold and imaginative approach which fully and finally resolves all claims." See Page 4 of the Paul Weiss memo to Congress. See the document at: http://www.sealaskaheritage.org/collection/Curry__W/afn__letter.htm and attached.

Finality

If only if Sealaska would now honor the pledges its leaders made in 1971 to make a final settlement, this bill would not be before Congress.

SECOND WAVE OF CLEAR-CUTTING MORE DEPLORABLE THAN THE FIRST

SEALASKA WANTS TO BREAK THE DEAL IN ANCSA 36 YEARS AFTERWARDS

To come back to Congress crying that the deal Sealaska made 36 years ago was not fair is absurd.

It's like saying the Strip in Las Vegas and all the casinos on it should move to New York, because Bugsy Segal didn't know what he was doing in the 1940s.

Breaking the deal 36 years later is not only absurd, it is also unfair.

Prior to ANCSA, the Federal Government paid Sealaska for all the timber taken by the creation of the Tongass National Forest. See Tlingit and Haida Indians of Alaska v US 177 F Supp 452 (1959).

Then after ANCSA in 1971, Sealaska and/or its constituent villages cut the same timber .

That's double-dipping. First they got paid for the taking of timber in the entire Tongass National Forest and next they got some land to cut timber that had not been cut.

ANCSA requires Sealaska to select their land from the area marked out on central Prince of Wales Island, and only in that area. ANCSA is clear on this issue. Only Congress can change this scheme and Congress should not change it.

Sealaska has two choices. If they do not want to further soil the nest of the villages of Kassan and Craig and Hydaburg and Klawock, all on central Prince of Wales, they could turn their uncut land into a recreational area or a subsistence hunting area. Alternatively, they could cut all their remaining land within their designated area.

In neither case should they be allowed to select any land at all on the northern end of Prince of Wales Island. I believe the attached pictures from Google Earth will make abundantly clear how much land has been cut on northern Prince of Wales-about 50% of marketable timber.

By the way, Sealaska ships almost all its timber to Asia without hiring American workers to process it further. Federal law does not allow the same to occur in the Tongass National Forest. This is another reason American taxpayers are going to be shortchanged by this bill.

NORTHERN PRINCE OF WALES ISLAND SHOULD NOT BE TRANSFERRED

Long ago as a young man, I sat on the banks of the great Chilkoot River listening to Chief Donowack, Austin Hammond. Austin was telling me how his people were buried in the caves above us, which was the traditional place for catching and preparing sockeye salmon for the winter.

We sat on a great rock. It was here, he told me, that long ago, one of his successors made two disputing heads of clan houses sit on this rock until they could resolve the conflict.

If the dispute could not be resolved, one of the clans could mock the other party by carving a totem for, say, not honoring a bargain.

Austin then told me that his people came north from what is today Sumner Strait, the northern border of Prince of Wales Island, because of a dispute with a tribe from the south of Prince of Wales. It would be great if Congress could sit on a rock now and then, but I am afraid that it is time to create a virtual totem, one that shows that Sealaska's leadership abandoned the teachings of the elders who always told them to honor the land and its creatures.

I am afraid Byron and his fellow leaders, in their sincere quest to follow the ways of the five chiefs of Yakutat, and renew the people, have allowed greed to harm the wildlife that inhabited the forests and for millennia sustained the people.

About a decade ago, Byron gave two huge trees from Sealaska's holdings to a group of Hawaiians who carved them into a catamaran, which they used to renew

the hopes of many Native peoples from San Diego to the shores of the Chilkoot and all the way over to Japan.

Byron was sitting in the catamaran when, it was reported, he cried out in a loud voice, "These trees are alive." Quite an epiphany.

If Byron also acknowledged that the Eagle, Raven, Wolf, and Bear-the names of the clans and moieties of the Tlingit and Haida-actually need to survive on the north end of Prince of Wales Island in large tracts of old-growth forest, he would not be asking to log the small remaining stands of oldgrowth forest left that are necessary to sustain these creatures.

I hope Byron and the other elders of Sealaska, for alas now we are elders too, will leave the land on northern Prince of Wales Island alone for all the generations yet to be born. Let them experience, as I have over the decades, their wonders. Let us fish there for steelhead together.

When Vancouver first passed Salmon Bay on the east side of northern Prince of Wales, Natives came out in canoes throwing white feathers of peace into the air. When he entered Port Protection on the western side, more canoes came out and welcomed him.

Congress voted in 1990 to protect both parts of Salmon Bay on the east and the western slope of Mount Calder on the west. These two areas, the parts of them not logged at least, are like the guardian totems at the mouth of the long house that welcome both the clan and visitors alike. What an irony it would be to maintain the entrance but soil the interior of northern Prince of Wales Island.

On the Board of Directors of the Salmon Bay Protective Association with me was Edward Churchill, a chief of the Stikine clan of Tlingits, the clan which by tradition had rights to the northeast of Prince of Wales Island.

During a year and a half on the board with him, I got to know why Ed wanted to save Salmon Bay. He wanted to hunt at Salmon Bay for the rest of his days. This place held a spiritual significance to him. The act of hunting was walking in the footsteps of his ancestors who had also hunted and fished there. It was equally important for him to be there as it is for me to worship in a temple. In both places, we experience much more than we are. This bill would authorize Sealaska to desecrate the sacred forests Ed loved.

Unfortunately, Congress, when it drew its map of Salmon Bay, let the logging companies into the upper reaches where the big timber was. Only two thirds of the watershed was preserved by Congress, mostly the muskeg parts that did not have commercial trees.

And so Ed left this earth disappointed that the land his people wanted to hunt in, the land he wanted undisturbed for his great-grandchildren, was taken for commercial logging. This was despite my best efforts to keep his subsistence hopes alive.

I know the sadness Ed must have felt when the logging companies succeeded in entering into Salmon Bay. I too have hunted there, climbed its mountains, and gazed down, with dismay, at the land I first saw as wilderness from a sea plane, now clear-cuts stretching all the way to the west to Mount Calder.

But now there is an opportunity to change.

Byron Mallot has the power to make that change.

Can Byron Mallot at the Sealaska headquarters, whose offices have the relics of his people, totem poles and masks, displayed prominently-can Byron tell Congress that the Stikine clan and all the other non-Natives in southeast Alaska should not have what Ed wanted?

Can Byron tell Congress-in good conscience-that between the majestic Salmon Bay on the east and Mount Calder on the west, he wants the descendants of Ed to walk on the northern shores of Prince of Wales where the deer do not have enough food to eat and the wolf is near extinction and the bear hard to find and the eagle not in the sky and the goshawks extinguised?

These animals are carved on the totems of the Tlingit and Haida. The elders' creation of the great totems now in the Museum of Natural History and the Peabody was undertaken with a deep regard for the living creatures who dwelled in the forest. And that value for the life of those creatures was part of a great legacy they transmitted in their wall murals, masks, and totem poles.

Sealaska's logging of this area will throw mud on their great totems.

If Byron can answer that he still wants this area, then the five chiefs of Yakutat, I believe, will abandon him-and Austin and Ed and I, in my turn, will turn our backs to him too.

It is time for Byron to sit on the rock near the Chilkoot and talk.

It is time once and for all to allow northern Prince of Wales to recover from the rapacious over-logging that devoured it between 1975 and 1995.

Leaving the ancestral home of the Stikine and Kuiu Tlingit alone would be a final step in the spiritual restoration of the Tlingit to the proud tradition their ancestors left for them, a comeback to which Byron Mallot has dedicated his life.

STATEMENT OF THE ALASKA PROFESSIONAL HUNTERS ASSOCIATION, ON S. 881

Mr. Chairman: The Alaska Professional Hunters Association (APHA) submits the following statement regarding S. 881, the "Southeast Alaska Native Land Entitlement Finalization Act." APHA supports amending the legislation to ensure that access for hunting and current hunting guiding permits are not encumbered.

The bill would enable Sealaska Corporation to select and take title to substantial additional acreage in Southeast Alaska, now held as public lands as part of the Tongass National Forest, for private economic development and cultural site preservation. It would also authorize the Corporation to acquire these now public lands outside of the 10 village withdrawal land selection areas established nearly three decades ago pursuant to the Alaska Native Claims Settlement Act. The measure does not prescribe precisely which lands may be transferred from public to private ownership nor does it make clear the aggregate amount of acreage to be transferred.

Throughout Tongass many APHA members hold special use permits to provide guided hunting and other recreational services to the public on these public lands. If guides are forced off of lands converted to private ownership, there are insufficient alternative lands available to accommodate these long established operations. Many existing guides operate in areas providing high quality hunting, and substitute areas of comparable quality simply do not exist to handle displaced guides. APHA is strongly opposed to any legislation which would force guides out of their permitted areas.

APHA is persuaded, however, that the bill can be amended to treat special use permits as valid existing rights that must be honored by Sealaska Corporation or its successors or assigns. We appreciate that the language in section 5(d) is a good faith effort to address this concern. Unfortunately, the language does not provide sufficient protection for existing permittees. It would protect existing permits for only the remaining term of that permit and provides no assurance that such permits can, or will be, renewed or extended. Since most of these permits carry only five or 10 year terms, the absence of any guarantees regarding extension or renewal ensures that any impacted guides will be out of business in a relatively short period of time. That is unacceptable.

Additionally, APHA seeks language that Sealaska could not authorize new or additional guide operations on lands already subject to an existing operation. The effects of additional pressure in an area could destroy the efficacy of the present guide service. Consequently, the bill needs to include language ensuring that lands transferred to Sealaska's private ownership include limitations on the ability of the Corporation to impose fees, restrict access or otherwise regulate the operator/permittee. Such language would genuinely ensure the protection of existing valid existing rights for more than a short time period.

APHA is prepared to work with the bill's sponsors and the Committee to craft appropriate protective provisions for existing guide operations that might be impacted by the land transfers authorized by this bill. Absent such provisions, APHA would be compelled to oppose the measure. Thank you.

AUDUBON ALASKA,
Anchorage, AK, October 8, 2009.

Hon. RON WYDEN,
Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, 223 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR WYDEN: The purpose of this letter is to comment on the "Southeast Alaska Native Land Entitlement Finalization Act" (S. 881) proposed on behalf of Sealaska Corporation. Audubon Alaska urges that action by the Subcommittee on Public Lands and Forests on this measure be deferred.

Audubon Alaska fully supports Sealaska Corporation's right to select its remaining land entitlement consistent with the Alaska Native Claims Settlement Act (ANCSA). Provisions in S. 881 would, however, greatly expand the boundaries of the areas from which Sealaska could select land and would result in significant conflicts with other important Tongass National Forest values and uses. Before enactment of S. 881, or another measure that would modify the ANCSA selection area boundaries, these conflicts should be reconciled.

Some of the lands that Sealaska proposes to select in S. 881, which are outside of its current withdrawal area, are located within watersheds that have extremely important fishery and wildlife habitat values that could be substantially compromised by the intensive logging practices permitted on privately owned lands. In addition, the proposed legislation includes the transfer of dozens of small parcels scattered throughout the region with little or no restriction on how they could be used or developed. These additional land transfers could potentially compromise the ecological integrity of many areas of the forest, as well as result in a variety of user conflicts.

It should be noted that an alternative legislative proposal pending before Congress (S. 1738/H.R. 3692 "The National Forest Roadless Area Conservation Act of 2009") would provide permanent conservation protection for some of the same lands that Sealaska proposes to select for logging and/or other development.

Audubon Alaska again recognizes and respects the importance of addressing Sealaska's unsatisfied land entitlement. Changes to the ANCSA selection boundaries as proposed by Sealaska, however, should be deferred until such time as the modified selection process can be reconciled with other important public interests including fish and wildlife conservation and recreational uses of the Tongass National Forest.

Sincerely,

JOHN W. SCHOEN,
Interim Executive Director and Senior Scientist.

ERIC F. MYERS,
Senior Policy Representative.

STATEMENT OF TIM TOWARAK, PRESIDENT, BERING STRAITS NATIVE CORPORATION, ON S. 522

Chairman Wyden and Members of the Subcommittee on Public Lands and Forests, for the record I am Tim Towarak, President of the Bering Straits Native Corporation (BSNC), a regional Alaska Native corporation authorized by the Alaska Native Claims Settlement Act (ANCSA). Thank you for taking up S. 522 and considering it today. This bill would resolve several outstanding land issues involving our Native corporation's land entitlement under ANCSA, as well as several involving the State of Alaska (State) by ratifying an agreement between the United States, the State, and BSNC.

As a regional Native Corporation, BSNC received entitlement to 145,728 acres of land under Section 14(h)(8) under ANCSA. The bill S. 522 will fulfill a critical component of that entitlement by conveying 1,009 acres in the Salmon Lake area, 6,132 acres of land at Windy Cove and 7,504 acres of land at Imuruk Basin to BSNC. The bill would also convey 3,084 acres in the Salmon Lake area to the State of Alaska. BSNC will relinquish 3,084 acres of land from its original Salmon Lake selection. Passage of the bill would avoid further costly and counterproductive administrative appeals or litigation and is a sensible, fair and amicable resolution to some difficult land issues that have faced the parties for many years caused in part by the competing land selections of the State and BSNC.

Two important purposes would be served by Congressional approval, through S. 522, of the Salmon Lake Land Ownership Consolidation Agreement. The first is that it will allow BLM to finalize the conveyance of Native lands within the Bering Straits region using the mechanism of direct negotiation afforded by the Alaska Lands Transfer Acceleration Act. Should Congress approve S. 522, such action will be consistent with ANCSA and it will also highlight the importance of cooperatively resolving potentially litigious disputes over competing land selections by the State of Alaska, the Native Corporations and the United States. The second purpose served is the transfer of lands to those whose history and culture are deeply rooted there and whose dependence on those lands for subsistence and identity continue to this day.

By way of background, our Native region encompasses a large geographic region around Nome, Alaska, Norton Sound, and the Bering Straits, which is located between the United States and Russia. Maps and other detailed information relevant to the legislation is contained in a Briefing Booklet, entitled, "Salmon Lake Area Land Ownership and Consolidation Agreement," provided to the Subcommittee previously.

Our region historically is icebound for seven months of the year. What few local roads that have been built over time are not connected to the state highway system whose closest point is approximately 400 miles away. In the summer, rivers and the ocean are prime means of transport for the people of our villages. In the winter,

once these water bodies are frozen, they become transportation links for people to travel to various villages in the region by snowmachine or dogsled. Travel to the larger cities in the state requires travel by air.

The BSNC region is an area typified by rolling tundra, alpine tundra, and mountain ranges, as well as small spruce forests at its eastern limit. Reaching toward eastern Eurasia, the Seward Peninsula is the westernmost extension of the North American continent. Residents of the region have lived off the land for millennia, and while the modern era has brought significant change to this way of life, the lands are still the basis for BSNC's shareholders identity as they continue to use the lands for subsistence purposes as well as for recreation. It is the importance of these lands, both in the past and for the future, that guided BSNC in its original ANCSA land selections during the 1970's.

BSNC, established as the regional Native Corporation for the communities of the Seward Peninsula, Bering Strait, and Norton Sound, is seeking to finalize all land entitlements granted through ANCSA. The process of land selection, prioritization, adjudication by BLM, and finally, the transfer of land to the Alaska Native Corporations has taken over 30 years. This process is still ongoing, though the 2004 Alaska Lands Transfer Acceleration Act (P.L. 108-452) reported to the Senate by your Committee provided the impetus and tools for resolving regulatory bottlenecks in ANCSA and expediting transfers to the State of Alaska and Alaska Native Corporations.

The history of BSNC's ANCSA 14(h)(8) selection of Salmon Lake began in 1977 when BSNC filed selection number F-33819. In 1997, BLM determined that the application would be rejected because the lands were not withdrawn under Section 11(a)(1) of ANCSA. BSNC appealed this decision to the Interior Board of Land Appeals, and the decision was remanded back to BLM. By this point in time, BSNC had already spent well over $100,000 in legal fees related to the Salmon Lake appeal. Additional 14(h)(8) selections at Windy Cove (F-33833) and Imuruk Basin (F-33834) were to be similarly adjudicated and further appeals could need to be pursued resulting in additional legal and litigation costs. In short, there was an acute need for a resolution to be negotiated that would deal with the respective interests of all parties equitably.

With the passage by Congress of The Alaska Land Transfer Acceleration Act (P.L. 108-452) in 2004, the mechanisms for negotiating land selection conflicts were streamlined. The Act also provided the opportunity for Native corporations to negotiate directly with the BLM for final settlement. As a result of a pending decision on these land issues by the BLM, BSNC requested that BLM withhold the final decision for F-33819 until such time as BSNC could meet with BLM and the State to discuss the possibility of resolving the conflict.

In 2004, representatives from BSNC, BLM, and the State met to discuss the possibility of resolving the issues through a negotiated settlement. Over the course of the next three years the parties met on an annual or semi-annual basis and were eventually able to reach an agreement that served all of their interests. Through the agreement, titled the "Salmon Lake Area Land Ownership Consolidation Agreement," the State and BSNC each receive a portion of Salmon Lake. The lands BSNC would receive are contiguous with and adjacent to lands previously conveyed to the Native corporation. Likewise, the lands the State would receive are immediately adjacent to other State-selected lands. Access to State waters and other public lands has been assured through the reservation of public easements over the lands to be conveyed. All lands granted to the parties through the Agreement will be counted against their remaining entitlements. Regarding the lands BSNC would receive, the total acreage subsumed under the Agreement would be subtracted from BSNC's remaining ANCSA 14(h)(8) entitlement. For the State of Alaska the lands would be counted against the State's entitlement under 6(a) of the Alaska Statehood Act.

BSNC and its member villages are positioned to be the first region in the State to receive all of the land entitlements allocated by ANCSA. However, without the Salmon Lake Land Selection Resolution Act, the achievement would be delayed further. BSNC seeks to avoid further delays caused by litigation and/or the need for reselection of 14(h)(8) lands. This Agreement forged between the parties is not a land exchange nor does it modify or waive any section or regulatory mandate of the ANCSA.

Salmon Lake is one of the westernmost red (sockeye) salmon spawning lakes in North America. The lake is surrounded by a landscape of glacial moraines which contain evidence of use that spans countless generations. At the east of the lake is a small, ancient settlement of two or three house pits while along the shore near the center of the lake is an old village site of perhaps twenty semi-subterranean houses remains. Old burial sites are located between the Nome-Taylor road and the lakeshore, and stretched along Fox Creek, which empties into the lake on its north

shore, is a caribou drive line and stone tents rings and shooting blinds left by hunters over two centuries ago.

Today, residents of the region and BSNC shareholders visit the lake for the same reasons our ancestors did. The rich salmon resource is harvested along the Pilgrim River, just below the eastern outlet to the lake.[1] Caribou returned to the Seward Peninsula in 1996 after a hiatus of well over 100 years,[2] and the people have camps near the lake that they use to access the herd when it crosses or is near the Nome-Taylor road. Clearly this area has been and remains important to our shareholders as a place for securing subsistence resources and will continue to be an important place in the history and lives of the people of the region.

The other lands subject to this Agreement lie on the north and south shores of Imuruk Basin. Windy Cove lies at the base of the north flank of the Kigluaik Mountains. It is in this mountain range where an ancestor to our shareholders encountered a giant eagle that taught him the songs, dances, and ceremonies that have come to be known throughout the region as the Eagle-Wolf messenger feast. In the past this ceremony brought villages together to trade, feast, and perform the necessary rituals that ensured the return of the spirits of the animals they hunted to insure a balance was maintained between the human and animal worlds.

The lands called the Imuruk Basin lands in the Agreement encompass the delta of the Agiapuk River on the north shore of Imuruk Basin. This area contains old camps and village sites, some dating back 2000 years. One village on the Agiapuk River was virtually wiped out by the 1918 influenza epidemic, a tragedy that nearly halved the Native population of the region stretching from Unalakleet to Shishmaref because indigenous people living there did not have immune systems that could deal with such diseases from outside of their world.

The Imuruk Basin lands are essential resource procurement/subsistence use areas to this day. Salmon are harvested as they return to the Agiapuk River, moose are taken for winter supplies on the lands, and the area swarms with waterfowl in the spring and fall of every year. Situated between the lands of the villages of Mary's Igloo, Teller, and Brevig Mission, this land is of central importance for the continuation of our peoples' culture, history, and ongoing subsistence lifestyle.

The people of the Bering Straits region will be deeply grateful to this Subcommittee and to the Congress for ratifying the Salmon Lake Area Land Ownership and Consolidation agreement thereby sensibly resolving some of the critical remaining lands issues in our region. Thank you for this opportunity to provide the Subcommittee with our views on this important piece of legislation.

STATEMENT OF THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS, ON S. 1272

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (referred to here as "the Tribe") provides this testimony for the October 8, 2009 legislative hearing of the Subcommittee on Public Lands and Forests Hearing on S.1272 (Wyden and Merkley).

The Tribe is pleased that it is able to offer testimony in its capacity as a federally recognized Indian tribe. Exactly 25 years ago, almost to the day, on October 17, 1984, through the enactment of Public Law 98-482, the United States Congress took definitive action to restore the Tribe to its rightful place as a sovereign government. By doing so, Congress repudiated the "termination era" that reached its peak in the 1950's and that resulted in the severing of the federal government's political relationship with our Tribe and dozens of other Indian tribal governments. Public Law 98-482 (1984) restored the Tribe's government-to-government relationship with the United States.

In 1984 there was also an effort to secure a federal wilderness protection for this area. Despite tireless efforts, this proposal was not included final version of the Oregon Wilderness Act of 1984, Public Law 98-328 (1984). The case for such protection has grown only more compelling since then. Accordingly, the Tribe supports the efforts of Oregon's Congressional delegation to provide statutory wilderness designation through S. 1272 and its companion bill in the House, H.R. 2888. This legislation will accord these forest lands with the highest level of protection available under federal law. But we also take this opportunity to ask for consideration and

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[1] BSNC has worked cooperatively for years with Alaska Department of Fish and Game and Norton Sound Economic Development Corporation to allow access across BSNC lands to the east of the lake for the purposes of salmon studies and enhancement programs in the Pilgrim River/Salmon Lake drainage.

[2] The Seward Peninsula caribou herd disappeared between 1850 and 1970, causing a significant shift in land use and settlement for the Native residents of region.

fairness in addressing an injustice of error or omission that has deprived our Tribe of any portion of our ancestral forest for more than 150 years.

The Tribe certainly shares the widely-held sentiment that the Wasson Creek and Franklin Creek watershed area satisfies the applicable Wilderness Act requirements and standards. Most notably, these lands provide outstanding opportunities for solitude and primitive and unconfined forms of recreation. The Tribe has an innate connection to these lands because this is the forest that substantiated the Tribe's ancestors for thousands of years before European colonists arrived. The proposed Devils Staircase Wilderness Area is in the Ancestral Territory of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, in particular the Lower Umpqua Tribe. Lower Umpqua Tribal Elders recall, as children, hearing from their Elders of hunting parties and camps in the mountains between the Umpqua and Siuslaw Rivers. Both Golden Ridge—which is in the proposed wilderness area—and the ridge to the southeast included hunting, resource gathering, and spiritual sites associated with the Lower Umpqua village of Ts'alila located along the river near Scottsburg.

For these reasons, the Tribe's greatest aspiration today is to secure a forest land base that reflects our unique inter-Tribal union of three distinct, but now confederated tribes. It would be a disservice to our Tribal ancestors if we falter in our effort to reclaim a small fraction of our Tribal heritage and patrimony. We have worked exhaustively to develop our forest restoration proposals within the complex and sometimes acrimonious northwest forest policy arena.

Our message is as simple as is our goal. We ask only that the various interests—private, public, governmental, and non-governmental participants in this process—commit to work with the Tribe in good faith to help us achieve our goal of regaining a meaningful and manageable Tribal forest land base. We trust that each of the entities that are working to establish the Devil's Staircase Wilderness will recognize that the righteousness our forest restoration cause is incontestable. And all we ask from the other participants in this process is fairness. For our part, the Tribe commits to continue to work—as we have for the past decade and more—as diligently as possible with the various interests and stakeholders to address any questions and resolve any issues that may arise in crafting a Tribal forest restoration proposal. It is quite possible that our Tribal forest restoration objective can be accomplished on a land base that is smaller than the amount of land covered by this legislation, possibly even an amount of land that is equal to half amount of the amount of land covered by the proposed wilderness designation—and obviously involving different acreage entirely.

Since re-gaining recognition in 1984, the Tribe has worked persistently to secure legislation to restore a small fraction of our ancestral lands. For the Congress to designate some of our ancestral lands as wilderness, as in S. 1272 and its companion bill in the House, H.R. 2888, is not inherently inconsistent with the Tribal vision for this area as described in the various iterations of our Tribal forest restoration proposal. Indeed, some of our Tribal forest restoration proposals would have imposed wilderness-like restrictions on some of the very same lands that are covered by this legislation. For example, in these proposals the Tribe proposed to thin stunted stands to accelerate the development of late-successional forests, then leave these stands to nature's management in perpetuity with the exception of the gathering of traditional plant materials for cultural uses. One recent iteration of the Tribe's proposal from June 2006 included approximately 6,000 acres of the proposed wilderness area (centered around Otter Creek) now managed by the U.S. Forest Service.

The Tribe has no interest in impeding the effort to secure wilderness status for some of our ancestral homelands as proposed by S. 1272 and its companion bill in the House, H.R. 2888. While once seemingly endless, however, federal forest land is increasingly becoming a finite and scarce resource. Designation of any federal land as wilderness in the Ancestral Territory of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians effectively removes that acreage from the dwindling amount of federal lands that are available for restoration to our Tribe. The

Tribe is mindful that wilderness designation via the proposed legislation could heighten the competition over sometimes-conflicting resource priorities on the remaining lands retained by the federal government, thereby making our future task even more difficult after this bill's enactment.

In the recent past, the Congress has ensured that land restoration efforts of other tribes are not placed at such a disadvantage by legislation establishing national parks or monuments or similar designations. For example, the Timbisha Shoshone Tribe faced this concern when Congress enacted the California Desert Protection Act, Public law 100-433. Congress address this by including a provision in that law, Section 705, that directed the Secretary of Interior to identify an area within this relatively small tribe's aboriginal homeland that would be suitable for a reservation.

Congress subsequently transferred approximately 8,000 acres of federal land to the Timbisha Shoshone Tribe and provided for the additional acquisition of more than 2,000 acres of fee (privately owned) lands to this newly-established reservation. Timbisha Shoshone Homeland Act, Public Law 106-423. Timbisha Shoshone was recognized at about the same time that our Tribe was re-recognized. As the legislative history for the Homeland Act notes: "Authorities available [to federal land management agencies] . . . under existing law, such as to grant special use permits or enter into a memorandum of understanding, cannot provide the permanence, security, and economic opportunity that a trust land base affords a Tribe." This is exactly why our Tribal forest restoration effort has included two components. First, as described above, a suitable forest land base that reflects our inter-Tribal union. And secondly, trust status protection for the relatively small but culturally significant sites located on federal lands, most notably these are the following Bureau of Land Management tracts: Takimiya (Umpqua Eden) (128 acres) and the Coos Head tract (60 acres).

In closing, the Tribe greatly appreciates the opportunity to participate in this discussion of how to protect the Devil's Staircase in our government-to-government capacity. The injustice of error or omission that has deprived our Tribe of any portion of our forest for more than 150 years must be remedied. We simply want to ensure that the next seven generations of our membership will have the opportunity to achieve the permanence, security, and opportunity afforded by creation of a Tribal forest and the protection of our special sites. The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians is committed to achieving this vision in a way that does not impede the efforts of others to assure that the next seven generations of Americans, of both Native and non-Native ancestry, will be able to appreciate the proposed Devil's Staircase Wilderness, as we and our Ancestors have for thousands of years.

Thank you.

STATEMENT OF THE ALASKA PROFESSIONAL HUNTERS ASSOCIATION, ON S. 881

Mr. Chairman: The Alaska Professional Hunters Association (APHA) submits the following statement regarding S. 881, the "Southeast Alaska Native Land Entitlement Finalization Act." APHA supports amending the legislation to ensure that access for hunting and current hunting guiding permits are not encumbered.

The bill would enable Sealaska Corporation to select and take title to substantial additional acreage in Southeast Alaska, now held as public lands as part of the Tongass National Forest, for private economic development and cultural site preservation. It would also authorize the Corporation to acquire these now public lands outside of the 10 village withdrawal land selection areas established nearly three decades ago pursuant to the Alaska Native Claims Settlement Act. The measure does not prescribe precisely which lands may be transferred from public to private ownership nor does it make clear the aggregate amount of acreage to be transferred.

Throughout Tongass many APHA members hold special use permits to provide guided hunting and other recreational services to the public on these public lands. If guides are forced off of lands converted to private ownership, there are insufficient alternative lands available to accommodate these long established operations. Many existing guides operate in areas providing high quality hunting, and substitute areas of comparable quality simply do not exist to handle displaced guides. APHA is strongly opposed to any legislation which would force guides out of their permitted areas.

APHA is persuaded, however, that the bill can be amended to treat special use permits as valid existing rights that must be honored by Sealaska Corporation or its successors or assigns. We appreciate that the language in section 5(d) is a good faith effort to address this concern. Unfortunately, the language does not provide sufficient protection for existing permittees. It would protect existing permits for only the remaining term of that permit and provides no assurance that such permits can, or will be, renewed or extended. Since most of these permits carry only five or 10 year terms, the absence of any guarantees regarding extension or renewal ensures that any impacted guides will be out of business in a relatively short period of time. That is unacceptable.

Additionally, APHA seeks language that Sealaska could not authorize new or additional guide operations on lands already subject to an existing operation. The effects of additional pressure in an area could destroy the efficacy of the present guide service. Consequently, the bill needs to include language ensuring that lands transferred to Sealaska's private ownership include limitations on the ability of the Corporation to impose fees, restrict access or otherwise regulate the operator/permittee.

Such language would genuinely ensure the protection of existing valid existing rights for more than a short time period.

APHA is prepared to work with the bill's sponsors and the Committee to craft appropriate protective provisions for existing guide operations that might be impacted by the land transfers authorized by this bill. Absent such provisions, APHA would be compelled to oppose the measure. Thank you.

STATEMENT OF THE COALITION OF NATIONAL PARK SERVICE RETIREES, ON S. 881

The Coalition of National Park Service Retirees (CNPSR) is a non-profit National Park advocacy organization comprised of nearly 750 former National Park Service employees who, collectively, have served almost 20,000 years within the agency in every capacity and at all grades, including former Directors and Deputy Directors, former regional Directors or Deputy Regional Directors, former Associate or Assistant Directors at the national or regional office level, former Division Chiefs at the national or regional office level, and former Superintendents or Assistant Superintendents. In our personal lives, we come from the broad spectrum of political affiliations. As park managers, rangers and employees in the National Park Service's many disciplines, however, we devoted our professional lives to a common goal—maintaining and protecting our national parks for the benefit of all Americans, both living and those yet to be born. We remain committed to that goal.

Our organization is pleased to provide testimony for the written record on S.881, Southeast Alaska Native Land Entitlement Finalization Act to be heard before the Subcommittee on Public Lands & Forests of the United States Senate. Our primary interest lies in one narrow segment of the bill that speaks to Glacier Bay National Park and Preserve. In general CNPSR supports the language found in Section 3(b)(2)(B)(ii) and Section 4(c)(1) which clearly articulates that Sealaska shall not select or receive any conveyance of land located within any conservation system unit under this Act.

We do not support the language or intent in Section 2(a)(17)(E) & Section 3(a)(2)(c) giving specific direction for the development of a special cooperative agreement between Sealaska and the National Park Service. We do not agree that more direction is required than what already exists in law and existing agreements and do not see any enhancement to the existing protection provided by the National Park Service in their mission to protect sacred, cultural, and traditional and historic sites within the park. We remain opposed to all language in this bill that directs the National Park Service to enter into a cooperative agreement with Sealaska Corporation because of its obvious redundancy and potential for conflict with the existing Memorandum of Understanding with the Hoonah Indian Association, the locally federally recognized tribe, their traditional territory encompassing the vast majority of lands within Glacier Bay. The relationship with the Hoonah Indian Association, predicated on an existing agreement has been very successful and does not need to be complemented by a second agreement. We would note the plethora of already existing federal legislation which requires consultation and cooperation to facilitate traditional cultural activities of federally recognized tribal governments. We would suggest that another agreement might even work at cross purposes to existing law and agreements creating potential conflict and confusion.

The areas of concern articulated in the bill that a cooperative agreement with Sealaska would supposedly solve have long been appropriately and successfully managed with the Hoonah elders and tribal members including cooperative research partnerships, presentation of interpretive themes, and integration of traditional Tlingit knowledge into park planning and management focus since at least 1995. The success with the Hoonah Indian Association has led to other similar successful endeavors with other Hoonah entities, including Hoonah City Schools and the Hoonah Heritage Foundation. Planning is currently underway for the development of a "tribal house" at Bartlett Cove in Glacier Bay involving all these entities including the Sealaska Heritage Institute who has also been invited. In short, it is unnecessary to compel any further cooperative agreement to encourage partnership between the entities than what already successfully exists.

Proposed language in the bill (section 3(c)(2)(B)(ii)) regards to this agreement seems to go further than just cooperating on cultural aspects giving a broader authority to Sealaska to oversee all "the resources within the Park" and certainly represents an overly aggressive extension of authority of Sealaska within Glacier Bay. Indeed, in section 3(c)(2)(B) there is the clear authority for the "establishment of culturally relevant sites" implying that development on these cultural, sacred, traditional and historic sites would be allowed in obvious contradiction to existing law

and the purposes for which the park was established. CNPSR cannot support these proposals in any manner.

In addition, we are very concerned about the "technical correction" found in Section 5(e)(2) that exempts Sealaska from oversight under the National Historic Preservation Act and amends the Act to say that all native corporation land is now tribal land with regard to NHPA. This proposal is far from a "technical correction" and it is not limited to just lands of interest to Sealaska. This proposal for all ANCSA corporate lands across Alaska would take away the protections provided for by the state of Alaska and its State Historic Preservation Officer (SHPO). Establishing the opportunity for a for-profit corporation to assume responsibility for protecting historic and cultural sites when that very same corporation may wish to develop a site for profit motives creates creating an inherent conflict of interest and the potential loss of historic or cultural sites in favor of the profit motive by the very same corporation. CNPSR is concerned that this significant change could impact millions of acres of corporate held lands within or adjacent to the boundaries of existing national park units in Alaska where continued involvement and oversight of the SHPO is essential to protecting park resources.

As author of this written testimony on behalf of the Coalition of National Park Retirees it should be noted that I served as the National Park Service Regional Director for Alaska from 2000 to 2003. Further, there are at least four previous superintendents of Glacier Bay National Park and Preserve that are members of this organization whom are obviously very familiar with the implications this Senate Bill might have on Glacier Bay and share our concerns.

We appreciate the opportunity to comment on S. 881 and hope our concerns will be noted.

STATEMENT OF JIM STRATTON, ALASKA REGIONAL DIRECTOR—NATIONAL PARKS CONSERVATION ASSOCIATION, ON S. 881

The National Parks Conservation Association (NPCA) works to protect, preserve, and enhance America's national parks for present and future generations. On behalf of NPCA's 325,000 members, and especially the national parks in Alaska, we appreciate the opportunity to submit these comments for the record.

As an organization focused solely on national park lands, NPCA takes no position on the vast majority of the proposed language found in S.881. Our interest is that small slice of the bill that speaks to Glacier Bay—principally Section 2 (a)(17)(E), Section 3 (a)(2) and (b)(2)(B)(ii) and (c), Section 4(c)(1) and Section 5(e)(2).

NPCA supports the language found in Section 3(b)(2)(B)(ii) and Section 4(c)(1) which makes it very clear that "Sealaska shall not select or receive under this Act any conveyance of land .located within any conservation system unit." This bill is very clear that conveyance of lands within Glacier Bay National Park & Preserve to Sealaska is not considered or anticipated and we find this language both satisfactory and comforting.

It is the intent for a cooperative agreement found in Section 2 (a)(17)(E) and the specific direction for such an agreement between Sealaska and the National Park Service found in Section 3 (a)(2) and (c) that causes us heartache. In addition, we are very concerned about the "technical correction" found in Section 5(e)(2) that exempts Sealaska from oversight under the National Historic Preservation Act.

The Organic Act of 1916 charges the National Park Service with protecting in perpetuity America's natural and cultural treasures. There is no higher level of protection available for natural or cultural resources found in the United States than designation as a unit of the national park system. Our national treasures are held in trust by the Park Service for all Americans and are both preserved and interpreted for present and future generations. In reading the proposed legislation, we fail to see how protection of Glacier Bay's identified sacred, cultural, traditional and historic sites are enhanced by the directed Cooperative Agreement found in Section 3(a)(2).

We have expressed our concern about the cooperative agreement language on numerous occasions to Sealaska and to both Senators Murkowski and Begich and appreciate the opportunity to share our concerns with other members of the U. S. Senate at this hearing. NPCA is opposed to all language in this bill that directs the National Park Service to enter into a cooperative agreement with Sealaska Corporation, or any other Village or Urban Corporation. This proposed directive is redundant because the Park Service already has an existing cooperative agreement which establishes a solid working partnership for the park's traditional and cultural resources with the Hoonah Indian Association, the local federally recognized tribe,

whose traditional territory includes the vast majority of the lands now part of Glacier Bay National Park.

Furthermore, the Park Service is charged to cooperate with and facilitate the traditional cultural activities of federally recognized tribal governments under the provisions of the Native American Graves Protection and Repatriation Act of 1990, the Alaska National Interest Lands Conservation Act of 1980, the Archaeological Resource Protection Act of 1980, the American Indian Religious Freedom Act of 1978, the Alaska Native Claims Settlement Act of 1971, the President's Federal Indian Policy signed on January 24, 1983, Executive Order 13007 (Indian Sacred Sites) and Executive Order 13175 (Consultation and Coordination with Native American Tribal Governments).

In addition to being redundant, any additional agreements directed by Congress between the Park Service and Regional or Village Corporations organized under the Alaska Native Claims Settlement Act, we fear, would lead to conflict and confusion. The Park Service already has a solid working relationship, formalized in a Government to Government relation, with the Hoonah Indian Association in a Memorandum of Understanding initially signed in 1995 and renewed in both 2000 and 2005.

Specifically, the National Park Service agrees to recognize the contributions of Hoonah elders and tribal members to the history, culture and ecology of Glacier Bay and sets forth the relationship for cooperative activities and partnerships for research, education, interpretation and integration of traditional Tlingit knowledge into the park's planning, management and interpretive regimes. These are the very same areas of concern used to justify the need for an additional cooperative management agreement with Sealaska. In reality, they are already being addressed and have formally been so since 1995.

Building on the partnership with the Hoonah Indian Association, the Park Service has broadened its relationships with other entities in Hoonah to include the Huna Heritage Foundation (HTC) and Hoonah City Schools (HCS). Together they have created multiple opportunities to annually bring tribal youth and elders together at cultural sites in the park for deep lessons in clan and tribal history. Currently, this partnership is developing plans to construct a traditional tribal house at Bartlett Cove that will be the centerpiece of a cultural preservation program. In addition to being the cornerstone of the park's cultural interpretation program, the tribal house will also be a facility where workshops will be held to teach a variety of Tlingit cultural traditions, such as carving, basket weaving, language, song, dance and more. The partnership has extended an invitation to Sealaska Heritage Institute to become a partner in development of this facility and program. We don't understand how adding additional entities to this already existing formally recognized relationship improves the current situation and we remain concerned that it could create conflict between competing interests.

We are also concerned that the language of the bill could be interpreted to elevate Sealaska into a full cooperative management partnership with NPS on ALL park management issues. Language in Section 3 (c)(2)(B)(ii) says that the agreement shall "ensure that the resources within the Park are protected and enhanced by cooperative activities and partnerships among federally recognized Indian Tribes, Village Corporations and Urban Corporations, Sealaska, and the National Park Service." Our interpretation is that it is NOT limited to just the cultural sites suggested in the bill's findings in Section 2 (a)(17)(E). The language says "the resources within the Park," which is a broader authority than merely the resources associated with indentified cultural sites. This is a significant shift in the role of any cooperating partner with the National Park Service and one that NPCA is opposed to.

Furthermore, we are concerned that the specific directive for a cooperative agreement found in Section 3(c)(2)(B) that provides for the "establishment of culturally relevant visitor sites" could be interpreted as allowing development at these cultural, sacred, traditional and historic sites—an activity we feel is contrary to the purpose for which the park was established.

Our final park-related concern with this bill is that the National Historic Preservation Act (NHPA) is amended to say that all native corporation land is now tribal land with regard to NHPA. That is NOT a technical correction and it is not limited to just lands of interest to Sealaska. This is a change for all ANCSA corporate lands across Alaska and it takes away the protections provided for by the state of Alaska and its State Historic Preservation Officer (SHPO). The scenario we fear is that a for-profit corporation would assume responsibility for protecting historic and cultural sites when that very same site is impeding a development opportunity of the very same corporation. With this change to the NHPA, Native corporations operating logging and mining operations on their land, for example, would now make their own determinations about how best to protect cultural sites where logging and

mining is occurring. This is classic fox guarding the henhouse and we don't find that very comforting. NPCA is concerned about this significant change because there are millions of acres of corporate held lands within the boundaries of existing national park units in Alaska and the continued involvement of the SHPO in all proposed developments on those lands is necessary to protect the values of adjacent park resources.

In summary, we feel the existing MOU between the Park Service and the Hoonah Indian Association already addresses the needs and concerns set out in the Sealaska Bill for "Sacred, Cultural, Traditional and Historic Sites" that may be found in Glacier Bay National Park & Preserve. An additional cooperative agreement would be redundant and could confuse the situation should the Park Service find itself pulled between contradictory approaches of two different Native Alaska entities.

Should this bill move forward, we would request that those sections of S.881 that speak to Glacier Bay National Park & Preserve and the technical correction relating to the SHPO be dropped from the bill's language.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA, ON S. 940

Mr. Chairman, thank you for allowing a hearing on this important legislation.

This bill would direct the Bureau of Land Management to convey approximately 2,400 acres of land that they currently manage to the Nevada System of Higher Education. This transfer will allow for development of three new higher education campuses: one for the College of Southern Nevada; one for the University of Nevada, Las Vegas; and one for Great Basin College.

Currently, the Nevada System of Higher Education campuses in southern Nevada comprise just 1,200 acres. This is one of the smallest footprints of any major higher education system in the western United States. In fact, the University of Nevada, Las Vegas has less than half the land base of comparably enrolled western universities such as the University of Utah, the University of Colorado, or the University of California at San Diego. The College of Southern Nevada is similarly short on space, having been already near capacity at each of its three campuses before a 15 percent spike in enrollment over the last 3 years. Further, the small branch campus of Great Basin College in Pahrump, which currently holds its classes in high school classrooms at night, has seen a phenomenal 160 percent increase in full-time enrollment this fall. Each of these institutions of higher education has a pressing need for space in order to continue to provide the high quality of education that Nevadans and all Americans expect and deserve.

My legislation provides for conveyance of approximately 40 acres for the College of Southern Nevada and 285 acres for Great Basin College. 2,085 acres would also be conveyed for the University of Nevada, Las Vegas after remediation of a World War II small arms range on portions of the land. This future north campus for the University of Nevada, Las Vegas abuts Nellis Air Force Base, and the legislation contains a provision that requires a binding interlocal agreement between the Nevada System of Higher Education and the base prior to conveyance. This agreement will ensure that both the mission of the base and our national security interests are protected.

This legislation has the support of the entire Nevada congressional delegation and has been welcomed by area leaders. The Nevada System of Higher Education has worked closely with city and county officials to plan the development of world-class facilities in their communities, and with the Air Force to address the needs of Nellis Air Force Base. It is important to note that each of the three parcels designated for transfer has been designated by the Bureau of Land Management for disposal because they are surrounded by development and are difficult to manage. Additionally, the key language in this legislation regarding the activities allowed on these school lands was unanimously approved by this committee in 2002.

One of our great responsibilities as a Congress and as a people is to provide our citizens with the opportunity to take part in the American dream. And we all know that education is the key to that dream. By working together to make these new campuses a reality we will turn these lands into the literal foundation of opportunity for generations to come.

I greatly appreciate the distinguished Chairman and Ranking Member making time for this hearing and I look forward to working with the Committee to advance this bill.

STATEMENT OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON S. 940

The Nevada System of Higher Education (NSHE) would like to thank Senator Harry Reid and the Nevada delegation and their staffs for their work on this legislation. We also appreciate the subcommittee for scheduling this hearing and for the opportunity to introduce a statement into the record.

The Southern Nevada Higher Education Land Act of 2009 is of great importance to the Nevada System of Higher Education. Our university and college campuses in southern Nevada currently serve 70,000 students, and that number is expected to grow by 21% over the next ten years. When compared to other western colleges and universities, campuses in Southern Nevada have less land to meet the needs of our students. We need additional space to meet our current needs, as well as the demand future growth will place on our institutions.

The campuses affected by this legislation, the University of Nevada Las Vegas (UNLV), the College of Southern Nevada (CSN) and Great Basin College (GBC), under the direction of the Nevada Board of Regents, have worked diligently with the respective local governments to identify areas that will be of most benefit to the institutions and the communities they serve. The local governments of North Las Vegas, Las Vegas, and Pahrump and Nye County have enthusiastically supported this legislation and the opportunity to partner with the Nevada System of Higher Education. These partnerships and the legislation before you today will allow for smart growth in mainly urban areas that will enhance the educational experience for students and improve the quality of life for residents of the local communities.

As UNLV compares its current land holdings with institutions of similar size, there are huge discrepancies, most of which are related to the age of those other institutions and their ability, many decades ago, to secure land in order to support the developing needs of higher education in their communities. The ability of these research institutions to have access to such land has helped them, in many areas in the United States, to become vibrant centers of economic development activities, helping their communities, the state and even the region.

The value of this land conveyance will benefit all of higher education in Southern Nevada, and will allow the state's largest university, UNLV, to further support graduate education and research needs. It is also important to note that the use of this land has been closely planned with two other main partners: the City of North Las Vegas (CNLV) and Nellis Air Force Base (NAFB). We currently have Board of Regents approved interlocal agreements in place with both these partners that define our cooperation and use of this land, should the final transfer become law.

As unemployment in Las Vegas has reached more than 13 percent and the Las Vegas valley has continued to lead the nation in foreclosures, enrollment at the College of Southern Nevada (CSN) has soared and expanded by more than 15 percent over the past three years. CSN is the largest and most ethnically diverse institution of higher education in Nevada and charges the most affordable tuition in Southern Nevada. CSN serves approximately 43,000 students this fall semester. However, at about 40 square-feet per student, CSN has some of the most cramped college campuses in the United States.

Furthermore, the area surrounding the property has experienced explosive growth. Over the past two decades, this area has seen the addition of 70,000 homes and hundreds of thousands of residents. Currently, these families have no access to a Nevada higher education facility within a half-hour commute.

The college specializes in providing job training and general education credits that accommodate the scheduling needs of a diverse community, operating on a 24-hour day. CSN plans to move forward with the NW campus as a traditional community college campus focusing on the provision of educational learning space supplemented by the necessary day-to-day services required by the students while they are on campus.

CSN and the City of Las Vegas have entered into an agreement to establish innovative design standards for the development of the CSN campus, roads, and infrastructure improvements on the Property. Expanding services to this area of Southern Nevada is a natural fit for CSN's mission as an open-access institution that is responsive to the community's ever-changing needs.

Likewise, the opportunity for Great Basin College (GBC) to expand in Pahrump and Nye County will provide a much needed service to residents of this area. The population of Nye County is approximately 40,000 and growing. It is the only community of that size in Nevada that is not served by a community college with a permanent, dedicated campus. Economic and workforce development in Pahrump and Nye County is essential to local residents and those residing in southern Nevada. With a campus located on this site, the college's strategic master plan for Pahrump and Nye County can move forward. Education and training programs in green tech-

nology, renewable energy, health, education, and business are already in college offerings or being planned for the near future.

This legislation provides the means for Great Basin College to provide an opportunity for all Nevadans to participate and succeed in higher education; to provide academic and technical programs that address the unique education needs of a highly diverse and non-traditional population; and build on the quality of life of all Nevadans by advancing and enriching lives in Nye County.

The transfer of the three parcels of land as provided by this legislation will benefit the long term needs of public higher education in southern Nevada and represents a once in a life-time opportunity. In many ways this is a modern day version of the land grant act that will greatly help support public higher education institutions in Southern Nevada. The Nevada System of Education asks that you support this legislation and give us the opportunity to provide the highest quality of education for our students now and long into the future.

STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA, ON S. 940

I want to thank Senator Reid for his work on this important legislation that will launch a new chapter in higher education expansion in southern Nevada.

With more than 85% of our great state's land under federal control, we have long relied on federal legislation to allow for growth, including the beginning of our system of higher education. It was the federal Morrill Land-Grant Legislation that brought a new era in our system of higher education with the much lauded Desert Research Institute and medical school.

Today, we again turn to federal legislation to convey land from the Bureau of Land Management to our growing universities. The Southern Nevada Higher Education Lands Act allows for federal land to be transferred to the University of Nevada, Las Vegas (UNLV); the College of Southern Nevada (CSN); and Great Basin College.

These are all worthy institutes of learning that, with this additional la'nd, will be able to meet the needs of Nevada students for many years to come.

UNLV, also a land-grant university, is looking to expand its campus near Nellis Air Force Base. While there are always concerns about encroaching on the space and mission of Nellis, I am confident that all sides will cooperate and work together to ensure the safety and success of all neighbors.

CSN is the fourth largest two-year college of its kind in the United States and Nevada's largest institution of higher learning. With three main campuses and eleven academic centers, the school continues to grow in facilities and reach, and we are fortunate that with this legislation, even more southern Nevadans will benefit.

Great Basin College in Elko, Nevada, wants to expand to Pahrump to impact the lives of even more students-a goal that promotes education for all of southern Nevada, including in more rural areas.

I am pleased to cosponsor this legislation and voice my support for the expansion of southern Nevada higher education. The investment we make in education will provide great dividends in the future.

STATEMENT OF MIKE CASABONNE, PRESIDENT, NEW MEXICO FEDERAL LANDS COUNCIL; JIM COOPER, PRESIDENT, NEW MEXICO WOOL GROWERS, INC.; AND ALISA OGDEN, PRESIDENT, NEW MEXICO CATTLE GROWERS' ASSOCIATION, ON S. 1689

My name is Mike Casabonne and I'm President of the New Mexico Federal Lands Council. The New Mexico Federal Lands Council represents thousands of federal and state trust lands grazing operations.

I will confine my comments today to livestock grazing in wilderness, grazing language in S. 1689 with respect to National Conservation Areas, the need for a wilderness "light" designation and a request for local field hearings.

LIVESTOCK GRAZING IN WILDERNESS

The problems with livestock grazing in wilderness areas have been well documented, leading to Congress issuing the Grazing Guidelines (House report No. 101-405). Our concern is that these guidelines were written when most wilderness areas existed in the high country. The lands affected by this legislation occur in a desert ecosystem where the resource and ranching needs are far different. For instance, the "occasional use" of motorized vehicles may be sufficient for high country, seasonally grazed allotments. It is not sufficient for desert, year around grazed allotments where pipelines and other water facilities must be checked on a regular basis. We

suggest that Congress or an independent entity conduct a thorough review of the guidelines applicability to desert allotments and make recommendations for any warranted changes. We further request Congress refrain from designating any desert ecosystems where livestock grazing occurs as wilderness until such time as the review is completed and revisions considered.

LIVESTOCK GRAZING IN NATIONAL CONSERVATION AREAS

The grazing language in Section 4 of S.1689 places the grazing allotment owner at a distinct disadvantage. The consistency language puts in jeopardy existing grazing practices and will place severe limitations on any future range improvements or other rangeland management practices. We strongly recommend the consistency language be dropped and that livestock grazing be managed according to FLPMA and other applicable laws. We have reviewed the proposed language submitted by People For Preserving Our Western Heritage as part of their testimony and endorse its contents.

In addition we have some questions on the "where established" language in Section 4. Is this applied on an allotment by allotment basis, on an acreage basis or some other criteria? What impact does the "where established" language have on permitted numbers of livestock? Can permitted numbers be increased in a National Conservation Area under this language? In other words, we are seeking a clear enunciation of Congressional intent with respect to the "where established" language and we hope the Committee will provide that.

A DESIGNATION OTHER THAN WILDERNESS

The land use pattern in Doña Ana County, a valley floor of private lands surrounded by various types of Federal land, is not unique to the west. Population growth combined with public pressure to retain privately held farmland and other open spaces and the public desire for additional recreational opportunities will continue to impact Federal land. Clearly a new land use designation is needed which will protect certain lands from development, but still allow for public access and enjoyment. Some have called this wilderness "light", others wilderness "without the big 'W' ". The Rangeland Preservation Area as proposed by People For Preserving Our Western Heritage meets this criteria and we believe is appropriate for the lands in Doña Ana County under consideration. This or some other similar designation should be considered by the Committee for S. 1689 and for other legislation which may impact such land use patterns in our western communities. The time has come for Congress to step forward with a new land use designation that responds to both national concerns for protecting Federal lands and local concerns for development, recreation and traditional uses.

FIELD HEARING

The issues we've raised, combined with such other issues as boundary adjustments, range improvements, homeland security, energy corridors and other right of ways, flood control projects, Renew New Mexico projects, and so on necessitate a field hearing to fully air and adequately address the complex issues involved. Allowing two witnesses five minutes each to testify two thousand miles away from the land and the people involved is simply not a reasonable or appropriate legislative approach. We strongly recommend a field hearing be held in Doña Ana County on S. 1689

Thank you for the opportunity to present this written testimony.

STATEMENT OF KEN MIYAGISHIMA, MAYOR OF LAS CRUCES, LETICIA BENAVIDEZ, CHAIRWOMAN, DOÑA ANA COUNTY COMMISSION, MICHAEL CADENA, MAYOR OF MESILLA, ON S. 1689

There are few times in a person's life were one is able to be a part of something truly historic. Today we have such a moment for our communities in Doña Ana County. On September 17th, Senators Bingaman and Udall introduced legislation called the Organ Mountains-Desert Peaks Wilderness Act in Congress to forever protect some of the most important natural areas in our county—including our iconic Organ Mountains—as new wilderness areas. The time has come to take the next step in securing this natural legacy for our region's future generations.

For years, Las Crucens and residents of Doña Ana County have sought balance between rapid growth and protecting some of the beautiful open space and mountains that give us our identity. Citizens have wondered if the quality of life that brought them here or kept them here was going to stay that way or if instead, we

would we go the way of some other high growth communities and lose these important natural resources to sprawl and development.

Thanks to the visionary leadership of Senators Bingaman and Udall, we are closer to an answer. The Organ Mountains-Desert Peaks Wilderness Act will protect many of Doña Ana County's most beloved natural treasures, including much of the Organ Mountains, the Robledos, the Sierra Las Uvas Mountains, the West and East Potrillos, Broad Canyon, and Mount Riley as new federal Wilderness Areas. Some of these lands were given interim protection almost 30 years ago, but lacking wilderness designation, remain at risk until Congress gives them this "gold standard" of protection.

This important conservation legislation will also protect nearly 100,000 acres buffering the front of the Organ Mountains as a National Conservation Area, and would include part of the Doña Ana Mountains. The legislation will allow a full range of recreational and traditional activities to continue, including hunting, hiking and ranching, while preventing further development in this area.

Protecting these vital natural areas will boost our economies, as visitors come to enjoy the beauty of the landscapes and employers can attract workers looking for the high quality of life our open spaces contribute to. A 2006 study of the economies of many western United States cities by the non-profit Sonoran Institute found that communities with nearby protected lands had faster than average personal income growth. When good employers and high-tech entrepreneurs can locate anywhere they want, areas with high quality protected public lands are an added incentive.Wilderness designation of our area's natural gems will help our communities enjoy this competitive advantage and long lasting economic benefits.

Wilderness and National Conservation Areas are considered the "crown jewels" of America's protected public lands, and designation here could help attract federal dollars to showcase them. Simply put, Wilderness will provide a huge long term economic benefit to Doña Ana County and its communities.

Today we have the chance to choose a direction that will have significant impacts for our region and our way of life. At a time when we continue to lose 6,000 acres of open space each day in America—2 million acres a year, we believe Senators Bingaman and Udall have taken a laudable step toward ensuring that more of what makes New Mexico the land of enchantment will be here for us and our grandchildren. We encourage Congress to take up the legislation and pass it quickly. It will continue to give back for generations to come.

STATEMENT OF SANFORD SCHEMNITZ, CHAIRMAN OF THE SOUTHWEST CONSOLIDATED SPORTSMEN; JOHN MOEN, PRESIDENT OF THE SOUTHWEST NM CHAPTER OF QUAIL UNLIMITED; NOEL COOLEY, PAST PRESIDENT OF THE DOÑA ANA COUNTY ASSOCIATED SPORTSMEN; AND JOHN CORNELL, NEW MEXICO WILDLIFE FEDERATION

Our canyons, grasslands, and mountains are tough, rugged, and spectacular. It takes time to get to know them-hours spent afield watching quail, deer, or just a beautiful landscape view. As sportsmen, we've spent many years appreciating and utilizing both the beauty and the bounty of local lands like the Organ Mountains, Broad Canyon, and the West Potrillo Mountains.

Yet while these mountains and grasslands surrounding our ever-enlarging city are rugged, they are also very fragile. Those of us that have spent years—indeed, decades—exploring the vast expanses of our open spaces surrounding the sister cities of Las Cruces and El Paso, are very much aware of that fragility. Many different users, including sportsmen, have appreciated the bounty that exists here. We have also realized that the well-being of these same areas is not guaranteed.

As recently as the 1980s, there were no houses, other than a couple of ranches, between A-Mountain and the Organs. So much has changed in the last three decades. The same fate has occurred in the valley between Las Cruces and Hatch and between Las Cruces and El Paso. Human civilization, and the stresses that it brings to other life that share this landscape, slowly creeps toward and encroaches upon them.

So four years ago, when we heard that a group of folks -including conservationists—wanted to designate wilderness in these local areas to ensure they would stay as they were, we were interested, but also skeptical. Similar efforts in the 1980s and 1990s had not met with success. Some sportsmen were concerned about how the plans would be crafted and what their effects would be.

But our years afield convinced us of the urgent need to protect good quality habitat and preserve our natural lands for current and future generations.

We believed that in the fight to preserve these special places, this time would be different—largely because Senator Jeff Bingaman and his staff stepped up to the

plate. They came to our community and listened. They started out with open minds, eager to hear local ideas and opinions. With an eye for balance, many local groups collectively went to work with the Senator's staff to look for real and lasting solutions to protect our natural public lands. Land conservation is complex, and requires leadership at all levels. Senator Bingaman, through time consuming and thoughtful work found real compromise and balance. Several years of give and take and field trips out on the land produced an important milestone: a proposal to protect many of our most important lands in Doña Ana County. We are proud to have been a part of this process.

The Organ Mountains-Desert Peaks Wilderness Act, introduced by New Mexico Senators Jeff Bingaman and Tom Udall, will protect these areas and their natural habitats and resources in perpetuity-essentially "locking in" such activities as hunting, hiking, horseback riding, camping, and basic family recreation, for all time. That protection will serve the greater good of those of us that wish to enjoy these places and pass them down to our children's children. That is the key to the puzzle—finding a balance between providing opportunity for us, as citizens, to seek recreation within these areas but, at the same time, conserving them as reservoirs of clean water and air and as habitat for wildlife.

While the new bill does not include all of our suggestions, nor one hundred percent of any other group's requests, we believe it is balanced. Senator Bingaman, Senator Udall and their staffs did tremendous work in reaching out to the many varied interests and stakeholders. We feel fortunate to have had their leadership at the helm steering this historic legislation and making this long sought after goal of protection possible.

As sportsmen, we join with many other members of the larger community to encourage the New Mexico delegation to get behind this important conservation bill. Move the Organ Mountains-Desert Peaks Wilderness Act through Congress and to the President's desk with good speed.

JOINT STATEMENT OF RICHARD E. HAYS AND STEPHEN L. WILMETH, ON S. 1689

For hundreds of years the desert of what is now Arizona has been the route of goods coming north from Mexico. The flow of merchandise was created by demand from citizens and settlers of del Norte, the expanse of territory generally north of the 54th Parallel. Over time, the goods became as often illegal as they were legal. Today, the goods passing through the rural, isolated expanse of sand, rock, and heat are more often than not, illegal. The circumstances and conditions surrounding the flow are dangerous, and the consequences of stemming the tide must be a national priority.

Since 911, the emphasis of border security has become a national debate. In fact, recent polls in Arizona indicate that 51% of residents believe that border security is more important than the national health care debate. In a margin of 65% to 20%, those same residents believe enforcing border security is more important than dealing with the legalization of aliens already in the United States. As distance from the border increases, these same questions don't stimulate the same responses. The phenomenon of changing priorities as the distance from ground zero increases is clearly in play on the Mexican border.

Through time, the economics and the conditions of illegal entry have resulted in the evolution of dominant entry points along the border. Due to the ease of entry within or adjacent to urban centers during the late 80s and 90s, those areas became focal points for entry. Pressed by American citizenry who were tired of being overrun with illegals, the Border Patrol responded with organized enforcement tactics that concentrated activities at those points. Examples of this were El Paso, Nogales, and in the expanded urban area at Tijuana. When the El Paso operation was instituted the data was very clear. The incidence of illegal entry was reduced.

In 1994, Operation Gate Keeper was undertaken along the California urban border areas. In a curiously delayed response, the entry of illegals was reduced at the point of asset concentration, but a far different result occurred elsewhere. The success of halting entry in the urban areas was mirrored by the expansion of entry in the desert areas to the east. It was what the Border Patrol expected and wanted. Illegals would be easier to catch in open rural areas than they had been in the congestion of the urban centers in southern California.

Several conditions existed to support this reaction to Gate Keeper. First, the economic conditions north and south of the border only expanded the flow of illegal entry. Jobs were available north of the border. Second, Mexican Highway 2 ran adjacent to the border for miles into vast and isolated expanses. Third, the American invention of designated wilderness areas stretched for miles east/ west and north/

south along that boundary in national wildlife refuges and monuments managed by the Department of Interior (DOI). The soft underbelly of the American border was discovered.

THE WILDERNESS BECOMES A DANGEROUS PLACE

By 1998, visitors entering Organ Pipe National Monument with back country permits were estimated to be outnumbered by illegal aliens trekking north by a two to one ratio. By the following year, the permits issued to park visitors had dropped in half and the number of illegal nightly visitors had nearly tripled. The monument had become a place to be avoided by American citizens.

The increased illegal entry also meant there was no longer a safe place for the illegals. The Border Patrol recorded five deaths in what they describe as the "West Desert Corridor" in 1998. By 2002, there were more than 130 deaths in the same corridor. This count is particularly alarming in that the deaths were occurring in the face of declining apprehensions after 2000 in the Border Patrol sector as a whole. Deaths were running at the rate of about 40 per 100,000 apprehensions whereas five years earlier there had only been four deaths per 100,000 apprehensions . . . a tenfold increase!

Other statistics tied to crime were no different. Organ Pipe statistics indicated that finding abandoned vehicles in the monument in 1994 was unusual. By 2001, they had reached nearly 150 per year. Number of high speed pursuits, tons of marijuana captured, and illegal apprehensions in the park all reflected similarly alarming trends. In 2003, National Geographic declared that Organ Pipe Monument was the most dangerous park in the United States. It got so bad that signs were posted in the park not to stop for dead bodies. It could be a trap set to lure unsuspecting park visitors!

ORGAN PIPE STAFF QUANTIFIES DAMAGE LEFT BY ILLEGALS

In the midst of the chaos the National Park Service, the managing agency of the Organ Pipe National Monument, embarked on an effort to quantify the damage being done to the monument. Their approach and their findings were interesting. They mapped transects across the monument on predominately east/west directions rather than north/ south. Their logic was simple. They would be able to observe the north/ south illegal traffic more dynamically.

What they found was more impact on the monument in the designated wilderness areas than in the nonwilderness, fully accessible areas. Why . . . because Border Patrol and Park Service officials were limited in their ability to access the wilderness areas on a continuous basis. They didn't have full and unrestricted access. Motorized access in wilderness areas is not allowed. The illegals were taking full advantage of easy access through areas preserved for posterity.

In an internal report done by the "Resource Management Staff" at Organ Pipe, very alarming results were presented. The most glaring example pertained to a representative one square kilometer parcel of designated wilderness in the Valley of the Ajo. The following was quoted. "Results of a GIS model, based on transect data, of what a "typical" square km of valley floor habitat might look like to a monument visitor taking a hike." The one square kilometer, slightly more than one quarter section of land, had data extrapolated and mapped presenting the following illegal impact on the monument:

1. Seven rest sites
2. 15 incidences of vehicle tracks
3. 40 sites of trash disposal
4. 48 discarded water bottles
5. one set of bicycle tracks
6. one set of horse tracks
7. three abandoned camp fire sites
8. 254 foot trails!

The report went on to quantify the establishment of "wild cat" roads which serve as access for drug runners. On a map in the presentation, 35 such illegal roads can be counted. That compares to 13 legal, established roads in the monument.

THE RECIPROCAL OR MIRROR EFFECT

As the data was analyzed something very interesting began to emerge. The damage was not confined to designated wilderness areas managed by United States agencies on the north side of the border. What was occurring was that similar damage was occurring in desert areas adjacent to the international border to the south and southwest.

El Pinacate, the "sister park" to Organ Pipe had become a staging area for illegal entry into the United States. In a aerial survey done for the purposes of mapping air strips used by drug runners, not only illegal airstrips were found, but roads and trenching done by the Mexican military to dissuade the establishment of the airstrips were being created in the fragile cinder landscape of the Pinacate Biosphere Reserve.

Twenty two airstrips were found that had been trenched by the Mexican military. Twelve other trenching sites were found that were intended to prevent the establishment of airstrips. Five illegal, "wildcat" roads were mapped, and six fully operational illegal strips were being used for loading and flying drugs north.

In addition, "colonias" continue to sprawl out along Highway 2 as the infrastructure is built in response to the business of moving goods and services north. Mountains of trash, extensive wood cutting, and vandalism to border fencing and facilities lead the Organ Pipe staff to write that the activity will "impact natural and cultural resources along the border". Pictures of such activity lead any observer to surmise that the statement was understated at best.

THE GREATER PICTURE

Land agencies of the United States are charged with managing massive stretches of lands that lie near and adjacent to the Mexican border. The DOI, through its various agencies, manages about 47% of those lands in Arizona and 48% of the lands adjacent to the border in New Mexico. Every stretch of that land today is under assault from illegal entry with many areas that reflect conditions similar to those in Organ Pipe. If Department of Agriculture lands (Forest Service) are added, the list is expanded.

Two additional examples include the Tohono O'odham Indian Reservation and the Coronado National Memorial. The Tohono O'odham, administered by DOI's Bureau of Indian Affairs (BIA) is a reservation with a native Indian population that has an historical homeland extension into Mexico. In that expanse of land, Tohono O'odham people do not have allegiance to powers north or south of the border. The native Indian population, originally known as Papagos, move back and forth across the border. Drug cartels have made permanent inroads into the area with cash and the promise of greater wealth. The BIA, has little ability to deal substantively with the issues.

Further east, the Coronado National Memorial magnifies the risk that roadless border areas pose to the entire nation. In a 3 by 3.5 mile corridor, the Yolanda Molina de Hernandez Organization runs drugs like greyhounds on a racetrack. Once inside the monument, runners either go north or northeast into USFS lands and the Huachuca Mountains where there are over 70 miles of trails. Citizens who enjoy the adventures of an outdoor excursion know what this area has become. It is not for the faint of heart and it gives a new meaning to the Wild West.

In both of these cases, the mirrored effect of infrastructure expansion seen at Organ Pipe has occurred. Where roads are absent and railroads are present, the drug cartels have established facilities and or terminals for staging and running drugs and humans north. The build up of infrastructure is continuing. Airstrips are established, colonias are expanding, more roads into DOI and USDA managed lands have been made, and degradation of fauna and flora continues.

THE EL PASO EXPERIENCE

In the first major effort aimed at reducing illegal entry in urban areas, Operation Hold the Line, was started in El Paso in1993. Data from that operation indicates that apprehensions fell quickly from about 22,000 per annum to about 7,000 and stabilized near 9,000. What was not seen was the wholesale displacement to entry elsewhere as seen in the desert corridor of Arizona. What was occurring?

One prevailing expert theory is that at the time the illegals didn't have the soft entry points through federal wilderness areas to fall back to. All New Mexico areas allowed fully motorized access by the Border Patrol and had "engaged resident ranchers" that lived and were constantly present on the expanse of border running west from El Paso. East from El Paso was even less accessible. Those lands are dominated by private land holdings with residents who constantly patrol and communicate with the Border Patrol and local law enforcement. Illegals were being monitored and constantly ran the risk of being in the path of American citizens who would and will report their presence.

Further evidence of this phenomenon was found in radar records of drug flights from Mexico's interior to the border. In Texas, the concentration of such flights and corresponding apprehensions of drugs adjacent to the border is relatively sparse considering the expansive landscape across south Texas. New Mexico shows similar and

even less concentrated results. On the other hand, the Arizona situation is staggering. The situation there is akin to a full scale invasion by a foreign power. There, isolated federal lands made worse by wilderness designation are an outright threat to American security and well being.

THE THEORY TESTED

In the Boot Heel of New Mexico, the Border Patrol installed a communication device on Big Hatchet Mountain. The facility handled sensor signals from the entire eastern half of the Boot Heel area. The device was placed without the consent of Bureau of Land Management (BLM). When word spread of the device's presence, environmental groups demanded that the device be removed claiming that it would interfere with desert bighorn and the lesser and Mexican long nosed bats' breeding and life cycles. The BLM, under pressure because the area is a wilderness study area, pressed the issue and the Border Patrol capitulated and removed the device.

For several years, the eastern half of the Boot Heel adjacent to a very dangerous Mexican border was without this device! When the Border Patrol finally got approval to put the device back into service some astounding data was found. From 2006 records, it was found that mechanical traffic had increased by 671% and foot traffic had increased by 348% from the same period the year before. Soft entry points are sought and found by illegal operatives along the border. When they are found the cartels take full advantage of them! In the case of Big Hatchet, the Border Patrol was denied full access and was operating with diminished ability because of environmental demands. American security and American people were put at risk.

THE OPPORTUNITY FOR NEW TERRITORY

Today, there is a continuing effort to designate wilderness on federal lands along the Mexican border. The Wilderness Society through its affiliated groups, the Sky Island Alliance and the New Mexico Wilderness Alliance, has proposed huge areas on and or near the border for wilderness legislation. Two of these areas, the Tumacacori Highlands of southern Arizona and the Potrillos Mountain complex in Doña Ana County, New Mexico are large isolated areas that pose the same risks to the United States as the Arizona lands already under siege.

The question becomes what will happen if wilderness designation is successfully legislated. In Arizona, an expansion of what is going on all around the Tumacacori Highlands will expand. In New Mexico, the outright risk of duplicating the Arizona is fully in play. The American people must remember that the Wilderness Act of 1964 prohibits motorized access and man made facilities. Notwithstanding the promises of bastardizing that wilderness standard with "cherry stem" roads providing limited access, locals fear what will happen when the legislation reaches the committee hearings and horse trading in Congress. Any agreements made conditionally with local needs in mind will likely be altered, more roads will be closed, the Border Patrol will fight for access, and the drug cartels will find a new soft underbelly of access into the United States. The protection in play with the combination of resident ranchers, state and local law enforcement, and the Border Patrol will become constrained and conditional. What is arguably the sole reason the Arizona experience hasn't been duplicated in New Mexico will be forever altered.

The New Mexico component even has some of the characteristics of the Arizona model. In addition to the vast areas of federal lands, Highway 9 runs parallel to the border. Experience with trucks being loaded at staging areas in Mexico and crossed to be unloaded at points along that road becomes the same kind of opportunity. What makes matters even more dangerous is that a portion of the northern boundary of the proposed Potrillo Mountain Wilderness area is formed by an ultramodern east west transcontinental rail line just 24 miles from the border. The specter of accessing that major east west transportation line with a weapon of mass destruction provides a heightened security risk.

THE LESSONS UNLEARNED

When legislation designating more wildernesses on the U.S. border is heralded by environmental groups and Mexican drug cartels alike, American leaders need to reassess their thinking. It isn't the casual visitor to Organ Pipe, Cabeza Prieta, or the segments of the Coronado National Forest making new roads, trashing the travel corridors, setting fires, poisoning water holes, and carrying AK-47s. The American visitors are the only people who will follow the rules and honor the spirit of wilderness as it was intended. Those big, blacked out Jeep Gladiators that are running across desert wilderness areas at night are not occupied by folks who are maintaining a bird identification list nor do they care in the least about any fragile cinder cone formation. They are just glad that the chances of encountering a Border Patrol

agent or any other American who has a vested interest in maintaining the integrity of the lands are limited because of the restrictions placed upon that agent or that citizen.

What is more insidious is the manifestation of our actions on like areas to the south of the border. The El Pinacate phenomenon needs to be reviewed. When our lands are being ravaged by an onslaught of humanity and our actions have unwittingly created the same devastation across our borders because of the infrastructure and policing actions that are taking place to combat it, shame on us for our idealism. In this case, we run the risk of having met the true enemy, and . . . he is in our midst.

SIDE BAR I—THE BORDER PATROL BECAME THE BOOGIE MAN

The dust swirled around the Hughes 500 as the Park Superintendent leaned in and admonished and berated the Border Patrol pilot. The pilot had landed the helicopter on designated wilderness in a rescue operation that would save the lives of several illegal aliens that were simply not prepared to endure the heat and the conditions of crossing Organ Pipe National Monument. Threats were countered back, and, ultimately, nothing was done and no charges were filed . . . this time.

When Operations Hold the Line, Safeguard, and Gatekeeper were undertaken, the Border Patrol knowingly pursued a plan that would force illegals crossing the Mexican border to avoid the urban areas and venture into the remoteness of the border expanses. It was expected that the hordes of illegals crossing in the urban areas would be easier to apprehend if they were forced out into open country where technology and open space would allow observation and interdiction. The plan worked.

It can now be observed, however, that the Border Patrol was actually unprepared for the conditions that they had to encounter to apprehend the diverted illegals. The federal land designation, wilderness, became a most confounding constraint. In Border Patrol writings and reports from the 90s there were numbers of references to "wilderness." Based on retired agent correspondence and interviews, however, it becomes apparent that the interpretation of the reference was more of a generality of remoteness and isolation than it was a land designation. The real culprit was a land designation with restrictions that handcuffed enforcement activities. The Border Patrol was ready and capable of handling real wilderness. It simply wasn't ready for the realities of designated Wilderness!

In a metaphorical comparison, the conflicts between DOI land agencies and the Border Patrol increased proportionally to deaths in the Desert Corridor of Arizona's border lands as illegal entry accelerated. Tension was apparent on both sides. In a report by Park Service staff, the activities of the Border Patrol on the desert environment of Organ Pipe contributed to the degradation of the fragile environment. The accusation was actually listed in an array of such threats alongside the same comparison to drug runners!

What the Border Patrol interpreted to be Park Service mentality was actually the federal land designation that the Park Service had a vested interest in administering. As noted in the Wilderness Act of 1964, wilderness was a land largely untrammeled by man. Motorized vehicle access was not allowed. Neither permanent roads nor temporary roads were allowed. Even overflight of aircraft in a designated wilderness was conditional in the original concepts of the law. When legal actions were filed by environmental groups against the Border Patrol, the Marine Corps, and the Air Force for overflight of designated border wilderness, the hostility level was elevated yet more.

The Border Patrol finally sought Congressional help and Arizona's Senator Kyl (R-AZ) stepped into the fray and demanded less conditional access and more Border Patrol freedom to respond and patrol. Time and unrelenting tides of illegals have forced a pragmatic, albeit tentative relationship with the sides as both agencies attempt to maintain their mission commitments. Where expansion of designated wilderness has occurred, though, the same conflicts time and again arise between the agencies and from environmental special interest groups. When this reoccurs, the premise of the prevailing Border Patrol interpretation of the underlying intent of the land agencies comes back into focus. What should be agreed upon, however, is that the Mexican border, with all the large expanse of arid, isolated, and soft points of entry, is a very dangerous place. It is dangerous to every American and the danger isn't just the flow of immigrant laborers. The real danger lies where the most radical ideology collides with the most money.

SIDE BAR II—THE DOI INTERNAL AGENDA MUST BE QUESTIONED

Although, the data that the Park Service staff collected at Organ Pipe was astounding, no underlying report was written. Nothing was brought officially to the

attention of Congress. There was a 2004 report of the information presented at a "Border Lands Manager" group, but why something as important as the facts in the report were not widely distributed is a matter of concern. It leaves interpretation to such an oversight to criticism, suspicion, and speculation.

In the report, the Park Service noted that mitigation alternatives were as follows:

1. Educate the public
2. Monitor resource damage
3. Demand a political solution

Each of these alternatives needs clarification and explanation by the Park Service. Taken in order, educate whom and what? Is the suggestion that education is in order referring to the need to forewarn the public of the danger of any and all activities in border wilderness areas or is the reference aimed at educating the Drug Cartels of the damage they are causing those wilderness areas? If it is the former, a more honest and frank assessment to park visitors would have been appropriate. "You are endangering your life and the lives of your loved ones by visiting this border wilderness. Contact your Congressman and demand immediate and full access to the border so the Border Patrol and Homeland Security forces can act and this degradation can be stopped!" If it is the latter, a worldlier Park Service negotiator had better be at the table when the Carrillo-Fuentes Cartel leadership settles into a seat around the table. It is highly unlikely they would readily agree to alter their routes for the benefit of 21 Sonoran antelope.

As for the need to monitor the resource damage, how much damage does it take to decide that something is grossly wrong with the system? It shouldn't take a genius to figure out that evidence of 254 foot trails in a quarter section of designated wilderness is not what the original framers of the wilderness act had envisioned. Perhaps the superintendent of the monument should try to personally apprehend and ticket one of the Jeeps crossing the desert at night. After all, that is exactly what he tried to do to United States Border Patrol agents when they landed a helicopter on wilderness land in a normal operation.

As for the demand for a political solution, why not ask Congress to pass legislation making it a federal crime for illegal aliens to enter the wilderness areas, damage natural resources, leave mountains of trash, and poison existing and rare water holes? Certainly such legislation would be possible, but that outcome is as ludicrous as placing constraints and barriers upon Homeland Security activities. As for calling up the Mexican president and demanding that he conceptualize and implement an acceptable solution could be done as well, but the fallacy of that "political" solution is not even worthy of debate. This snake's head must be cut off.

The underlying risk that DOI faces is that, in the internal environment of its operations, a different agenda is in play. Unless a different attitude is demonstrated, the agency runs the heightened risk of being accused of allowing wilderness, the environmental movement, and certain segments of their administration to be so interlocked and intertwined that each component is indistinguishable. Crafting and growing land preservation for rewilding schemes is one thing, but jeopardizing American national security is something quite different.

The whole Arizona border phenomenon should elevate the wilderness movement to the status of national debate. The degradation of the border environment is so blatant and widespread, that the keen observer must question the real intent. If it was truly a debate about stewardship of natural resources, the steward would have long ago cried for substantive assistance and put aside any philosophical debates. Perhaps the truth is that the whole affair is a matter of control and power. The environment just happens to be a convenient vehicle to camouflage the truth.

IMPLICATIONS OF THE BIG HATCHET MOUNTAIN WILDERNESS PROSPECT

The view from Big Hatchet Peak at night is something to behold. At least 125 miles of isolation and "big lonesome" dominate and reduce all civilized things across the vast radius of this vista. To the south is Mexico. Pin points of lights from villages and widely scattered ranches can be seen. The glow of larger towns and cities like Agua Prieta and Janos reflect on distant cloud cover, but mostly, the shear immensity of this isolated land in darkness resonates into your senses. To the north, lights of New Mexico towns Silver City, Deming, and Lordsburg can be seen. To the east, lights from El Paso and Las Cruces glow. As daylight advances, the view alters and physical features become prominent. Animas Mountain to the west reaches into the same rarified air as Big Hatchet. The bluffs and points of Big Hatchet disappear vertically away from the summit. If you are inclined to feel faint at the prospect of hanging out into space to look over the edge, this is not the place for the weak of heart. This is nature at its rawest, and the physical demands and dangers are

matched only by the illicit human activities going on around the clock in this big isolated country. This is one of the most active corridors of human and dope smuggling along the U.S. and Mexican border. This is the "Boot Heel" of New Mexico. The international border surrounds you on the south and the east.

In the midst of this isolation is a man made device that could be compared to something as out of place as a contraption placed from a space vehicle on the surface of Mars or Venus. It is a communications device placed by Customs and Border Protection-Office of Border Patrol (CBP-BP) under a permit from the Bureau of Land Management (BLM), the agency charged with administering the federal lands dominating the entire region. It is there to receive and relay electronic signals from across the eastern half of the entire Boot Heel area. Such devices are a vital tool in monitoring and controlling illegal entry from Mexico in this immense area. They meet the technological need to have line of sight contact with a receiver that can relay readings to a Border Patrol monitoring center. Big Hatchet is the dominating physical feature that both creates the need for such a collector and provides the location from which the signals are relayed. It would seem to the uninformed that the CBP-BP and BLM would be united in the need for placement and operation of a device with such importance in the National Security effort. The truth is they don't share the same missions and are both influenced and administered by federal government bureaucracies dominated by very different political agendas.

For several recent years this relay was not operational. It had been placed on the mountain by the BP without official BLM approval. Why such an important link in communication was not authorized can be explained in part by the nature of the service it provided. The BP is not in the business of announcing to the world where and when monitoring devices are placed. If such information is made known, it is not just the good guys who will be aware of such placement. The bad guys are the individuals making their living running dope and human delivery services, and their success depends on their ability to avoid detection. If an important piece of detection equipment is taken out, it makes their job much easier to accomplish.

Conflict concerning placement of the repeater arose when environmental groups demanded its removal from Big Hatchet, which lies within a Wilderness Study Area (WSA), and must be managed under the provisions of the Wilderness Act of 1964 and the Federal Lands Policy and Management Act of 1976. As a man made technical device (there without a permit), the sensor repeater was not allowed. The environmentalists claimed it would interfere with lambing of the resident big horn sheep and existence of lesser and Mexican long nose bats found in abundance in a large cave in the area. The BP complied with the BLM order, and the repeater was shut down.

As time passed and illegal activities increased, pressure and criticism arose calling for reinstallation of the repeater. The public was not aware that the entire east half of the Boot Heel was without a repeater. A huge, dangerous, black hole existed on the American border. Retired Border Patrol Sector Chief Gene Wood has repeatedly called attention to how corridors of entry into the United States develop. He describes active entry points as "soft points", and they become more active based on the inability of the BP to monitor, patrol, and interdict traffic. A growing number of folks are now aware that the intensity of activity in this isolated area is the culmination of conditions that have contributed to this "soft point" of entry. The absence of the repeater on Big Hatchet Mountain was a primary, contributing factor.

How big did the problem become? In the BLM's Environmental Assessment completed in 2006 and allowing the reinstallation of the repeater, it was noted that illegal mechanical traffic increased by 671% and foot traffic increased by 348% during the first six months of fiscal year 2006 compared to the same period the previous year. The report stated that "the danger posed to the families of the people who are perceived to assist the Border Patrol by calling in illegal traffic is potentially devastating." In the absence of the repeater, local input was limited to that form of communication. The U.S., through political jousting, put local residents and BP agents alike in a difficult and dangerous position.

In 2008, the repeater was reinstalled. It is there by the authority of a Memorandum of Understanding between the BLM and the CBP-BP, but it is a conditional allowance. The condition is that if the U.S. Congress changes the current land designation from WSA to Wilderness, "the CBP-BP must remove all communication site equipment from the Big Hatchet Wilderness as soon as possible." It is obvious how that will impact illegal activity and national security. The question of how such a demand impacts other areas and issues must be asked.

To the east of Hidalgo County where Big Hatchet lies, there is an active proposal to designate 358,000 acres of Luna and Doña Ana Counties as wilderness. Over 150,000 acres of that proposal lie in the Potrillo Mountains just north of the border between Columbus and Santa Teresa, NM. The same condition of WSA designation

exists in that proposed area. If wilderness designation is passed by Congress, residents are worried that environmentalists' demands for the removal of all technical monitoring gear along with elimination of mechanical access will be imposed on the operation of the CBP-BP, which stands between residents and the drug lords and coyotes of the smuggling rings in Mexico. "All we know and see on a piece of paper is the demand for the Border Patrol to remove their monitoring gear from Big Hatchet Mountain if wilderness designation occurs on that WSA. How can we possibly believe that the same thing wouldn't be repeated here in Luna County," stated rancher Bill Smyer. "Push comes to shove, we will bear the burden of any downside. Our government constantly elevates environmentalists' demands above the concerns and safety of anyone gainfully employed and trying to stay in business! We have no champion."

It is ironic that the only legal agreements in place on this and other WSAs are grazing permits between agencies of the U.S. government and local ranchers. The primary burden of performance is placed solely on the agency trying to maintain national security, CBP-BP. They can have their repeater in place only on a conditional basis, and they cannot rely on having helicopter access on an ongoing basis. From January through April and from June through October 15 they have to make the half day climb up Big Hatchet Mountain on foot to service their facility. The BLM, under demand by several environmental groups, won't allow helicopter disturbance that may affect the big horns and the bats. If wilderness is declared here or elsewhere on the border, the conditions will only get more stringent and limiting. The question needs to be asked, "How can any national leader support a process that inhibits or destroys the ability of a U.S. agency and local residents to control, protect, and enhance their lives and livelihoods with a satisfactory degree of safety and efficiency?" An observation made by a resident who would be affected by wilderness designation in Doña Ana County provides significant insight. He said, "There is a big difference between being in the crowd cheering and being in the arena fighting for your life. We must find leaders who have at least visited the floor of the arena, or we will not prevail. Remember, if we rely on the crowd, they will only cheer when we are killed."

Editor's note: This article is one in a series written by members and friends of People for Preserving Our Western Heritage. www.peopleforwesternheritage.com

CATTLE AND NATIONAL SECURITY BY STEPHEN L. WILMETH

Cattle free by 93! Cattle free by '03! Remember those battle cries? There is little doubt that too many have heard those same words even in recent days.

The assault on the federal lands rancher started longer ago than most realize. It was started at least by 1944 when the Forest Service in the Gila National Forest sent the first notice to destock the Gila Wilderness. It was done under the guise of failure to make adequate progress in range improvements and the resulting deterioration of range on the Mogollon Front in Grant County, New Mexico. The Forest Service followed by evicting cattle from the major allotment in what is now known as the Gila Wilderness and leaving the same allotment holder on the very range that was purported to be in poor condition!

The Gila Wilderness was established not by Congress but by Forest Service in an administrative directive 20 years prior to that first eviction of cattle. It was not until 1964 when the Wilderness Act was passed and signed by the president that the wilderness was officially a federal land designation. By that time, the seeds were sown to press forward administratively to circumvent what the law of 1964 had promised. Cattle grazing would be allowed to continue where it existed in federal wilderness at the time of the signing of the act.

At the time of the passage of the Wilderness Act, there were 24 active allotments within or directly adjacent to the Wilderness core of the Gila. By 2000, fully half of those allotments had been fully destocked and the other 12 had been destocked 87% from 1960 numbers. Values of permits used to secure operating loans plummeted. Few comparable sales to establish value were even available as permits were simply dropped or reassigned to neighboring ranches with the approval to run only the cattle allowed on the neighboring allotment. Other than fellow ranchers, few people recognized the travesty of the implicit penalties that eliminated half or more of the value of those investments. An analogy would be for homeowners in any subdivision suddenly finding their home less than half of its value overnight because of a zoning ordinance change.

The trend was not limited to the Gila. In the Colorado Wilderness Act of 1980 and again in the 1990 Arizona Desert Wilderness Act, Congress demanded that the federal grazing guidelines be rewritten to clearly demonstrate that the administration of any wilderness legislation wouldn't be used to eliminate grazing. Stakeholder

unrest existed all across the West, the cries from the environmental camp echoed ever more loudly, and cattle numbers continued to decline.

In southern Arizona, the cry for wilderness was particularly active, and it was there that over 1,000,000 acres of border wilderness was designated since 1978. What Americans should be aware of is the cost of that legislation in terms of moral decay and national security interests to this country. Moreover, for the first time, the penalty for the pervasive removal of cattle from federal lands may start to be quantified.

More than 50% of the American side of the New Mexico and Arizona border with Mexico is made up of Department of Interior (DOI) lands. These lands are administered by the Park Service, the Fish and Wildlife Service, the BLM, and the BIA. The Department of Agriculture's Forest Service administers yet more lands made up of national forests and the Department of Defense has yet more of the border at the Barry Goldwater Bombing Range.

In studies uncovered recently, data reveals that the management of the border wilderness areas of Cabeza Prieta National Wildlife Refuge and the Organ Pipe National Monument contributed to the establishment of free flowing corridors of human and drug related smuggling activities. From those corridors the expansion of similar activity has spread like wild fire into the Tohono O'odam Indian Reservation, the Buenos Aires National Wildlife Refuge, the Coronado National Monument, and the various parcels of the Coronado National Forest.

The problems began when the Border Patrol instituted operations to stem the tide of illegal entry in urban centers. Their idea was simple. If such efforts could reduce the flow of illegal entry into populated centers and push it into rural areas, interdiction and apprehensions could be done easier. The campaigns worked well in Mexicali, Tijuana, and El Paso, but failed miserably in Nogales. What was found was that illegals from the Nogales operation found another soft point of entry. The designated federal wilderness at Organ Pipe and Cabeza Prieta was an immense opportunity for entry. As the Border Patrol and the Park Service or Fish and Wildlife Service fought over jurisdiction, the illegal flow of drugs and humans moved across the protected wilderness in growing numbers.

Where there were no roads, the cartels and human smugglers made roads. Where there were no trails, they made trails. Where there were 17 legal permanent roads in Organ Pipe there became 35 wildcat roads where blacked out Jeeps ran north during the night. The Park Service itself estimated that, in a representative one square kilometer out in the Valley of the Ajos, an unsuspecting American family on a hike would encounter 254 illegal foot trails that didn't exist when wilderness was first established in the monument!

Until recently, the Border Patrol viewed the conflict as a turf dispute with the Park Service. It was politics, and the demand by the Park Service to stay out of wilderness areas was simply countered by Border Patrol demands and threats for unrestricted and unconditional access. What wasn't recognized was that the federal designation of wilderness was the true culprit. The Park Service and the Border Patrol were trying to accomplish their agency mission requirements while the illegal hordes going north grew ever more confident and dangerous.

Word spread quickly. Mexican Highway 2 became the artery bringing the armies of illegals to the wilderness border. A whole infrastructure of supporting businesses sprung up to support the business of staging and sending illegals north into the United States. Buses showed in route videos preparing the illegals for desert survival and strategies of evading American authorities. Runways for cartel aircraft ferrying drugs to the border were established. Illegals at any given time in Organ Pipe topped 20,000 individuals. Whole areas of the monument were closed. It got so bad that signs were posted warning visitors to not stop for dead bodies because they may be booby traps or decoys for robbery.

While the wilderness experience in Arizona was being hailed by drug cartels and American conservation groups, a different story was occurring in Texas. Although Texans may not agree that they are exempt from border violence and drug related activities, there is a difference in the intensity of what is going on there as opposed to Arizona. The data comes from Aerostat summaries. The Aerostat system provides radar assistance for tracking cartel aircraft approaching the border from the Mexican interior. The system uses a series of tethered blimps strategically positioned to monitor the border.

Aerostat records in a representative time frame indicate that cartel aircraft approach Texas about once every 17 miles of border. In New Mexico, the rate is almost twice the Texas rate at once per nine miles of border. In Arizona, the records run at least 10 times that of Texas or once every mile and a half of border.

The drug seizure trend is similar. In Texas, the rate runs about one incident in every 50 miles of border. In New Mexico, it is about once every 3.5 miles of border

and in Arizona the rate is once in less than two miles of border. The latter represents a density of drug seizures 25 times that of Texas and it isn't because the drugs in Texas are not being interdicted. It is because the density of activity in Arizona is just that much more intense and dangerous.

A question must be asked. What is happening in Texas that isn't happening in Arizona? Three retired Border Patrol officials were posed that question (current agents will not comment publicly on this question without reciting policy).

Gene Wood, former sector chief at McAllen (Texas) said, "You've got private ownership of lands with a very aggressive citizenry in Texas protecting their private property rights. They interact immediately and continuously with the Border Patrol and the Border Patrol has full and unencumbered access to everything, at any time, and for any reason."

When asked why the New Mexico results are intermediate between the Texas and Arizona data, former Chief of Border Patrol Flight Operations, Richard Hays, said, "Like Arizona, there is a domination of federal lands along the New Mexico border, but New Mexico still has a residual population of a resident ranching community. Go on over into Arizona and nearly the entire border is federally controlled land. The ranchers have been eliminated or so decimated that they no longer can maintain a dominant posture. They are gone in the monuments and the wildlife refuges and the infrastructure that they built and maintained is gone as well. The forest allotments are so gutted and reduced that those folks are in a very precarious position. And, at the Tohono O'odham (Reservation), the BIA has no idea how to control that deal. You come to you own conclusions of what has happened in Arizona."

When asked, retired Yuma Sector Chief and new Chairman of the National Association of Former Border Patrol Officers, Jim Switzer, said, "New Mexico and Texas still have a vested, engaged, and resident population of citizens who will protect their private property rights. The Arizona counterparts have been largely eliminated." Asked to clarify his remarks, he continued, "Look at the data. Where there are resident Americans who have private property rights at risk there remains a working relationship with the Border Patrol. If there is activity, the Border Patrol will be contacted and welcomed. That is not the case where federal land agencies are present."

The cost to America of removing cattle and ranchers from border wilderness can start to be quantified by reviewing relative costs. Without considering the Border Patrol budget or budget increases, what are security expenses in a representative border wilderness? In fiscal year 2009, the budget for the Organ Pipe's law enforcement component for a park that shares 30 miles of Mexican border was $1.922 million. In 2000, there was no such component of that budget.

With such a budget and 28 approved officers how is Organ Pipe handling the illegal traffic? In another report, Organ Pipe management commented on the fact that in the last six months, the mechanized drug traffic had "increased dramatically." With dramatic increases in drug trafficking in a six month period in 2009 (when illegal human smuggling was down dramatically) it would follow that the Park Service will ask for and receive additional funding for 2010 and beyond.

Meanwhile, over in Texas the buffer created by ranchers who actively defend their property rights provides a version of national security that costs American tax payers nothing. What is now being revealed is that if the same buffer had always been allowed to continue uninterrupted in Arizona, the problem of illegal entry into the United States would not be the problem it is today.

So, cattle free by '93, eh? The environmental movement succeeded in reaching that goal on most of the Arizona border. This understanding of border events should lead objective thinkers to want to investigate what the expanded cost to America has been for such an idealistic and reckless attack on American private property rights. On the American border, the cost has been accumulated in terms of moral decay, loss of American jobs, and national security breaches. The next big question is what and how has it affected the American heartland?

STATEMENT OF BUTCH BORASKY, NYE COUNTY COMMISSIONER, DISTRICT 4, PAHRUMP, NV, ON S. 940

Please support S 940 to direct the Secretary of the Interior to convey to the Nevada System of Higher Education, certain Federal land located in Clark and Nye Counties, Nevada.

Great Basin College in Pahrump would like to place a campus on said land. Local developers here in Pahrump have pledged to help by way of infrastructure to the property.

It would be really beneficial for Nye County to have a campus locally. This would allow young people to stay in the community to atend college and not have to commute or move out of the County to get an higher education.

This will also greatly benefit the Bureau of Land Management's (BLM) fire station adjacent to this property. We have been patiently waiting for the past 4 years to see this happen.

Your help on this will be greatly appreciated.

STATEMENT OF NICOLE SHUPP, PAHRUMP TOWN CHAIRMAN, PAHRUMP, NV, ON S. 940

This letter serves as strong support for the passage of s. 940. This land upon conveyance will allow Great Basin College to expand and create a college campus in our town, which will bring jobs to Pahrump and give students another option for obtaining a higher education. If I can be of any further assistance, please do not hesitate to contact me.

STATE OF NEW MEXICO,
OFFICE OF THE GOVERNOR,
Santa Fe, NM, October 6, 2009.

Hon. JEFF BINGAMAN,
U.S., Senate, 703 Hart Senate Office Building,Washington, DC.

DEAR SENATOR BINGAMAN: I am honored to support a historic land conservation measure that has been many years in the making: the Organ Mountains-Desert Peaks Wilderness Act. I appreciate the leadership that you and Senator Udall demonstrated by introducing this important legislation to protect many of the most important public lands in Southern New Mexico. From the jagged spires of the Organ Mountains to the petroglyphs in Broad Canyon, the Act will protect approximately 259,000 acres of wilderness, and an additional 100,000 acres as two new National Conservation Areas. When enacted, these protected lands will showcase some of the finest ecosystems and vistas that New Mexico's Chihuahuan Desert has to offer, while making an important contribution to our country's wilderness and National Landscape Conservation System.This legislation has also brought together an impressive and diverse group of citizens to help develop this proposal, with organizations such as the Hispano Chamber of Commerce de Las Cruces, Southwest Consolidated Sportsmen, and the League of Woman Voters working hand in hand to push for its development. Through a multi-year process, important agreements and compromises have been made to facilitate border security, flood control, and access for all citizens. The end result, the Organ Mountains-Desert Peaks Wilderness Act, truly represents the best of community cooperation and legislative leadership. As Governor of New Mexico, I am honored to lend my strong support for the Organ Mountains-Desert Peaks Wilderness Act, and encourage Congress to support its passage into law.

Sincerely,

BILL RICHARDSON,
Governor.

NATIONAL ASSOCIATION OF FORMER BORDER PATROL OFFICES,
Brunswick, GA, October 22, 2009.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources, Committee, 304 Dirksen Office Bldg., Washington, DC.

Re:S. 1689

DEAR SENATOR BINGAMAN: The issue of the designation of Wilderness Areas as addressed by the subject bill is of great concern to the National Association of Former Border Patrol Officers (NAFBPO). As the name indicates, we represent a group which has several thousand years of cumulative experience protecting our borders spread over more than 50 years. We know from that experience that designating a particular area as a Wilderness has no impact at all on those who intend to violate of border's security. Prohibiting the use of motorized vehicles within such border areas without permitting the necessary law enforcement agencies, including the Border Patrol, to carry out their sworn duties, is tantamount to permitting a corridor for illegal aliens, drug smugglers, and potential terrorists to exploit. We

foresee this same situation may be duplicated in the areas being proposed for wilderness in S. 1689, Organ Mountains-Desert Peak Wilderness Act.

Information that we have points to the fact that there has not been a public hearing scheduled to get input on this issue, nor has there been an explanation of the anticipated impacts that wilderness designations will have on border security. We feel the importance of border security should be fully discussed with local communities so that they are aware of the implications of wilderness designation. Our organizations strongly suggests that a field hearing be held in Doña Ana County, New Mexico, to fully develop final recommendations relative to border security on lands proposed for wilderness protection.

Respectfully,

JAMES S. SWITZER,
Chairman.

STATEMENT OF BOB REICH, CEO, LASEN AIR

I am speaking from the ranks of the nearly 800 member coalition that opposes your legislation intending to designate wilderness on over a quarter of a million acres of Doña Ana County lands. Please be cognizant of the fact that this coalition of citizens, local businesses and organizations, and is not a group of fringe radicals or overfunded "environmental" organizations. If you will observe the membership, this group is arguably the very core of businesses and organizational leadership that makes Las Cruces, Deming and this region of the state work. In my opinion, this coalition has been minimized, and any assumption that you have that it isn't observing what is going on is strictly in error.

These cities and this region of the state cannot be hamstrung by an environmental movement that has an agenda that is not being honestly portrayed. At a minimum, your legislation eliminates the majority of community access to the remaining points of higher elevation in the county. Already, the various branches of the DOD, Fish and Wildlife, and NMSU have a lock on the remainder of the Organs, the San Andres, and points east. As the legislation stands your actions will place unnecessary pressures on lands outside the withdrawn areas that will receive the diverted traffic. As a concerned leader, please recognize the hypocrisy of land stewardship that creates enforcement free corridors for drug runners and illegals.

Throughout this debate, the press and others have continued to refer to the objection to this plan as the "ranchers' stand" or the "ranchers' plan". That will lose its validity as this process concludes. This is a Doña Ana County citizen's coalition and the number of ranchers is a small percentage of the opposition. Your actions, however, will ultimately contribute to the reduction of the already small number of ranchers and the loss of a major portion of our New Mexico heritage.

Instead of total withdrawal and locking most of the citizens of Doña Ana county (and state and federal law enforcement officials) out, we have continually proposed responsible joint use that will preserve the cultural, historic, and natural features of the area and allow use of the area by the majority of the people. I stand perplexed as to your insistence to appeal to a network of organizations and people who have ties to such radical ideology and one sided agendas. This will ultimately be an issue that will be exposed and understood. Our group may not stand with signs in front of your office in opposition, but our group will eventually be heard in more basic forms of due process.

In the past you have consistently stood up for the people of New Mexico and the United States of America, we are hoping that you will reconsider your position on this vital issue and create a 11win-win" situation for all of us. You still have an opportunity to make positive political strides by recognizing and coming forth with modifications that allow for responsible joint use of the areas rather than wilderness that effectively shuts the American people out, and creates clear corridors for illegals and drug runners.

Thank you for Your time and consideration,

STATE OF ALASKA,
DEPARTMENT OF NATURAL RESOURCES,
Anchorage, AK, October 6, 2009.

Hon. RON WYDEN,
Chairman, U.S. Senate, Subcommittee on Public Lands and Forests, Washington, DC.

Hon. JOHN BARRASSO,
Ranking Member, U.S. Senate, Subcommittee on Public Lands and Forests, Washington, DC.

DEAR SENATORS WYDEN AND BARRASSO: The State of Alaska provides the following comments on S 522, the Salmon Lake Land Selection Resolution Act and S 881, the Southeast Alaska Native Land Entitlement Finalization Act. Both bills are scheduled for a hearing before the Subcommittee on Public Lands and Forests on October 8, 2009.

S 522—Salmon Lake Land Selection Resolution Act.—The state supports passage of this important legislation that will equitably resolve competing land selections surrounding Salmon Lake on the Seward Peninsula in Alaska. The legislation ratifies an agreement between the Bering Straits Native Corporation (BSNC), the US Bureau of Land Management (BLM), and the State of Alaska to resolve land selected under the Alaska Native Claims Settlement Act (ANCSA) and the Alaska Statehood Act. The three parties signed the agreement on July 18, 2007 after several years of negotiation. Under the agreement, the state and BSNC will acquire land adjacent to Salmon Lake and the BLM will retain land important for public access and a campground. The agreement recognizes both the lake's importance to the public for recreation and its importance to BSNC shareholders for subsistence, cultural and recreational values. We are not aware of any opposition to this legislation.

S 881—The Southeast Alaska Native Land Entitlement Finalization Act.—The state continues to support Congressional action to resolve the outstanding land entitlement of the Sealaska Native Corporation. Sealaska has waited too long to receive a fair entitlement under ANCSA. The state agrees that the land currently available to Sealaska under provisions of ANCSA does not provide Sealaska with an adequate and equitable land base. The pool of economic development land that would be made available under S 881 provides Sealaska with land that is more suitable for timber harvest than the lands it would acquire absent this legislation. In addition, the land currently available to Sealaska contains areas with high public values for watersheds and recreation. These lands will remain in public ownership under S 881.

In reviewing S 881 as currently drafted, we have identified some concerns regarding the need to protect public access across parcels to be conveyed to Sealaska, impacts to management of adjacent federal lands, and community concerns regarding certain specific parcels. Regarding public access, the Economic Development Lands need to provide sites for public access to and from the road system to the shoreline, as provided for in easements reserved under ANCSA Section 17(b). The Traditional and Customary Trade and Migration Routes to be conveyed under Section 3(b)(2)(A)(11) need to be subject to ANCSA Section 17(b) or similar provision to ensure public access across these long, narrow conveyances. These Routes also need to exclude tidelands, submerged lands and navigable waters.

We also would like to see the legislation crafted to minimize disruption to the existing, successful federal land transfer program in Alaska that is focused on largely completing land entitlements owed to all ANCSA corporations as well as the state.

The state is also concerned that S 881 (Section 5(e)(2)) takes an unnecessary and problematic step in defining all ANCSA lands in Alaska as being "tribal lands." The suggested change is directly contrary to section 4 of ANCSA which eliminated claims to tribal lands. Directly or indirectly modifying ANCSA is far more than a "technical correction," and raises fundamental land ownership and land management questions for the State of Alaska. The savings clause does nothing to address the immediate shift in land management authority, and merely confuses an already complicated land status question. See Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520 (1998).

We are willing to work with Sealaska and the Committee to address these concerns. We commend the subcommittee for bringing these bills forward for consideration and we respectfully request that this letter be included in the hearing record. Thank you for the opportunity to comment on these important bills that will benefit Alaskans.

Sincerely,

THOMAS E IRWIN,
Commissioner.

ALASKA FEDERATION OF NATIVES, INC.,
Anchorage, AK, November 2, 2007.

Hon. NICK RAHALL,
Chairman, House Committee on Natural Resources, U.S. House of Representatives, Washington, DC.

RE: HR 3560, to provide for the completion of Sealaska Corporation's Land Selection under the Alaska Native Claims Settlenient Act.

We are writing oa behalf of the Alaska Federation of Natives (AFN) to express AFN's support for H.R. 3560, Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. AFN is the largest statewide Native organization in Alaska. Its membership includes over 200 villages (both federally-recognized tribes and village corporations), the 13 regional Native corporations established under the Alaska Native Claims Settlement Act (ANCSA), and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs.

In 1971, Congress enacted ANCSA to recognize and settle the aboriginal clainig of Alaska Natives to their traditional homelands by authorizing the establishment of Alaska Native Corporations to receive and manage lands and funds awarded in settlement of the claims of Alaska Natives. The purposes of ANCSA were to settle the land claims of Alaska-Natives and to provide them with a means to pursue economic development, and create sustainable economies for the benefit of Alaska's Native people. However, more than 35 years post-ANCSA, the land conveyances have yet to be completed.

Since 1971, many of the Alaska Native Corporations have become successful and powerful economic engines within their regions and throughout the State of Alaska. Sealaska Corporation is the single largest private employer in Southeast Alaska, providing from 200 to 400 part-time and full-time jobs, annually, and contributing as much as $40 million, annually, to the Southeast Alaskan economy through its logging contracts, road building activities, and other timber-related activities. Sealaska also provides a significant benefit to Alaska Natives. throughout the State of Alaska through its annual 7(i) revenue sharing contributions, totaling over $300 million since Sealaska began operating. Some Alaska Native Corporations outside of Southeast Alaska have expressed extreme gratitude to Sealaska because the 7(i) payments that they have received have, in many instances, kept the Corperations out of bankruptcy.

Sealaska would now like to engage in comprehensive land entitlement and conservation initiative, which would allow it to complete its land entitlement by making cultural and economic land selections outside of the original withdrawal areas, and in return would allow removal of the encumbrance created by the withdrawal of lands for Alaska Native selection in Southeast Alaska. If Sealaska does not receive conveyance of all of the lands to which it is entitled in the near term, the primary economic activity of Sealaska—logging—will cease in the near term. That will impact Southeast Alaska's Native people, the Southeast Alaska economy, and the Alaska Native Corporations throughout the State that have come to rely upon Sealaska's 7(i) contributions.

Therefore, we strongly support the enactment by the United States, Congress of a bill that would allow Sealaska to complete its ANCSA land, entitlements, thereby enabling it to continue to help meet the economic needs of the Native people of Southeast Alaska and Alaska Native Corporations throughout the State of Alaska.

Please do not hesitate to contact us if you have any questions regarding our position on this important legislation.

Sincerely,

ALBERT KOOKESH,
Co-Chair of the Board.

TIM TOWARAK,
Co-Chair of the Board.

ALASKA FOREST ASSOCIATION, INC.,
Ketchikan, AK, October 9, 2009.

Hon. LISA MURKOWSKI,
U.S. Senate, 322 Hart Building, Washington, DC.

DEAR SENATOR MURKOWSKI, The Alaska Forest Association (AFA) strongly supports the Sealaska Land Entitlement Legislation S-881. The AFA has represented the timber industry across Alaska for over 50-years. During the 1960s, 70s, 80s, and early 1990s the industry provided several thousand direct jobs and thousands more

indirect jobs, but over the last fifteen years the employment in our industry has declined primarily as a result of an inadequate supply of timber.

Our industry, which is comprised entirely of small businesses, includes landowners, logging and road building companies and manufacturing companies. These businesses work together in a symbiotic relationship along with our supporting industries—tug and barge operations, equipment and fuel suppliers, log and lumber scaling services, etc. Many of our supporting industries will be unable to survive the loss of Sealaska's operations. The domino effect that would follow the industry collapse would be felt across Southeast Alaska and would be most harsh in the small communities.

The AFA Board of Directors has consistently supported Sealaska's efforts to resolve their land entitlements and we continue to do so. Thank you for introducing this vital legislation.

Sincerely,

BRIAN BROWN,
President.

BERT BURKHART,
Vice-President.

WADE ZAMMIT,
Treasurer.

KIRK DAHLSTROM,
Director and past President.

STATEMENT OF STEVEN C. BORELL, P.E., EXECUTIVE DIRECTOR, ON H.R. 3560

The Alaska Miners Association is writing in support of H.R. 3560, the "Southeast Alaska Native Land Entitlement Finalization Act". This legislation will allow Sealaska Corporation to finalize its land entitlement granted user the Alaska Native Claims Settlement Act (ANCSA).

When ANCSA passed in 1971, Sealaska and the other Native Corporations were given the right to select lands near their villages and other areas where their respective peoples had lived. However, before the Corporations could complete their selections, various federal withdrawals occurred that greatly restricted their selections. Then in 1980 much of their historic land areas became part of various federal conservation system units and were thereby placed totally off limits for selection. The result was that there was not enough land available that would qualify for the Sealaska entitlement.

H.R. 3560 addresses this situation by exchanging some lands now held by Sealaska for other lands now owned by the federal government. This would provide closure regarding Sealaska's ANCSA land entitlement. It would correct some of the inequitable limitations on Sealaska's land selections by allowing it to select its remaining land entitlement from federal lands outside the designated withdrawal areas, including sites with sacred, cultural, and historical significance. The changes will also provide an opportunity for Sealaska to maintain a sustainable economy and to further economic and employment opportunities for Sealaska shareholders.

Thank you for the opportunity to comment on this important legislation.

ANCSA REGIONAL ASSOCIATION,
Anchorage, AK, June 30, 2008.

Hon. LISA MURKOWSKI,
U.S. Senate, 709 Hart Senate Office Building, Washington, DC.

RE: Sealaska Land Entitlement Legislation

DEAR SENATOR MURKOWSKI: I am writing to you on behalf of the Alaska Native Regional Corporation CEOs to express support for Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. As you are aware, Sealaska has yet to complete its Alaska Native Claims Settlement Act (ANCSA) land conveyances, 36+ years post-ANCSA, because of poorly contemplated land withdrawals in Southeast Alaska. Our organization strongly supports the fulfillment of the promises of ANCSA to create economically sustainable corporations for the benefit of Alaska Native shareholders.

Representatives from Sealaska have briefed the Regional CEOs on the land entitlement legislation. The legislation clearly provides opportunities for economic development and cultural preservation. Not only would there be economic and cultural benefits to the Native people of Southeast Alaska through this proposal, but there

would also be economic benefits to the Native people throughout the State of Alaska because of the revenue sharing requirements of ANCSA. Moreover, many of our regions throughout the State are seeing a loss of residents from the rural communities. The Sealaska proposal would be a positive step towards slowing this trend in Southeast, Alaska. We, therefore, express support for any legislation on this matter.

We urge you to pursue this important legislation. If you have any questions regarding our position, or need our assistance to secure enactment in the future, please do not hesitate to contact us.

Sincerely,

VICKI OTTE,
Executive Director.

STATEMENT OF HEATHER RICHTER, PRESIDENT, EDNA BAY COMMUNITY, ON S. 881

The community of Edna Bay, located on the northwest side of Prince of Wales Island in Southeast Alaska. would like to present testimony in opposition to the transfer of 32,000 acres of public land on Kosciusko Island into the private ownership of Scalaska Corporation.

Edna Bay is a remote subsistence based community established by a State of Alaska land sale in 1982. Since it is not connected to any other road system. residents depend entirely on the access they have historically had to the public lands on this island for their daily needs, which include subsistence harvesting, personal use timber and building materials. as well as economic opportunities.

Everyone understands the importance of completing ANCSA, and the state and federal government commitment to the support of economic prosperity for the native peoples of Alaska. The problem with the current legislation in it's pursuit of these goals is the lop sided representation that is happening in the process. Our community has been left without representation on all levels. Our district representative. Senator Albert Kookesh is chairman of the board for Scalaska. Representative Thomas is also a member of the board of directors. Senators Murkowski and Begich are co-sponsors for this bill on behalf of Sealaska. and Congressman Young has expressed his singular support of Senlaska through his introduction of HR 2099.

Our representatives should he striving to create a more balanced approach to resolving Senlaska's land entitlements. A solution should represent equitable treatment for all people living in Southeast Alaska. The current path will lead to the certain demise of several subsistence dependent communities on Prince of Wales Island. If Sealaska chooses to pursue their land transfers outside of the withdrawal areas set aside for them by Congress, they should have to do so in cooperation and working coexistence with other residents of Southeast Alaska. Corporate take over should never be allowed to become the established way of doing business in the Tongass National Forest.

As we have no representation in regards to this bill, we are asking the members of this committee to give careful consideration to Sealaska's request. In the interest of the continued prosperity for all who live in Southeast Alaska. we are asking you to vote no on S.881.

Thank you for your time.

COMMUNITY OF ELFIN COVE NON-PROFIT CORPORATION,
Elfin Cove, AK, December 31, 2008.

Hon. ED SCHAFER,
Secretary, Department of Agriculture, 1400 Independence Avenue S.W., Washington, DC.

The Community of Elfin Cove Non-Profit Corporation membership has reviewed and discussed the proposed land selections as part of Senate Bill 53651 that you introduced. We have serious concerns about the lands proposed for selection in the area near Elfin Cove.

While we support your efforts to remedy the longstanding problems with the Alaska Native Claims Settlement Act in regard to land claims for Sealaska, we do not support the inclusion of Lacy Cove, Point Lavinia and Inian Peninsula East. These areas have a long history of stewardship by the residents of Elfin Cove, Inian Islands, Idaho Inlet and Port Althorn. The adjacent waters are historically important commercial fishing waters.

The residents of Elfin Cove have developed an effective working relationship with the Hoonah Ranger District of the US Forest Service. The current Forest Service administrative policies have been effective in preserving the forest supporting subsistence access and the development of tourism.

We are concerned that dividing this contiguous area of wilderness will significantly disrupt the current subsistence access in the area. These lands are important sources of local subsistence activity.

The Community of Elfin Cove respectfully requests that as this important land settlement process moves forward that Lacy Cove, Point Lavinia, and Inian Peninsula East be excluded from the selection.

We have attached the resolution* passed at our most recent community meeting. We would be available to provide additional comment regarding S3651.

Sincerely,

GORDY WROBEL,
Chairman.

STATEMENT OF GREGORY AND CARIN RICHTER, FISHERMAN'S COVE FISH CAMP, NAUKATI, AK

Once again, my family find ourselves writing a letter for a different number bill, stating that we say NO to Kosciusko Island being part of Sea Alaska owned landed. This is my children's inheritance It is our privately owed property already. Lot TEN (10), U.S Survey 2615, situated on the East side of Fisherman's Harbor in Lot (5) and (6), Section 22, Township 68 South, Range 75 East, Copper River Meridian, Kosciusko Island, Alaska, Cape Pole. We depend upon the subsistence from hunting and fishing every year to feed ourselves and for our lodge business and for our business guests. With this proposed bills we would lose these rights. It would take away the from the value of the property due to the fact that Sea Alaska would own the property between Edna Bay and Cape Pole cutting off our supply roots. We own a hunting fishing lodge in Cape Pole. Considering the statement Sea Alaska made about a right to cross their property, would not be convened should we sell. In this economy crisis, the only econoirtical and real help in my children's life's is this land that belongs to us. When we die, to help them carry out their lives and families to come is this land in the last frontier Alaska, where they can live off of and work hard to survive. Why is this a threat again to my children and I again.

I realize how busy the government must be at this economical crisis and state of depression but our family would ask you for a letter of response. That would touch base with us and realize that you are listening to private land owners and would make us feel valid and secure. Attached are the previous letters with all of our concerns.

STATEMENT OF DAVID LOVE, GLACIER GROTTO PRESIDENT; TIMOTHY HEATON, PALEONTOLOGIST AND NSS FELLOW; KEVIN ALLRED AND CARLENE ALLRED, GLACIER GROTTO AND NSS MEMBERS; STEVE LEWIS, CONSERVATION CHAIR-GLACIER GROTTO, NSS MEMBER; RACHEL MYRON, GLACIER GROTTO AND NSS MEMBER

I am writing this letter on behalf of the membership of the Glacier Grotto listed below. The Glacier Grotto is a statewide chapter of the National Speleological Society (NSS) dedicated to the discovery, mapping and conservation of the karst and cave resources of the state of Alaska. The Glacier Grotto membership is very concerned about the new land selections that Sealaska Corporation has requested under the Alaska Native Claims Settlement Act as introduced initially as House Bill 3560 by Representative Don Young and reintroduced in Senate Bill (SB) 3651 by Alaskan senator Lisa Murkowski.

First, definition of the type of landscape the Glacier Grotto and NSS are particularly concerned about:

Karst topography is a landscape shaped by the dissolution of a layer or layers of soluble bedrock, usually carbonate rock such as limestone or dolomite. Due to subterranean drainage, there may be very limited surface water, even to the absence of rivers and lakes. Many karst regions display distinctive surface features, with sinkholes or dolines being the most common. However, distinctive karst surface features may be completely absent where the soluble rock is mantled, such as by glacial debris, or confined by superimposed non-soluble rock strata. Some karst regions

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*All attachments have been retained in subcommittee files.

include thousands of caves, even though—evidence of caves that are big enough for human exploration is not a required characteristic of karst.[1]

It should be noted that current land management practices on federal lands underlain by carbonate rock in Alaska, especially on the Tongass National Forest, manage these karst landscapes for the unique hydrological, speleological, archeological and paleontological resources underlying the surface of these landscapes as well as the biological community that covers and protects their surface. These areas contain unique biological microhabitats, for example, freshwater streams sourced or passing through karst bedrock produce significantly more invertebrates which feed a larger number of salmon than do non-karst systems, thus providing greater opportunity for subsistence, commercial and sport fishing harvest.[2] Karst regions in Southeast Alaska contain irreplaceable archeological and paleontological deposits, internationally significant cave and karst geologic features, surprising hydrological interconnectedness and remote recreational opportunities like few other places on the planet.[3] Archeological and paleontological research in Southeast Alaska has not only redefined how indigenous people arrived and colonized the Americas, but has also provided a picture of the plant and animal communities present in this region for the past 40,000 + years. The potential for additional paleontological and archeological discovery in this region is extensive and many of the cave-containing karst lands within the Sealaska selections have not been thoroughly inventoried. Each year, this region attracts researchers and cave explorers from around the country and worldwide. To date, the US Forest Service (USFS) land management practices associated with karst lands in Southeast Alaska have been a model for other agencies in other parts of the world.[4]

Three of the areas suggested for conveyance to Sealaska occur in some of the most highly developed karst landscapes in Alaska (containing features that are unique internationally). These areas are: Northern Prince of Wales Island, Tuxekan Island and Kosciusko Island. Below is some Geographic Information System (GIS) analysis provided by James Baichtal, Forest Geologist of the Tongass National Forest, relating to HB 3560:

> " . . . Kosciusko Island: Total area of Sealaska selection equals 25,882 acres of which 23,839 acres (92%) are underlain by karst. We (USFS, entered by D. Love for clarification) have inventoried some 1090 karst features we consider significant within the proposed land selection, of which there are 145 caves that have been designated significant[5] or most likely would be found to be significant when nominated. The 2008 TLMP included a 7678 acre Geologic Special Area encompassing Mount Francis and karst areas to the south with a boundary change to include the results of tracer dye studies. The Sealaska Corporation proposal includes 5,708 acres of the 7,678 acres or 74% of the Geologic Special Area. We have not inventoried this area but karst features may exceed a density of thousands per square mile.

NPOW: Total area of Sealaska selection equals 32,482 acres of which 16,435 acres (51%) are underlain by karst. We have inventoried some 161 karst features we consider significant within the proposed land selection, of which there are 23 caves that have been designated significant or most likely would be found to be significant when nominated. The Sealaska proposal includes 1,651 acres of the Geologic Special Areas found in the 2008 TLMP. The Sealaska proposed land selection also includes

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[1] Ford, D. and Williams, P. 2007 Karst Hydrology and Geomorphology John Wiley and Sones Ltd. 562 pp.

[2] Bryant, M.D.; D.N. Swanston; R.C. Wissmar; and B. E. Wright. 1998. Coho Salmon Populations in the Karst Landscape of Northern Prince of Wales Island, Southeast Alaska. Transactions of the American Fisheries Society 127:425-433, 1998

[3] Griffiths, P.; Aley, T.; Worthington, S.; Jones, W. 2002. Karst Management Standards and Implementation Review, Final Report of the Karst Review Panel, Prepared for USDA Forest Service, Tongass National Forest, Submitted to MWH (Montgomery Watson Harza) under the terms of USDA Contract 53-0116-255901, 27 pp. and appendices.

[4] Baichtal, J.F. 1997. Application of a Karst Management Strategy; Two Cases Studies from theTongass National Forest, Southeastern Alaska; The Challenges of Implementation. In: Proceedings of the 1997 Karst and Cave Management Symposium 13th National Cave Management Symposium Bellingham, Washington and Chilliwack and Vancouver Island, BC, Canada, October 7-10, 1997, Bellingham, Washington. Edited by Robert R. Stitt, pp. 4-11.

[5] "Significant" caves are defined by the FCRPA as possessing one or more of the following: unique biota, cultural, historical or archeological resources, geologic, mineralogic or paleontologic resources, hydrologic systems or water important to humans, biota or cave development, recreational value, educational or scientific values or are located within special management areas. See Federal Register [16 U.S.C. 4301–4309]

the Port Protection Watershed identified by through a Village Safe Water Grant and tracer dye studies.

Tuxekan Island: Total area of Sealaska selection equals 15,758 acres of which 11,936 acres (76%) are underlain by karst. We have inventoried some 339 karst features we consider significant within the proposed land selection, of which there are 30 caves that have been designated significant or most likely would be found to be significant when nominated. There are no Geologic Special Areas on Tuxekan Island.

In summary, the Sealaska selection on the Thorne Bay Ranger District where there are karst landscape concerns equals 74,112 acres, 52,210 acres underlain by karst (71%). We have a total of 1,590 karst features inventoried of which there are 198 caves that have been designated significant or most likely would be found to be significant when nominated. Many of these areas have such a high density of features that we have just never inventoried them so the actual number of caves from areas like Mount Francis, Flicker Ridge and the Calder Area would he much higher. The Sealaska proposal includes 7,359 acres of Geologic Special Areas . . . "[6]

Although the Glacier Grotto agrees that the tribes of Southeast Alaska (i.e-now represented by the Sealaska Corporation) have the right to lands promised under ANCSA, the Glacier Grotto does NOT believe that House Bill 3560 or Senate Bill 3651 should be passed unless changes are made to the bills. This letter is in opposition to this bill asking for additional withdrawals of public US National Forest lands outside of the original ANCSA withdrawal areas if these new withdrawal areas overlie karst terrain and/or caves. Refer to Sec 3 (b) (1), page 19 of the Senate Bill 3651 authorizing Sealaska to select lands categorized as "Economic Development Lands" (see the map entitled "Sealaska ANCSA Land Entitlement Rationalization Pool, dated March 6, 2008 and labeled Attachment A). Karst landscapes and caves underlying lands selected by Sealaska currently receive protection from damage under federal laws. These selected areas include and/or overlie karst landscapes and/or cave systems, and the Glacier Grotto and members of the NSS believe that these lands should not be developed but should be protected as they currently are under the FCRPA. Since no State cave resource protection law exists for State or privately owned lands, these areas should not be allowed to be managed under (non-existant) State law, but should continue to be managed under the FCRPA. In addition, if any of the "Traditional and Customary Trade and Migration Routes", "Native Futures Sites" and "Sacred, Cultural, Traditional and Historic Sites" overlie karst terrain or cave containing bedrock then these areas should also be removed from the selections and continue to be managed under USFS and the FCRPA.

While the membership of the Glacier Grotto signed below would like to believe that Sealaska Corporation would protect the karst landscapes and cave systems underlying the land selections in these bills, this may be an unrealistic expectation given Sealaska's past poor forest management (ex.-clear-cut logging on steep hillsides) on other lands it currently owns. Forests overlying karst in some of the new selections ("economic development area") are oldgrowth stands that were not harvested in USFS timber sales because of concerns about impacting the interconnected "high vulnerability" karst bedrock below. As outlined by James Baichtal's work above, these areas contain a large number of fragile cave systems, undelineated hydrologic systems and fragile soils supporting unique plants and animals. Transfer of these areas to Sealaska would endanger these unique cave resources and karst landscapes.

Further clarification of karst management on federal and state lands provided by James Baichtal, Forest Geologist, Tongass national Forest, is provided below:

> " . . . The authority for management of the karst lands and the associated caves on public lands comes from the Federal Cave Resources Protection Act (FCRPA) of 1988, The Antiquities Act of 1906, the Federal Land Policy Management Act of 1976 (FLPMA), and in Forest Service Management (FSM) directions 2356, 2361, and 2880, and 36 CFR 261 and 290. Subsequently, in the 2008 Tongass Land Management Plan, standards and guidelines were developed to protect the karst and cave resources found on the Tongass National Forest. For State of Alaska lands currently there is no "Cave Protection Act" in the State of Alaska (http://www.caves.org/committee/conservation/)(Conservation Laws and Policy, Cave laws and Policies) nor does the Forest Practices Code contain any provisions for protection of those resources from timber harvest, road construction and/or quarry

[6] Baichtal, James F., Forest Geologist, Tongass National Forest, Memo to Scott Fitzwilliams, RLMH Staff Officer, dated March 13, 2003 Review of the Proposed Sealaska-Tongass National Forest Land Exchange Concerning Karst and Cave Resources

development as stated by the Alaska State Division of Forestry (DOF) website at http://foresnyalaska.gov/forestpractices.htm . Neither the Alaska Forest Resources and Practices Act as published in 2000 nor the Alaska Forest Resources and Practices Regulations as published in 2000 contained language addressing karst or cave resources. In a Memorandum from the Department of Natural Resources dated March 6, 2003 which outlines the Coastal Region's Southern Southeast Area Five-year Schedule of Timber Sales for the period of January 1, 2003 through December 31, 2007, the DOF clearly states its position. In the description of the 2005 proposed El Cap Timber Sale, the DOF states, "The ADNR does not recognize karst topography as a significant resource to be managed on the State's limited land base in southeast. The DOF will protect karst formations that effect water quality as per the Alaska Forest Resources and Practices Act and Regulations. If significant recreational activity is found to be dependent on a karst resource, it will be taken into account during the design and FLUP (Forest Land Use Plan) process for a proposed timber sale." This memorandum can be accessed at the following website: http://www.dnr.state.ak.us/forestry/pdfs/fysts2003prelirndoc.pdf

Therefore, it can be assumed that if the ownership of these karst lands were transferred to Sealaska, no measures are in place to ensure their protection. "Section 2(b)(1)." of the FCRPA, Findings, Purpose, and Policy states that, "The purposes of this Act are "to secure, protect, and preserve significant caves on Federal lands for the perpetual use. enjoyment, and benefit of all people". It would be difficult to make a case that disposing of land containing significant caves (or those that may meet the criteria) meets this purpose.

There is also a planning and public participation section of the Act (Sec. 4. (b)(C)(1)(2) The Secretary shall— "(1) ensure that significant caves are considered in the preparation or implementation of any land management plan if the preparation or revision of the plan began after the enactment of this Act; and (2) foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public." These sections require consideration of cave resources and assure a public process is followed.

Further more, the FCRPA Sec 4(a)(11) states "— . . . including management measures to assure that caves under consideration for the list [of significant cave designation] are protected during the period of consideration." Therefore, I believe that if a cave is known or is nominated under the provisions of the Act, we have the responsibility to follow up and either designated it as a significant cave or make the decision that it does not meet the provisions of the law, and therefore not significant. Until this decision is made, known caves and nominated caves should receive the same protection as significant caves and we as an agency should not knowingly support an action that could jeopardize that resource.

The karst lands of the Tongass National Forest and the caves and all the resources within them belong to "all people". These karst lands are national treasures containing caves and karst features of international significance. Federal land managers (. . . and all reasonable people, the Glacier Grotto would argue...) have been charged with the "perpetual" protection of these resources. Knowingly transferring the ownership of these caves to a private entity with no provisions for protection in place, in our opinion, does not meet the purpose of the FCRPA. Based on the past liberal management strategies and practices on Sealaska lands, these resources would be irrevocably damaged and the resources within them and what we may learn from them threatened or lost . . . "[6]

Glacier Grotto membership believes that there should be no transfer of karst lands without restrictions on development activities above and around these karst areas and with provisions allowing unlimited access for additional exploration and mapping, scientific study, and complete protection as if these areas were administered public lands protected by the Federal Cave Resources Protection Act . We simply do not believe that the selected "economic development lands" will be managed in any other way than clearcut logging, no matter what Sealaska states is their new land management strategy. As to management of the 2004+ CulturanacrecVnistoric Sites selected, Sealaska currently does not have an archeologist on staff, or a workable management plan for these sites that would protect the sites even for their own Native membership. Also, SB 3651, Section 18 (A-C) removes the "protective covenant" that was in the original ANCSA legislation from past and future 14(h)(1)

[6] Baichtal, James F., Forest Geologist, Tongass National Forest, Memo to Scott Fitzwilliams, RLMH Staff Officer, dated March 13, 2003 Review of the Proposed Sealaska-Tongass National Forest Land Exchange Concerning Karst and Cave Resources

ANCSA sites that would have required that the sites be managed to federal standards. What are Sealaska's intentions? Sadly, we do not believe that Sealaska would protect the karst landscape, unique cave ecosystems and associated biota, hydrological systems (some assocated with community water supplies), cultural and archeological sites, paleontological sites, and recreational opportunties in the same manner that these resources are currently being protected under federal management. We ask that the sponsoring members of the House and Senate consider our concerns regarding this bill. We will gladly provide more information and testimony, if necessary, to help in modifying or rewriting this bill such that it would protect the nationally and internationally unique karst resources in Southeast Alaska. Thank you for your time.

Sincerely,

HAIDA CORPORATION,
Hydaburg, AK.

Hon. LISA MURKOWSKI,
U.S. Senate, 709 Hart Senate Office Building, Washington, DC.

RE: Supporting Sealaska Corporation's Land Entitlement Legislation, H.R. 3560, Haa Aaní

DEAR SENATOR MURKOWSKI: Haida Corporation, the Alaska Native claims Settlement Act (ANCSA) village corporation for the community of Hydaburg, supports H.R. 3560, Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. These conveyances were originally contemplated under ANCSA, but more than 35 years post-ANCSA, they have yet to be completed.

Sealaska representatives met with our community on September 14, and fully briefed us on the land entitlement legislation. Haida Corporation sees the economic and cultural benefits of this legislation and understands the importance of finalizing the ANCSA land entitlement conveyances, and therefore, is pleased to expresses its support for this legislation.

If you have any questions regarding our position ont his important legislation, please do not hesitate to contact us.

Sincerely,

LISA LANG,
President.

VINCENT JAMESON,
Chairman.

HUNA TOTEM CORPORATION,
Juneau, AK, November 16, 2007.

Hon. LISA MURKOWSKI,
U.S. Senate, 709 Hart Senate Office Building, Washington, DC.

RE: Supporting Sealaska Corporation's Land Entitlement Legislation, HR 3560, Haa Aaní

DEAR SENATOR MURKOWSKI: Huna Totem Corporation, the Alaska Native Claims Settlement Act (ANCSA) village corporation for the community of Hoonah, supports H.R. 3560, Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. These conveyances were originally contemplated under ANCSA, but more than 35 years post-ANCSA, they have yet to be completed.

Sealaska representatives met with our Board of Directors on September 22, and fully briefed us on the land entitlement legislation. Huna Totem sees the economic and cultural benefits of this legislation and understands the importance of finalizing the ANCSA land entitlement conveyances, and, therefore, is pleased to expresses its support for this legislation.

If you have any questions regarding our position on this important legislation, please do not hesitate to contact us.

Sincerely,

ROBERT WYSOCKI,
Chief Executive Officer.

ALBERT W. DICK,
Chairman of the Board.

STATEMENT OF HAYDEN AND BONNIE KADEN, GUSTAVUS, AK

My wife and I are writing to express our opposition to the Sealaska bill, S 881/ HR 2099, as it is currently drafted. We firmly believe that such a bill must be part of a comprehensive approach to resolving long-standing Tongass National Forest issues. The Tongass is a complex eco-system where decisions made on one issue often have significant impacts throughout the forest and on the communities, residents and industries which depend on the general health of the forest.

First, let me say that we are 42 year residents of the Tongass. I am a retired attorney and worked with Senator Begich's father, Nick, when I was on the legal staff of the Alaska Legislative Affairs Agency. I also later served as legal counsel to both the House and Senate Judiciary Committees in the Alaska Legislature: My wife, Bonnie, was an assistant to the Alaska Commissioner of Education in the late 60's and early 70's and later taught school in Gustavus, ending her career as principal of the Gustavus School from 1988—1993. During this same period we started and ran an eco-tourism business in Southeast Alaska using many areas of the Tongass that are the subject of this proposed legislation. In fact, we were early pioneers of the concept of eco-tourism on the Tongass National Forest demonstrating the principles of minimum impact camping and wilderness recreation and working with the Forest Service to plan and develop recreational opportunities throughout the forest. Thus, I believe that we speak with a wealth of on-the-ground knowledge.

We are concerned that by giving away high value public lands, lands that belong to all Americans, to private, for-profit corporations, we are locking up those lands and pretty much forever locking out the public, both Native and non-Native alike. Especially, we have seen firsthand the rape and pillage effects of clearcut logging on other Sealaska lands, more or less permanently ruining those lands for multiple uses.

Some potential consequences of this legislation include problems with public access to traditional community hunting, fishing, and recreational areas, decreased fish and wildlife populations, and loss of world class karst and cave resources. Witness the community resolutions which oppose Sealaska's proposed legislation. We are concerned that this legislation allows Sealaska to control access to areas that local residents and visitors rely on for hunting, guiding, fishing, recreation and other traditional uses.

We are concerned that this legislation does not prevent the cherry picking of some of the most productive fish and wildlife habitat in the Tongass National Forest. The targeting of some of the most valuable lands in the Tongass, which is proposed in this legislation, gives Sealaska miles and miles of roads and other infrastructure built and paid for by the U.S. taxpayers.

We are especially concerned that "Native Future" and "Cultural" sites contain no limits on the scope or size of commercial development or the amount of commercial visitation that could be allowed. The selection of 46 popular bays, coves, and anchorages throughout the Tongass raises red flags as to bow local and community use of those locations might be impacted.

We believe that Sealaska is attempting to change the rules under the 1971 ANCSA legislation for selecting from the public lands for their entitlements. You must remember that Sealaska is a for-profit corporation and in its desire to make a profit, it does not always look to the totality of the interests of the members of that corporation. Traditional native values relying on subsistence resources and the preservation of an ancient way of life often take short.slarift in a profit driven world.

Thank you for your attention to our concerns.

KAKE TRIBAL CORPORATION,
Juneau, AK, December 5, 2007.

Hon. LISA MURKOWSKI,
U.S. Senate, 709 Hart Senate Office Building, Washington, DC.

RE: Supporting Sealaska Corporation's Land Entitlement Legislation, HR 3560, Haa Aaní

DEAR SENATOR MURKOWSKI: Kake Tribal Corporation, the Alaska Native Claims Settlement Act (ANCSA) village corporation for the community of Kake, is writing to express its support for H.R. 3560, Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. In 1971, Congress enacted the Alaska Native Claims Settlement Act to recognize and settle the aboriginal claims of Alaska Natives to their traditional homelands by authorizing the establishment of Alaska Native Corporations to receive and manage lands and funds awarded in settlement

of the claims of Alaska Natives. The purposes of ANCSA were to settle the land claims of Alaska Natives and to provide them with a means to pursue economic development, and create sustainable economies for the benefit of Alaska's Native people. However, more than 35 years post-ANCSA, the land conveyances have yet to be completed.

Since 1971, many of the Alaska Native Corporations have become successful and powerful economic engines within their regions and throughout the State of Alaska. Sealaska Corporation is the single largest private employer in Southeast Alaska, providing from 600 to 800 part-time and full-time jobs, annually, and contributing as much as $90 million, annually, to the Southeast Alaskan economy through its logging contracts, road building activities, other timber-related activities, and total Sealaska economic output. Sealaska also provides a significant benefit to Alaska Natives throughout the State of Alaska through its annual 7(i) revenue sharing contributions, totaling over $300 million since Sealaska began operating.

Sealaska would now like to engage in a comprehensive land entitlement and conservation initiative, allowing it to complete its land entitlement by making cultural and economic land selections outside of the original withdrawal areas, and in return it would allow removal of the encumbrance created by the withdrawal of lands for Alaska Native selection in Southeast Alaska. If Sealaska does not receive conveyance of all of the lands to which it is entitled in the near term, the primary economic activity of Seaiaska—logging—will cease in the near term, which will impact Southeast Alaska's Native people, the Southeast Alaska economy, and the Alaska Native Corporations throughout the State that have come to rely upon Sealaska's 7(1) contributions.

Therefore, Kake Tribal supports the enactment by the United States Congress of a bill to complete Sealaska's ANCSA land entitlement to allow Sealaska to continue to help meet the economic needs of the Native people of Southeast Alaska and Alaska Native Corporations throughout the State of Alaska.

Please do not hesitate to contact us if you have any questions regarding our position on this important legislation.

Sincerely,

HAROLD MARTIN,
President.

SOUTHEAST ALASKA NATIVE ECONOMIC FUTURES COALITION,
Juneau, AK, December 7, 2007.

Hon. LISA MURKOWSKI,
U.S. Senate, 709 Hart Senate Office Building, Washington, DC.

RE: Supporting Sealaska Corporation's Land Entitlement Legislation, H.R. 3560, Haa Aaní

DEAR SENATOR MURKOWSKI: The Southeast Alaska Native Economic Futures Coalition is writing to express its support for H.R. 3560, Sealaska Corporation's legislative proposal to finalize its land entitlement conveyances. These conveyances were originally contemplated under the Alaska Native Claims Settlement Act (ANCSA), but more than 35 years post-ANCSA, they have yet to be completed.

Sealaska representatives met with us today and fully briefed us on this land entitlement legislation. The Southeast Alaska Native Economic Futures Coalition sees the economic benefits of this legislation and understands the importance of finalizing the ANCSA land entitlement conveyances. Therefore, we are pleased to express our support for this legislation.

If you have any questions regarding our position on this important legislation, please do not hesitate to contact us.

Sincerely,

DEWEY SKAN,
Chair.

STATEMENT OF ANDY RICHTER, PRESIDENT, NAUKATI WEST, NAUKATI, AK

In June 2004 communities on Prince of Wales (POW) Island were made aware of the fact that Sea Alaska Corporation was seeking to acquire Forest Service lands on P O.W, Tuxekan, Hecata, and Kosciusko Islands. The communities on these Islands have historically relied on subsistence in the surrounding forest and streams, it is extremely important to these communities. Sea Alaska has a policy of no use of their lands and that would mean No firewood gathering, berry picking. hunting or fishing and actually would isolate the communities of Edna Bay, Port Protection

and Point Baker. We asked Sea Alaska to have some informational meetings with the communities and this request has been denied and ignored for four years. We now are informed meetings with each community will happen in April 2008. What in the world happened to change the informational meeting issue?

Sea Alaska has offered user permits to locals that are supposed to be the same as we now have with the Forest Service. In fact they are very different. Permits would expire if you sold your property. If a family had a child after the permit was issued that child would not be allowed a permit. These are only a couple of points among several of the conditions of the permit. Sea Alaska is asking us to accept much less than what we now have. The Forest Service is a good neighbor and Sea Alaska is not going to be.

We have two other issues which are also very important to the communities.

(1) Sea Alaska has a history of whole log export of their timber so no supply for local mills is their policy. Since export timber is a significantly better return the bottom line is obviously more important than a healthy economy in Southeast communities.

(2) The fifteen mile radius non competition areas also known as enterprise sites are not acceptable. Sea Alaska has not provided any suitable answers to these issues and has in fact rel-bsed to meet with the public up to now.

Sea Alaska not surprisingly claims they have the support of the Native communities. It should be noted not all the natives agree with this land exchange and have stated so in public meetings.

Sea Alaska has only one interest and that is the bottom line. Sea Alaska has not been able to provide and acceptable answer to the question why legislation is necessary for any party other than Sea Alaska. It' this legislation passes the door will be open to other native corporations to come back to the Federal Government for more land because they think their piece of the pie wasn't sweet enough either.

The community of Naukati Bay supports Sea Alaska's remaining land selection established in the Alaska Native Claims Settlement Act. Only within the core ivnship boundaries established by the original Alaska Native Claims Settlement Act.

STATEMENT OF THE SOUTHEAST ALASKA CONSERVATION COUNCIL, ON H.R. 3560

The Southeast Alaska Conservation Council (SEACC) submits the following statement regarding H.R. 3560, the Southeast Alaska Native Land Entitlement Finalization Act. SEACC respectfully requests that this written statement and accompanying material be entered into the official record of this Committee hearing.

Founded in 1970, SEACC is a grassroots coalition of 15 volunteer, non-profit conservation groups made up of local citizens in 13 Southeast Alaska communities that stretch from Craig on Prince of Wales Island north to Yakutat. Our individual members include commercial and sport fishermen, Alaska Natives, tourism and recreation business owners, small-scale high value-added wood product manufacturers, hunters and guides, and Southeast Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

Congressman Don Young, along with several distinguished colleagues, introduced H.R. 3560 on September 18, 2007. We respect the efforts of Congressman Young to stand up for the interests of Alaska Natives throughout his tenure in the U.S. House of Representatives. Like Congressman Young and H.R. 3560's other cosponsors, SEACC supports completing the conveyance of Sealaska Corporation's land entitlement under the Alaska Native Claims Settlement Act (ANCSA). Nonetheless, we have serious reservations about the changes in federal law proposed in H.R. 3560 and oppose the bill as introduced. We remain committed, however, to maintaining open lines of communication with Sealaska Corporation and the bill's sponsors to finalize the conveyance of Sealaska Corporation's outstanding statutory land entitlement. Consequently, we offer the Committee these preliminary comments for your consideration as you begin your review of this legislative proposal.

[Due to the large amount of materials submitted, additional documents and statements have been retained in subcommittee files.]

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