Debra Thompson

From: Rebecca Knight <bknight15@icloud.com>
Sent: Tuesday, June 15, 2021 4:08 PM
To: Assembly
Subject: Alaska Natives Without Land
Attachments: Knight_Testimony _2Jun21.pdf

Hello Mayor and Assembly Members,

Attached is my written testimony from the June 2 Assembly work session.

I urge you to take a position in opposition to the Alaska Natives Without Land proposed legislation and do so very soon, prior to introduction of the bill. One of the Congressional staff mentioned, during the work session, something to the effect that Senator Murkowski would like to see as "perfect" a bill as possible prior to introduction in the Senate. Making amendments following introduction seems problematic.

I believe the bill creates more problems than it solves and will result in a Pandor's box of perpetual land claims in Alaska.

Thank you for your time,

Becky (Rebecca) Knight

Written Testimony
of
Rebecca Knight
Before the Petersburg Borough Assembly Work Session

Regarding the "Alaska Natives Without Land" Legislation
June 2, 2021

The following concerns regard Rep. Don Young's Bill-H.R. 3231 Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act.

This bill would enable clear-cut logging of valuable old-growth trees, mining in sensitive salmon spawning streams, and damaging roadbuilding or other construction across the Tongass which sequesters 44% of the carbon in the national forest system. It includes millions of dollars worth of taxpayer funded infrastructure including "*all roads, trails, log transfer facilities, leases,*" and other incidentals on the land to be gifted."[1]

I am a 46 yr. resident of the Petersburg area. To be clear, I have a long and abiding respect for the deep cultural ties of Alaska Natives to the land and have sincere concern regarding their centuries-old plight. For much of my adult life I have worked to protect those lands from industrialization, thereby trying to ensure that those ties endure. However, corporatization of public lands is the epitome of the western model of colonization.

I address specific concerns with the legislation in the last half of these comments. You will likely recognize much of the first half from my previous testimony.

Senator Murkowski and Representative Young Assured the American People that Aboriginal Land Claims Were Final

On Dec. 12, 2014 immediately following passage of the Sealaska legislation which granted 70 thousand acres of prime Tongass public forest lands to the corporation, Senator Murkowski declared,

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[1] *See* H.R. 3231 Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act.https://www.ci.petersburg.ak.us/vertical/sites/%7B6795A51C-8710-4546-B2D2-2A07534E232B%7D/uploads/HR_3231_--_Unrecognized_Southeast_Alaska_Native_Communities_Recognition_and_Compensation_Act.pdf

"***Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,***"[2]

Shortly thereafter Senator Murkowski introduced an earlier version of the "Landless" bill she introduced last session and likely again this session.

Also, as pointed out by Representative Young, when he reintroduced the modified Sealaska Corporation Lands Bill on February 14, 2013, he also proclaimed:

"Four decades after the passage of ANCSA, it is well past time for Sealaska to receive their full land entitlement, which will enable the Federal Government to complete its statutory obligation under ANCSA to the Tlingit, Haida, and Tsimshian people of Southeast Alaska." [3]
[emphasis added]

These statements are in direct contradiction to their current effort to corporatize and further colonize the Tongass. Words DO matter and in this case, clearly Senator Murkowski and Representative Young assured the American people that Alaska native land claims were final. How can we trust anything these powerful lawmakers proclaim in our nation's hallowed halls when those assurances are reversed before the ink is barely dry on the bill's pages?

Moreover, during deliberations for the 2014 Sealaska Bill, Senator Murkowski, on a Petersburg campaign stop, took questions on a variety of topics. Inevitably, her 70,000 acre 2014 Sealaska carve out from the Tongass came up for discussion. One member of the public remarked that, "...much of Southeast's residents cannot help but feel being played as hostages and political pawns in this legislation." Senator Murkowski, responded that she truly "regrets the anxiety and tension that the Sealaska bill had created in our small towns," and recognized that, the legislation "...pitted neighbor against neighbor" and that the "resentment is not good for communities." Those were her words and again-they do matter.

Natives From the Five Ineligible Communities Received Lucrative Economic Benefits In Lieu Of Corporate Status

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[2] See Sen. Murkowski Applauds Final Passage of Sealaska Lands Bill. 12Dec2014. https://www.energy.senate.gov/2014/12/sen-murkowski-applauds-final-passage-of-sealaska-lands-bill

[3] Rep. Young Introduces Modified Sealaska Lands Bill.14Feb2013 https://donyoung.house.gov/news/email/show.aspx?ID=EOKTLJ2SRD7BWTATKHFY2UAAKU

During enactment of ANCSA, Congress expected that some Natives in the region would be ineligible for village corporations because they failed to meet the three criteria for eligibility: (1) 25 or more natives were village residents on the 1970 census, (2) the village was not modern or urban in character, and (3) the majority of the residents were native.

To compensate, the Act created special economic benefits for them as "At-Large" shareholders. During the last few decades those benefits have provided more dividends than village corporations. This must be especially so during the timber heyday of the 1980's and early 1990's.

For instance, these shareholders receive regular ANCSA 7(i) financial distributions beyond that of "Village" shareholders-at least according to their Press Releases. The "Urban/At-large" shareholder for the Spring 2020, Fall 2020, and Spring 2021 Sealaska Shareholder Distributions were just over $1,300, $1,200 and $1,129 respectively, while village shareholders received far less, at $332, $398 and $370 respectively. Moreover, Aaron Schutt concluded in his scholarly research, "ANCSA Section 7(I): $40 Million Per Word and Counting" [4]:

"Ultimately, however, Section 7(i) has resulted in the sharing between the regional corporations of ***several billion dollars*** [emphasis added] *of revenue derived from resources from ANCSA lands. And it has quietly played an important role in economic equity and the success of Alaska Native corporations.*

'The resource revenue-sharing provision contained in Section 7(i) is an important and unique element of ANCSA.Section 7(i) still has important consequences for Alaska Native corporations and their resource development partners more than forty years after the passage of ANCSA. As highlighted by the title of this article, have received fair and substantial equitable benefits."

There Are No Landless Natives In Southeast Alaska

That natives from these communities have been "waiting 50 years" is not due to an "oversight" or an "inadvertent" omission. Their exclusion from village status was informed, considered, and an intentional determination under ANCSA. Quite simply, they did not qualify, as various high level agency officials have repeatedly written and testified before Congress regarding very similar versions of this bill—including in 1996 and 2015. According to these officials as well as the framers of ANSCA, natives from these communities received equitable treatment. They were not "left out."

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[4] M. Schutt. Alaska Law Reveiw. ANCSA Section 7(I): $40 Million Per Word and Counting. Aaron Dec. 12, 2016. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=alr

The Proposed Bill Will Create New Inequities Where None Exist.

In the words of Jim Lyons, Undersecretary for the Department of Agriculture in 1996, "There are no "landless" Natives in southeast Alaska since all Natives have a beneficial interest in lands owned by Sealaska, including surface and subsurface estates." Accordingly, the officials confirmed that natives from the five communities of Tenakee, Petersburg, Wrangell, Ketchikan and Haines were found ineligible for village status because they failed to meet the ANCSA criteria for eligibility.

I attached those official's statements[5] to my testimony for your meetings on Nov. 16, 2020 and Dec. 7, 2020. They contain far more detail to support the determination. I urge you to read the content. This information must be included and documented, on the record, for this proposed legislation, not ignored.

Additionally, as ISER's Director Lee Gorsuch wrote in his December 7, 1993 letter to KFSK reporter Amy Miller (to correct the record re. her inaccurate news story):[6]

"We did not, as you report, make a finding that Congress has inadvertently omitted the study villages from land benefits, nor did we recommend that Congress should now award them land. We did not, as you implied, say that the study villages were entitled to the same economic benefits as Southeast Alaska communities with village or urban corporations have received."

Better Approaches Exist for Addressing This Issue

Regional tribes have recently petitioned the USDA Forest Service to "engage in a new and more robust and legitimate government-to-government consultation process with the Tribes on the Tongass National Forest under the principle of 'mutual concurrence' to identify traditional and customary use areas and design forest-wide conservation measures to protect them."[7] Instead of corporatizing public lands currently open to all, Congress should laser-focus,

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[5] Previously supplied to you on Nov 16: **1.** Letter to KFSK, Amy Miller from Lee Gorsuch, Director Institute Social and Economic Research (ISER). Dec. 7, 1993; **2.** 2015-Landless_blacktestimonyfinal 36_16_15-1 5. **3.** Landless letter__Lyons to Young (OCR'd)__24Jul96 copy

[6] *Id.*

[7] Petition for USDA Rulemaking to Create a Traditional Homelands ConservationRule for the Long-Term Management and Protection of Traditional and Customary Use Areas in the Tongass National Forest. https://media.ktoo.org/2020/07/FINAL-Southeast-Tribes-APA-Petition-7-17-2020-Nine-Tribe-Signatures.pdf

through the USDA, on responding to that petition in an honest and meaningful way and very soon. No more foot dragging.

Also, if the Alaska Natives Without Land believe that they have been treated unfairly, then the perfect solution would be for them to seek land from Sealaska, the Regional Corporation for Southeast Alaska. No additional lands would be removed from public ownership and any disputes could be settled amongst themselves. This would also avoid the division among local residents which inevitably occurs with such controversial legislation.

These approaches would be far better than corporatizing lands now open to all Southeast residents and visitors.

Regarding the *"Written Testimony of the Representatives of the Southeast Alaska Landless Native Communities to the Senate Committee on Energy, Natural Resources Subcommittee on Public Lands, Forests, and Mining regarding S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act of 2020 December 2, 2020"*

On p.8 of the landless testimony, third paragraph, the argument assumes that all of the 17-million acre Tongass is forested and further implies that forest is of equal value everywhere here, for non-timber purposes. Also, in observing that "only 37,000 acres" of the total 115,200 acres of selection is "Tongass land base identified as suitable for timber," the testifier fails to realize that this does not include Old Growth Reserves (which a private corporation would consider suitable) or similarly higher mass wasting index areas they might log and stream buffering (which is more extensively protected under federal than private ownership). So the 37,000 acre issue is a red herring.

In the next paragraph on p.8, the Old Growth Reserve (OGR), scenic viewshed and semi-remote recreation LUDs were zoned for place-specific reasons, so comparing the amounts of them in the selections to the overall acreage of those Land Use Designations (LUDs) Tongass-wide is a nonsensical comparison. In fact, that the Forest Service determined that 40,500 acres of the 115,200 of selections is in OGRs (that's 35% of the selection acreage) is extremely troublesome.

While the testimony and Q&A both say the landless groups are left with the scraps, this is also true of the OGR system. Many of the OGRs don't meet (or barely so) the minimum biological requirements for an OGR, because loss of habitat to both federal and non-federal logging, because the best was logged and then the best of the rest. Attempting to move OGRs will be detrimental. So ecosystem realities must be taken into account and not dismissed. Especially since the landless groups won't commit to not logging, or even to not logging in

particular locations such as OGRs (i.e. declaring them as "unsuitable" in the bill, on the maps).

The Q&A states: "As you know, the 1997 Tongass Conservation Strategy is now almost a quarter century old. It was drafted at a time when there was significantly more concern about the scope of timber operations in Southeast Alaska." This overlooks the fact that logging habitat damage is cumulative and long-term; that the OGR system is a quarter century old is immaterial. And habitat losses are on-going under the Forest Service, AMHT, Div of Forestry and the University; and perhaps the proposed new ANCSA corporations. Also, relocating OGR's to suitable locations (if even possible) will involve considerable interagency staff time. These costs must be considered and accounted for and the taxpayer should be reimbursed.

The landless groups assume an entitlement to one township, based on the other corporations in Southeast. However, had the five corporations been included in ANCSA, perhaps Congress would have allotted less that one township to each of the Southeast corporations; or perhaps it would have allotted land to Sealaska on less that a 1:1 ratio with each village and urban corporation. So if Congress wishes to accommodate these five groups in some way as corporations, maybe that remedy needs to be novel in some ways, compared to the earlier ANCSA corporations. Allocation of land in Southeast was, in 1971, and still is, a zero sum situation, particularly regarding habitat and its ability - despite large losses of a key component (productive old-growth forest, particularly areas of high habitat position and quality) to support stability of the ecosystem.

Following, I address some of the Recent Questions and Answers Posed by the Petersburg Borough About the Proposed Legislation. They were answered by beneficiaries of the proposed legislation. I urge you to request answers be provided by a neutral agency, such as the Office of Management and Budget, as well as by the Delegation since they are the sponsors, <u>prior to introduction of the bill.</u>

<u>Q#4.</u> While the Portage Bay West Cabin may be removed from consideration in the proposed bill, (what I consider predetermined dealmaking fodder) it is important to note that there remain equally important trails, roads and other infrastructure to Petersburg Borough residents and the American citizen. Those improvements should also be removed from the bill or payments made by the corporations to reimburse the American taxpayer, even if that infrastructure is outside the Borough. According to the Landless response, this includes at least "three developed recreation sites, 3.5 miles of hiking trails, 26.5 miles of off highway vehicle trails, 90.9 miles of open roads, and 12 Marine access facilities."—millions of dollars worth of infrastructure.

Another overlooked issue is the taxpayer funded investments in silvicultural thinning for timber production (and wildlife) needs within the selected lands. These transfers of long term investment must be considered and accounted for.

Q #5. Access from the shoreline is not addressed (only by roadways, trails and forest roads). However, in Southeast much access for recreation, hunting and fishing is via the shoreline and then into the upland on foot. This is not addressed. Also the terminology "reasonable restrictions" is very problematic and open to interpretation by future beneficiaries or even backcountry caretakers.

Q #6. There is concern that the vulnerable Tongass Old Growth Strategy could be unraveled under the proposed legislation. Near the top of p.5: The Landless claim, "The new corporations will not be subject to such restrictions." But that's exactly the point of the question, and it's not addressed.

Q #7. It's clear that culvert and road maintenance is likely to not occur on roads where the FS does not retain an easement. This is of great importance since impaired culverts contribute to loss fish habitat. We all know how beleaguered our commercial fishing industry is currently. We are a fishing town.

Q #8. This is big question, and it is entirely dodged. It's a valid question because it goes to the honesty and global equity of claiming carbon credits. Credits can legitimately be taken only if logging is threatened. BP recently paid Sealaska $100 MM for carbon credits for not logging half of their forested acres—165,000 acres — thereby keeping the carbon which trees absorb from the air in their living tissues. Supporters of this bill are reluctant to include language which prohibits logging. Alaska Natives Without Land claim they will not log their acres but refuse to include such language in the bill. Doing so would disallow them from claiming lucrative carbon credits which otherwise cannot be granted if there is no intent to log their acres.

This issue is played both ways—neither saying they intend to log or are likely to log, NOR saying they want to claim credits—nor saying they won't do either. If they don't want to log, they can't legitimately claim carbon credits. And further, if they are seeking land to get carbon credits, then that is an abuse of

the credits system. Moreover, there are big issues regarding "leakage"[8] and "additionality"[9] that plague the credibility of the carbon cap and trade industry to make it appear as if they are easing the climate crisis when they actually are not. This is an issue that MUST be closely examined prior to Senator Murkowski's introduction of the bill.

Q #11 Would the Petersburg Borough Assembly be willing to ask for federal retention of mineral rights, with the rights put into a conservation easement? This would protect the corporations from surface damage from mining by another corporation, as well as the habitat there. "No copper pit on Mitkof." Sealaska has enough mineral rights already (and the Q&A says it has not used them).

Q #19. "Why not leave the subsurface rights to the United States."
Not Answered.

Q #33. The respondents claim, "...in many cases, the State [logging] standards provide stronger protections [than Federal] based on science, topography, and water resources, than the inflexible federal standards would provide."
This is simply untrue. The State of Alaska Forest Practices and Resources Act (FRPA) is much less stringent than Federal logging regulations. Under FRPA there are:

- no enforceable provisions for protection of wildlife habitat;
- fish stream buffers are narrower;
- variances to infringe on those buffers are routinely approved;
- there is no limit on the size of clearcuts thus the mega cuts we witness;
- allows for 100% round log export.

FRPA applies to Native Corporation logging, University, Alaska Mental Health Trust and the State of Alaska lands.

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[8] "One concern that faces all carbon markets is "leakage," whereby emissions are reduced within a carbon market merely by being pushed outside it.
The kind of leakage most people are familiar with has to do with displaced industrial activity. Say State X implements a carbon market. In response, a company with a factory in State X closes it and reopens it in State Y. Now State X has reduced *its* carbon emissions, but *total* carbon emissions haven't fallen at all — they just migrated. That doesn't do anybody any good." https://grist.org/climate-energy/californias-carbon-market-is-leaking/

[9] "At the heart of nearly all offset programs is the requirement of "additionality"—offset credits should only be given for emissions reductions *that would not have happened in the absence of the offset program.* Practically speaking, additionality requires verifying what a potential offset seller would have done without the offset program." https://www.brookings.edu/research/beyond-additionality-in-cap-and-trade-offset-policy/

Q #19. "Why not leave the subsurface rights to the United States." Dodged, NOT ANSWERED

Subsistence Priority Will be Lost on Selected Lands

Petersburg is a Federally recognized Subsistence Community. Once these lands are transferred to private interests, Petersburg residents will lose their subsistence priority on those lands. What provisions will be made to protect that subsistence priority, currently guaranteed under the Alaska National Interest Lands Conservation Act (ANILCA)? [10] This is a huge question.

Specific Selection Parcels

- The lands surrounding Wood Point at Thomas Bay are important to my family. We have harvested several deer through the years there. In fact, this area is a very important area to local hunters. We also have recreated there through the years. We oppose this selection.
- The Mitkof Parcels_Wrangell Narrows East and Mitkof Interior 2 & 4 are other important and fully utilized recreation areas for all Petersburg residents and contain some of the best remaining fish and deer habit on Mitkof Island. Corporatization of these lands would threaten existing uses. I request that no selections be made here.

While there remain many more problematic issues regarding this proposed lands legislation, it is clear that it is a mess and creates far more problems than it solves. I urge you to oppose the legislation, in no uncertain terms and advise the Alaska Natives Without Land to seek redress through Sealaska or by working with the Department of Agriculture to address a better relationship per their petition to the USDA. It is important that you take a position before the bill is introduced in the Senate. Once it is introduced it is all but assured to be enacted.

Sincerely,

Rebecca Knight

Becky (Rebecca) Knight

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[10] The **Alaska National Interest Lands Conservation Act** (ANILCA), passed by Congress in 1980, mandates that rural residents of **Alaska** be given a **priority** for **subsistence** uses of fish and wildlife. (View Title VIII of ANILCA - **Subsistence** Management and Use Findings