

STATEMENT
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BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND, FORESTS
ENERGY AND NATURAL RESOURCES COMMITTEE
UNITED STATES SENATE
OCTOBER 8, 2009

CONCERNING

S. 1272, THE "DEVIL'S STAIRCASE WILDERNESS ACT OF 2009"

AND

S. 881 "SOUTH EAST ALASKA NATIVE LAND ENTITLEMENT
FINALIZATION ACT".

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 is 63,535 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.881 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 ANCSA 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 TFPFA 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.