

CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF
2003

OCTOBER 15, 2003.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1899]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1899) to resolve certain conveyances and provide for alternative land selections under the Alaska Native claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1899 is to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1899, the “Cape Fox Land Entitlement Adjustment Act of 2003,” provides for a land exchange involving the Cape Fox Corporation, Sealaska Corporation, and the U.S. Forest Service in the Tongass National Forest, Alaska. The bill addresses an inequity regarding the Cape Fox Corporation arising under the Alaska Native Claims Settlement Act of 1971. The bill also rationalizes land ownership patterns, simplifies boundaries, and resolves “split estate”

problems in the Tongass National Forest. The land exchange will enable Sealaska and Cape Fox to acquire lands adjoining an existing gold mine project.

The Cape Fox Corporation is the Village Corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for the Native Village of Saxman, which is located near Ketchikan in the southeast panhandle of Alaska. Sealaska is the Regional Corporation for Natives from the entire southeast region of Alaska. Both corporations have holdings of surface and subsurface estate in varying patterns in the Tongass National Forest, which comprises most of Southeast Alaska.

Under ANCSA, a village corporation in Southeast Alaska was required to select 23,040 acres of withdrawn public land in the core township in which the Native Village is located, and to the extent necessary, lands contiguous to or cornering such township. With the exception of Cape Fox, all other Southeast Alaska village corporations were restricted from selecting lands within two miles of a home rule city. Cape Fox was restricted from selecting lands from within six miles from the home rule City of Ketchikan. The six-mile restriction precluded Cape Fox from selecting valuable timber lands, industrial sites, and other commercial property within that area, leaving only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no economic value, available for selection.

Cape Fox's land selections were further limited because the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. The inequity created by reducing lands Cape Fox could select has not been rectified.

H.R. 1899 is a sensible solution. It provides for adjustments to Cape Fox's land selections and for a land exchange that is mutually beneficial to the village corporation and to the U.S. Forest Service. Lands that Cape Fox acquires under the exchange are adjacent to the Kensington gold mine project, which could lead to major economic opportunities for the Native shareholders, as mining is a critical ingredient in the future economy of southeast Alaska. The Forest Service would acquire lands rich in wildlife habitat, recreation and watershed values. In addition, the exchange will rationalize complex land ownership patterns in Southeast Alaska.

The bill also provides for an exchange between Sealaska and the Forest Service to resolve long-standing "split estate" problems in which Sealaska owns the subsurface estate of certain lands owned by the U.S. in the Tongass National Forest. Split estates can be difficult and inefficient to manage.

A summary of the exchanges authorized under this bill are as follows:

- Cape Fox not required to select and receive 160 acres of certain ANCSA lands.
- Cape Fox receives surface (Sealaska receives the subsurface) to 99 acres of land outside Cape Fox's ANCSA selection area.
- Cape Fox receives surface and subsurface estate to 2,664 acres of Tongass National Forest at Jualin Mine site near Berners Bay (north of Juneau).
- Sealaska receives surface and subsurface of land within the Tongass National Forest that is equal in value to lands exchanged

to the United States. Sealaska selects its lands from 9,329-acre pool of Tongass lands at Kensington Mine, near Berners Bay.

- The United States receives lands and interests in land of equal value from within:

- (1) 2,900-acre pool and public trail easement offered by Cape Fox (surface) and Sealaska (subsurface) on Revilla Island;

- (2) 2,506 acres of Sealaska split estate subsurface on Prince of Wales Island; and

- (3) 2,698 acres of Sealaska subsurface estate remaining to be conveyed under Haida Land Exchange Acts and Sealaska/Forest Service Split Estate Exchange Agreement of 1991.

- Cape Fox would choose lands to be conveyed to U.S. from the 2,900-acre pool in (1) above.

- Lands received by the United States would be added to the Tongass National Forest and managed according to the Tongass Land Management Plan.

The land exchanges under H.R. 1899 are required to be equal in value.

Similar legislation passed the Senate in the 107th Congress, but no further action was pursued in the House. Attempts to address the inequities and land ownership problems concerning Cape Fox have been made in the past but without resolution.

A hearing that was scheduled on H.R. 1899 on Thursday, September 18, 2003, was cancelled because of Hurricane Isabel. A hearing on the virtually identical Senate version of the measure, S. 1353 (Murkowski), was held in Anchorage, Alaska, on August 6, 2003. In that hearing, testimony on the measure was received from Under Secretary of Agriculture Mark Rey, Bruce Borup, the Chief Executive Officer of Cape Fox Corporation, Steve Borell of the Alaska Miners Association, Rosa Miller, Tribal Leader of Auk Kwaan Clan, in addition to other organizations and individuals.

COMMITTEE ACTION

H.R. 1899 was introduced on April 30, 2003, by Congressman Don Young (R-AK). The bill was referred to the Committee on Resources. On October 1, 2003, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in car-

rying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of this bill could reduce offsetting receipts by up to \$10,000 a year.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 2003.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1899, the Cape Fox Land Entitlement Adjustment Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll and Deborah Reis.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 1899—Cape Fox Land Entitlement Adjustment Act of 2003

CBO estimates that enacting H.R. 1899 would have no significant impact on the federal budget. The bill could affect direct spending (including offsetting receipts), but we estimate that any such impacts would not exceed \$10,000 a year.

H.R. 1899 would direct the Secretary of the Interior to convey to Cape Fox Corporation, an Alaska Native village corporation, the surface estate to 99 acres of federal lands located within the Tongass National Forest in Alaska. The bill also would direct the Secretary to convey to Sealaska Corporation, an Alaska Native regional corporation, the subsurface estate to those lands. According to the Forest Service, those lands are not expected to generate significant receipts over the next 10 years; hence, CBO estimates that conveying them would have a negligible impact on the federal budget.

In addition, H.R. 1899 would authorize the Secretary of Agriculture to convey to Cape Fox Corporation the surface and sub-

surface estates to about 2,664 acres of national forest lands in exchange for other lands currently owned by that corporation. Following that exchange, the Secretary would be authorized to convey to Sealaska Corporation the surface and subsurface estates to federal lands to be identified by that corporation in exchange for its interests in the subsurface estate of roughly 5,204 acres of other lands. Under the bill, any lands or interests exchanged must be equal in value.

H.R. 1899 does not specify all of the lands to be exchanged under the bill but does identify areas from which such lands would be selected. Based on information provided by the Forest Service about the level of timber harvesting expected to occur on lands that could be affected by the bill, however, CBO estimates that any forgone offsetting receipts from such harvests probably would not exceed \$10,000 a year.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. The conveyances and exchanges authorized by the bill would be voluntary on the part of Cape For Corporation and Sealaska Corporation.

The CBO staff contacts for this estimate are Megan Carroll and Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

We strongly oppose H.R. 1899.

Under the guise of a land “exchange,” this special interest legislation would convey approximately 12,000 acres of valuable public lands from the Tongass National Forest to the Cape Fox Corporation and Sealaska Corporation. The national forest lands which would be transferred to private ownership—with the result that they could be developed or sold—are adjacent to the Kensington gold mine project and border the Berners Bay conservation area which was permanently protected by Congress in 1990. The corporate properties to be acquired by the Forest Service in exchange under the bill include about 3,000 acres of remote and isolated surface parcels, much of which has been roaded and clear-cut logged, along with about 9,000 acres of subsurface rights of dubious value.

Simply put, in this bill private corporations get the land gold while the Tongass National Forest—and the public—get the land shaft.

The Tongass lands which would be given away under this bill have multiple resource values for the American people who own those lands. The undeveloped forested lands in Berners Bay include coastline and old-growth timber. The area is very scenic, is heavily used for recreation, and has high fish and wildlife values. And the economic value of those lands, if the Coeur mining corporation redevelops the old Kensington gold mine as planned, may be substantial. In a July 28, 2003 press release Coeur noted:

The Kensington Gold Project is located approximately 45 miles north of Juneau, Alaska and contains an estimated 1.8 million ounces of proven and probable gold reserves and 1.4 million ounces of resources. Capital costs necessary to place Kensington into production are currently estimated to be \$150 million, while annual gold production is projected to average 175,000 ounces annually. * * * Coeur believes that significant exploration potential exists at Kensington that could materially increase the project’s total resources.

A significant number of Alaskans oppose this exchange because they believe that the values of undeveloped national forest lands in Berners Bay exceed any potential economic return that may be derived from privatization and development to facilitate the Kensington gold mine project. See, e.g., “Land Swap Plans Spark Outcry,” Anchorage Daily News, September 24, 2003. Opponents include the Auk Kwaan tribe, which has cultural and historic ties to the lands. Notwithstanding the opposition to the bill, the Majority failed to hold a field hearing in Alaska or bother to inspect the lands at issue. Moreover, a perfunctory public hearing scheduled in Washington, D.C. prior to the markup was cancelled.

Compounding the insult of the Majority's failure to provide due public hearing process, is the substantive injury of stampeding a fundamentally flawed bill through the committee. Among the many concerns regarding H.R. 1899 are the following:

- The lands specified for exchange in the bill were not derived via negotiation with the Forest Service; instead, the two corporations identified the Tongass National Forest lands they want surrounding the Kensington gold mine project and self-selected their corporation lands and subsurface rights to be transferred to the Forest Service in exchange.

- The exchange has not been subject to any Forest Service hearings or public process as would be required under the National Environmental Policy Act (NEPA) for an administrative exchange; by a congressional mandate to execute the exchange, the bill provides for a defacto exemption from NEPA.

- No land appraisals have been done on the lands to be exchanged; although the lands to be exchanged are to be "equal value" under the bill, there is no requirement for formal land appraisals following the standard process of applying the Uniform Appraisal Standards for Federal Land Acquisitions.

- While the direct benefits of the exchange to the corporations are clear—private ownership of 12,000 acres surrounding the Kensington gold mine project—there are no comparable benefits to the national forest to offset the loss of valuable lands in the scenic Berners Bay area; the 3,000 acres of Cape Fox corporation lands which would be thrust upon the Forest Service are in remote and non-contiguous parcels, and any commercial timber has been clear-cut logged. The Sealaska Corporation's subsurface would add little of discernable value to the national forest, yet they would receive by exchange about 9,000 fee simple (surface and subsurface) acres with high development potential in the Berners Bay area near Juneau.

In sum, H.R. 1899 violates every tenet in the rulebook for what constitutes a land exchange that is in the public interest. It would mandate a one-sided transaction which is a transparent give-away of valuable public lands to private corporations. We urge its rejection by the House.

NICK RAHALL.
 GEORGE MILLER.
 ED MARKEY.
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