

CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT; NEVADA NATIONAL  
FOREST DISPOSAL ACT; CRAIG RECREATION LAND PURCHASE ACT;  
CENTRAL NEVADA RURAL CEMETERIES ACT; AND TO EXTEND THE  
TERM OF THE FOREST COUNTIES PAYMENTS COMMITTEE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS  
SECOND SESSION

on

<b>S. 1354</b>	<b>H.R. 272</b>
<b>S. 1575</b>	<b>H.R. 1092</b>
<b>S. 1778</b>	<b>H.R. 3249</b>
<b>S. 1819</b>	

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MARCH 10, 2004



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**CAPE FOX LAND ENTITLEMENT ADJUSTMENT  
ACT; NEVADA NATIONAL FOREST DISPOSAL  
ACT; CRAIG RECREATION LAND PURCHASE  
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TERIES ACT; AND TO EXTEND THE TERM  
OF THE FOREST COUNTIES PAYMENTS  
COMMITTEE**

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**WEDNESDAY, MARCH 10, 2004,**

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

The subcommittee met, pursuant to notice, at 2:32 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

**OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S.  
SENATOR FROM IDAHO**

Senator CRAIG. Good afternoon, everyone. The Subcommittee on Public Lands and Forests of the Committee of Energy and Natural Resources of the U.S. Senate will come to order.

I want to thank each of you for coming this afternoon.

I would like to recognize our ranking member, Ron Wyden, when he gets here. We have worked closely together on a variety of pieces of legislation over the years and I look forward to partnering once again.

Let me welcome each of the witnesses who have traveled here to testify on S. 1354, S. 1778, and S. 1819. I know that coming to Washington at this time of year can sometimes be challenging, especially when we force you to make trips, often several times during the course of the year, due to the ricin scare. Sometimes you do not even want to come near Capitol Hill. We used to give you other excuses for not wanting to be here. But I would suggest that you are probably in one of the safest buildings in the country today based on the overall security levels that you have probably had to experience getting through all of this.

I also want to welcome Dennis Wheeler, CEO of the Coeur d'Alene Mines Corporation of Coeur d'Alene, Idaho. It is great to see you here, Dennis. We look forward to your testimony. I am glad that you came to Washington to testify on the Cape Fox bill and hope that your testimony will help ensure that that valuable project moves forward.

Finally, I want to welcome Under Secretary Mark Rey, who used to be a fixture in this committee, not before this committee. Those times when he prepared Senators to be tough on administration people, now we oftentimes find it very enjoyable to turn the table on Under Secretary Rey.

[Laughter.]

I also want to welcome Tom Lonnie, who is the Director of Minerals, Realty and Resource Protection for the BLM. Welcome before the committee, Tom.

I know that Senator Murkowski has a number of constituents here to testify today on S. 1354 and S. 1778. In a few minutes we will ask her, when she arrives, to make those appropriate introductions.

We are taking up several bills that we dealt with during last Congress, which I hope we can work through quickly this year: S. 1354 and S. 1778, as I have mentioned, Senator Murkowski's Cape Fox lands, a conveyance bill, and her city of Craig, another land conveyance issue.

We will also review two bills related to land conveyances in the State of Nevada. S. 1575 and its House companion, H.R. 1092, are two new ones before the subcommittee. They address the conveyance of six parcels of land in and around Carson City, Nevada. We will also be examining S. 1819 and its House companion, H.R. 272, to convey cemetery lands in Lander and Eureka Counties in Nevada.

Finally, we will take testimony on H.R. 3249, a bill to extend the mandate of the long-term Advisory Committee of the Rural Schools and Communities Self-determination Act of 2000.

I know that it has been a long and difficult effort to effectuate the Cape Fox land conveyance and it is somewhat controversial. I look forward to hearing more from all of the witnesses and working with Senator Murkowski to move this important legislation forward.

I am very interested in S. 1575 and H.R. 1092. It seems to me to be a novel approach to auction off Federal lands to help pay for the operational costs of reconstructing the Minden, Nevada Inter-agency Dispatch Center. But I am also somewhat troubled by provisions of this that will assign some of the potential revenues generated by the bill to be spent for public education and to the Carson Water Subconservancy District. I want to hear how the administration and others feel about this proposal.

It would seem to me that the proceeds from the sale of lands managed by the Federal Government should either be deposited in the Sisk Act account to be used for acquisition of other lands to be managed by the Federal Government or to the U.S. Treasury or to be utilized to fund needed backlog maintenance of other Federal operating costs.

Of course, I am quite sure that in the State of Nevada we do not worry about acquiring additional public lands. That State, other than Alaska, probably has the largest percentage of public lands of any State in the Nation.

We are going to allow each witness 5 minutes to summarize their testimony before we proceed with questions of them.

We also will have a time crunch in relation to Dennis Watson, who will be on the second panel, the mayor of the city of Craig, Alaska. As we move to that second panel, Lisa, I will ask you to make the appropriate introductions of your guests that are here from Alaska.

With that, let us move immediately to our first panel and we will start with you, Secretary Rey, for your comments. Thank you.

[The prepared statements of Senators Ensign, Reid, and Smith follow:]

PREPARED STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR  
FROM NEVADA, ON S. 1575

Mr. Chairman, thank you very much for holding a hearing today on S. 1575, the "Nevada National Forest Land Disposal Act of 2003." I respectfully ask that my testimony be placed in today's hearing record.

I am honored to join my colleague from Nevada, Senator Harry Reid, in sponsoring this important legislation. Congressman Jim Gibbons is the sponsor of identical legislation in the House of Representatives. S. 1575 is modeled on successful bipartisan laws that were enacted to competitively auction surplus federal land in Clark County, Nevada, and direct the proceeds to important public purposes such as parks, trails, and infrastructure.

Eighty seven percent of Nevada's lands are managed by the federal government. Nevada, for the past two decades, has been the fastest growing state in the nation. As our population centers continue to grow by leaps and bounds, we have continually needed to reexamine our federal land boundaries to make sure they make sense. Such is the case in the Nevada National Forest Land Disposal Act of 2003, which seeks to dispose of seven relatively small parcels in Douglas County and Carson City in northern Nevada.

The name of this measure is a little misleading. Yes, we seek to dispose of lands now under the jurisdiction of the U.S. Forest Service. But the lands we are putting up for competitive auction are isolated parcels next to or interspersed with private land. From a management standpoint, it does not make any sense to have the Forest Service managing parcels that do not have forest characteristics. These lands, when sold, will provide for orderly growth in the Carson City and Douglas County area and allow for quality expansion.

S. 1575 calls for the auction of these seven parcels on a competitive basis, at no less than fair market value. I have a written commitment from the Humboldt-Toiyabe National Forest supervisor that the sale of the 231 acres of land identified in this bill will be conducted the way we sell lands in southern Nevada, a process that has earned high marks from the U.S. Interior Department's Inspector General. By putting out desirable land for auction, the taxpayers realize the highest price the market will bear. S. 1575 also give the Secretary of Agriculture the ability to reject a sale if it is not in the public interest. The taxpayers are protected and the federal government is assured that the future use of the land will not harm the National Forest system near these privatized lands.

The proceeds from the sale of the seven parcels will be put to good public use. Five percent would go to the State of Nevada's general education fund, the same as under current law in the Southern Nevada Public Land Management Act. Another five percent would go to the Carson Water Subconservancy District, a bi-state agency that works to balance the interests of communities in Carson City and Douglas County and the Carson River Watershed's environment. The remainder of the funds would be earmarked for two worthy purposes: (1) the Interagency Dispatch Center in Minden to augment the Forest Service's and State of Nevada's ability to fight wildfires that are a major threat to our national forest in the area; and (2) parks, trails, and natural areas for the public to enjoy.

Responding to concerns about "directed" sales of public forest lands, I would briefly like to explain the unique circumstances precipitating the legislation I introduced. First and foremost, 87 percent of Nevada is owned by the federal government. No other state has such a high percentage of federal lands, which is an enormous burden on local governments. Most planning decisions in Nevada are not made in town halls or by county commissioners. The planning decisions must be made by Congress, an incredibly tough task in the fastest growing state in America. The seven parcels that are offered for sale in this legislation are simply not characteristic of the forest lands we all support preserving. Rather, the parcels are suitable for uses that are consistent with the population and economic growth that Nevada is experi-

encing and will continue to experience in the foreseeable future. It simply does not make sense—from a management or even a common sense perspective—to keep these pieces of land within the current national forest boundary and under federal management.

Concerning the use of the sale proceeds, there is a clear national benefit in making available the sale proceeds to the Minden Interagency Dispatch Center and the Carson Water Subconservancy District. Enhanced fire fighting capabilities among all levels of government prevent catastrophic fires in our national forest lands along the Sierra Front. Wildfires have the potential to wipe out entire ecosystems, accelerate erosion into streams and rivers, and hasten the spread of non-native plant species and noxious weeds. The Carson Water Subconservancy District takes a lead role in the very health of the Carson River, the tributary to Walker Lake (a major stop for migratory birds) and the subject of significant federal interest. To argue that these beneficiaries are not of a national interest is a compartmentalized view that simply does not take into account the fact that federal, state, local, and private lands do not exist separately along distinct boundaries.

The lands identified for disposal carry an added monetary value because of the investments made by local governments such as infrastructure and proximity to commercial and residential development. Certainly, local governments have a right to realize that added monetary value when selling public lands as long as the use of the proceeds is a public benefit. I believe that all Americans realize a tangible benefit from having a better equipped fire fighting capacity to protect priceless forest lands along the Sierra Front. Federal agencies do not have the money to take care of the lands they currently manage in Nevada, and this is an honest attempt to help the Forest Service.

In closing, Mr. Chairman, the Nevada National Forest Land Disposal Act of 2003 has precedent in federal law. Nevada's need to grow responsibly depends on our action today, and I believe I have written this legislation to protect taxpayers and ensure that the funding generated from these directed land sales is used to benefit the public only. We should follow the lead of the House of Representatives and pass S. 1575 quickly.

Again, Mr. Chairman, thank you for holding this hearing today.

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PREPARED STATEMENT OF HON. HARRY REID AND HON. JOHN ENSIGN,  
U.S. SENATORS FROM NEVADA, ON S. 1819

Mr. Chairman, thank you for holding this hearing and for the opportunity to speak on this important piece of legislation. As you may know, as much as 87 percent of the land in Nevada is controlled by federal agencies. The U.S. Forest Service, the Bureau of Land Management, the Bureau of Reclamation, the National Park Service: these are our neighbors. And because we have so much federal land in our state, Nevada's congressional delegation works closely with state and local leaders to ensure that federal land issues are dealt with in a fair and timely manner.

The problem addressed by this legislation, the Central Nevada Rural Cemeteries Act, is a small issue with serious importance for two communities in the heart of my state—Kingston and Beowawe. Each of these towns was founded by pioneers who settled in Nevada's high desert valleys in the mid-to-late 1800s. And, as with all communities, the people of Kingston and Beowawe established local cemeteries to provide a final and sacred resting place for their friends and family. This is a fairly straightforward narrative, Mr. Chairman, except that when the boundaries of the federal lands in Nevada were demarcated roughly one hundred years ago—the cemeteries of the two towns were not excluded as they should have been. Today, much of the original Kingston cemetery is on Forest Service land and the Maiden's Grave Cemetery in Beowawe is on land managed by the Bureau of Land Management.

To rectify this situation, The Central Nevada Rural Cemeteries Act provides for the conveyance of the Maiden's Grave Cemetery to Eureka County and for the balance of the original Kingston Cemetery to be conveyed to Lander County. Plain and simple, this is the right thing to do. There is no question that the people of Beowawe and Kingston deserve the right to control and manage the ground in which their ancestors lie. We sincerely hope that our colleagues recognize the benefit that these conveyances would provide to the people of central Nevada and that they will support the passage of this legislation.

Mr. Chairman, I am also a cosponsor of another piece of legislation before this committee today. I am pleased to support the Nevada Forest Land Disposal Act. Senator Ensign has provided detailed background on this bill in his submitted statement.



I thank the Committee for its time and attention.

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PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR  
FROM OREGON, ON H.R. 3249

Mr. Chairman, I appreciate your willingness to hold this hearing today on several bills pending before the Subcommittee, particularly H.R. 3249, a bill to extend the term of the Forest Counties Payments Committee. As a Member who represents a state where half the land is managed by the Federal government, I support enactment of H.R. 3249. This will enable the Congress to receive better information about the effectiveness of the certain payment methodologies to eligible states and counties under a variety of county payments statutes.

The Forest Counties Payments Committee was originally established in 2000, "to develop recommendations, consistent with sustainable forestry, regarding methods to ensure that States and Counties in which Federal lands are situated receive adequate Federal Payments to be used for the benefit of public education and other public purposes." It was supposed to produce a report within 18 months of its establishment, which the Committee did. However, because of timing of the enactment of the Secure Rural Schools and Community Self Determination Act, of which I was an original cosponsor, the effectiveness of payments to counties under that Act could not be fully evaluated. That Act strengthens the historic link between the counties and the federal lands located in those counties by specifying that a portion of the county payments be invested in eligible projects on federal lands. The effectiveness of programs funded under Title II and Title III of the Act should also be evaluated.

We should extend the term of the Forest Counties Payments Committee in order for the Congress to have a complete evaluation before the Secure Rural Schools and Community Self Determination Act comes up for reauthorization. I am convinced that payments made under the Act have been vital to schools in Oregon. However, since this is a nationwide program, I believe it is important to have a complete analysis of the effectiveness of this Act for all of the eligible counties.

I look forward to working with my colleagues on the Energy and Natural Resources Committee pass H.R. 3249 in the near future. I want to thank all the witnesses appearing before the Subcommittee today.

**STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE**

Mr. REY. Thank you, Mr. Chairman, Senator Murkowski, to appear before you today to offer the Department's view on the five bills that you mentioned.

With regard to the Cape Fox bill, the Forest Service continues to work with Senator Murkowski's staff on the language of the provision. The Department supports the enactment of S. 1354. We have a couple of additional changes that we would like to work through. We believe that there are significant benefits to the Government from enactment, including consolidation of public lands on the southern portion of the Tongass and the elimination of split estate ownership.

The Department supports enactment of S. 1778, the Craig Recreation Land Purchase Act. We have listed some suggested modifications for the committee's consideration as well.

The Department does not object to making additional Federal lands available to Lander County, Nevada, as provided for in S. 1819, but the Department believes the Forest Service can meet the objectives of this legislation under its current statutory authority that would allow it to convey national forest system land to Lander County for fair market value.

S. 1575, the Nevada National Forest Land Disposal Act, recognizes the importance of orderly and responsible development in Carson City and Douglas County and that the disposal of specific

parcels of Federal lands administered by the Forest Service may assist in the facilitation of that effort. The Department does not oppose S. 1575.

Finally, the Department would have no objection to the enactment of H.R. 3249.

That concludes my statement. I would be happy to respond to any questions.

[The prepared statement of Mr. Rey follows:]

PREPARED STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT UNITED STATES DEPARTMENT OF AGRICULTURE

Mr. Chairman, thank you for the opportunity to appear before you today in order to provide the Department's views on S. 1354 Cape Fox Land-Entitlement Adjustment Act, S. 1778 Craig Recreation Land Purchase Act, S. 1819 Central Nevada Rural Cemeteries Act, and S. 1575 Nevada Forest Land Disposal Act of 2003.

S. 1354—CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT

This bill, as introduced, provides for an additional 99 acres of Alaska Native Claims Settlement Act (ANCSA) selection area for Cape Fox and Sealaska Corporations at Clover Passage on Revillagigedo Island, and removes the requirement for Cape Fox to select 160 acres of mountaintop land within their core township. It also requires the Forest Service to offer, and if the offer is accepted by Cape Fox, to complete land exchanges with the Cape Fox and Sealaska Corporations.

Through this land exchange:

- Cape Fox Corporation would receive the surface and subsurface of 2,663.9 acres of National Forest System (NFS) lands at the Jualin Mine site near Berners Bay, north of Juneau.
- Sealaska Corporation would receive the surface and subsurface of NFS lands to equalize values of Sealaska subsurface lands and interests in land it conveys to the U.S. Sealaska Corporation would select NFS lands of equal value from within a 9,329-acre pool of NFS lands at the Kensington Mine, also near Berners Bay.
- The Forest Service would receive lands and interests in lands of equal value from within: (1) a pool of approximately 2,900 acres, including a public trail easement, offered by Cape Fox (surface) and Sealaska (subsurface) on Revillagigedo Island; (2) 2,506 acres of Sealaska subsurface estate, located at Upper Harris River and Kitkun Bay, on Prince of Wales Island; and (3) 2,698 acres of Sealaska subsurface land interests remaining to be conveyed to Sealaska pursuant to the Haida Land Exchange Act and the Sealaska/Forest Service Split Estate Exchange Agreement of 1991. Cape Fox would choose the lands to be conveyed to the United States from the 2,900 acre pool in (1) above.

The Forest Service previously worked with Senator Murkowski's staff to clarify and improve the language when these exchanges were under consideration in the 107th Congress. The Department could support the enactment of S. 1354 with the changes below:

1) We request that Sec. 5(d) be clarified to read “. . . by Cape Fox under subsection (c) are equal in market value to the lands described in subsection (b) based on appraisal reports approved by the Secretary and prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.” Similarly, we request that Sec. 6(b) be clarified to read “. . . selected lands are equal in market value to the lands described in subsection (c), and may adjust amount of selected lands in order to reach agreement with Sealaska regarding equal market value based on appraisal reports approved by the Secretary and prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.”

2) We request that Sec. 7(a) be clarified to read “. . . shall be of equal market value.” And “. . . estimates of market value of exchange lands with supporting information in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.”

3) Sec. 5(f) gives the Secretary of Agriculture ninety days after enactment to attempt to consummate an exchange agreement with Cape Fox. During this ninety day period, Cape Fox (pursuant to Sec. 5(c)) has sixty days to identify lands to be conveyed to the U.S., potentially leaving only thirty days for the U.S. to complete

an appraisal, obtain title information, and complete the exchange process. Similarly, Sec. 6(d) only gives the Secretary of Agriculture ninety days after receipt of selections by Sealaska to attempt to enter into an exchange agreement with Sealaska. We request these time frames be extended.

4) A normal component of a land exchange includes a provision requiring the exchanged lands to be subject to satisfactory environmental site survey and remediation pursuant to the American Society for Testing and Materials (ASTM) Standard Guide for Environmental Site Assessment E 1903. We request this requirement be added to Sec. 7(b).

With these minor changes, the Department of Agriculture supports the enactment of S. 1354. We believe there are significant benefits to the government from enactment, including consolidation of public lands on the southern portion of the Tongass and elimination of split estate ownership.

#### S. 1778—CRAIG RECREATION LAND PURCHASE ACT

The Department would have no objection to the enactment of S. 1778 if all the following concerns are addressed.

S. 1778 would require the Secretary of Agriculture to purchase, at appraised value, the “Sunnahae Trail and Recreation Parcel” described in Sec. 2, as an addition to the Tongass National Forest. The funds received by the City of Craig under S. 1778 would be used by the City to purchase the “Wards Cove Property” described in Sec. 3, for local economic development.

We support the City of Craig’s interest in economic development opportunities. The City of Craig is surrounded by ANCSA corporate land, and has a limited taxable land base. Craig anchors the nine smaller towns and villages on Prince of Wales Island, and the economic stability of Craig is critical to the economy of the island as a whole.

We do note that acquisition of the “Sunnahae Trail” parcel will present significant challenges for its administration as a component of the National Forest System. The parcel is small, isolated from other federal lands, and encumbered by outstanding mineral rights. We would like to work with the Committee and the City of Craig to investigate other options that address mutual interests. For example, the City of Craig holds beach lots adjacent to the Craig Ranger District compound, which might be more appropriate for sale to the United States.

The “Sunnahae Trail” parcel includes about 350 acres of trail, trailhead, and mountaintop property surrounded by private land. Much of the parcel is a narrow strip on either side of a city trail in need of extensive reconstruction. Surrounding lands are owned by Shan Seet, an ANCSA Corporation, and have been extensively logged. The City of Craig owns only the surface estate; the subsurface estate is owned by Sealaska Corporation.

S. 1778 would directly authorize appropriation of \$ 250,000 to the Forest Service for reconstruction of the Sunnahae Trail. Reconstruction of the trail would cost far more. Section 2 would require the Secretary to purchase the Sunnahae Trail parcel, at appraised value. Without a current appraisal, we do not know how much this would cost, but a total cost to the government of more than one million dollars is possible. This purchase and reconstruction would limit the flexibility of the Forest service to address other priority needs throughout the full length of the trails under its administration. This flexibility is essential to protecting and enhancing the Nation’s comprehensive interstate network of trails that provide a wide variety of experiences, resources, and services for all types of trail users.

We also note that proper reconstruction of the Sunnahae Trail to avoid steep slopes and minimize environmental impacts would follow a different alignment. The parcel to be conveyed under S. 1778 follows the existing alignment.

#### S. 1819—CENTRAL NEVADA RURAL CEMETERIES ACT

In summary, Section 1 of S. 1819 requires the Secretary through the Chief of the Forest Service to convey to Lander County, Nevada for no consideration, all right, title, and interest of the United States in and to the 8.75 acres of National Forest System land known as Kingston Cemetery.

In accordance with Public Law 85-569, the Townsite Act, we have already conveyed 1.25 acres of land (on which the cemetery is located) to the Town of Kingston for \$500 on August 1, 2000. At the time of conveyance, the Town of Kingston indicated the 1.25 acres encompassed all known marked and unmarked gravesites. The Town of Kingston indicated that the 1.25 acres was adequate to accommodate their future expansion needs. Specifically, all of the gravesites were accounted for within a half acre fenced area that the 1.25 acres encompassed. The additional 0.75 acres were intended for parking and anticipated expansion of the current cemetery.

If new unmarked gravesites have been discovered or the needs of the Kingston Cemetery have changed and are in the public interest, we would be supportive of making additional Federal lands available to the county or city for fair market value and granting the county an easement to maintain the access road to the cemetery as a county road.

If Lander County is not willing to pay fair market value to purchase this land, we would be willing to consider authorizing its current and future use of this land under a special use permit authorization.

The Department does not object to making additional Federal lands available to Lander County, Nevada in S. 1819, but the Department believes that the Forest Service can meet the objectives of Section 1 of this legislation under its current statutory authorities that would allow it to convey National Forest System lands to Lander, County for fair-market value in cash.

For example, under the Townsite Act, the Secretary of Agriculture may convey, for fair market value, up to 640 acres of land to established communities located adjacent to National Forests in Alaska or the contiguous western states. Within certain limits, the Sisk Act authorizes the Secretary of Agriculture to exchange lands with states, counties, or municipal governments or public school districts for land or money.

Moreover, under the General Exchange Act, the Secretary of Agriculture can exchange National Forest System lands with State and local governments. These laws require the Secretary of Agriculture to obtain fair market value for exchanges or sales of National Forest lands. Indeed, the Federal policy, in recent decades has moved toward obtaining a fair return to the public for the value of lands conveyed out of federal ownership.

#### S. 1575—THE NEVADA NATIONAL FOREST LAND DISPOSAL ACT OF 2003.

In summary, Section 1 of S. 1575 directs the Secretary of Agriculture to sell at public auction six specific parcels of National Forest System land in Carson City or Douglas County, Nevada ranging from 3 to 80 acres in size with proceeds of said sales being dispersed to various state and local entities.

S. 1575 recognizes the importance of orderly and responsible development in Carson City and Douglas County and that the disposal of specific parcels of Federal lands administered by the USDA Forest Service may assist in the facilitation of that effort.

Section 3(d)(1)(A) of the bill would add a requirement that the Secretary shall “pay five percent to the State of Nevada for use for the general education program of the state”; (B) “pay five percent to the Carson Water Subconservancy District in the State”; and (D) “retain and use, without further appropriation, the remaining funds for the purpose of expanding the Minden Interagency Dispatch Center in Minden, Nevada, as provided in paragraph (3). Section 3(d)(2)(B) of the bill provides for “The development and maintenance of parks, trails, and natural areas in Carson City, Douglas County, and Washoe County, Nevada, in accordance with a cooperative agreement entered into with the unit of local government in which the park, trail or natural area are located”.

In addition, Section 3(d)(1)(C) requires the Secretary to “deposit 25 percent in the fund established under Public Law 90-171 (commonly known as the Sisk Act; 16 U.S.C. 484a)”. In general, we believe that proceeds generated from the sales of Federal lands should be made available for the acquisition of replacement National Forest System lands within the State of Nevada.

While we support the premise of working closely with all agencies within the State and appreciate the reimbursement of sales processing costs, we would like to work with the committee to develop broader alternatives for the distribution and use of the proceeds generated from the sales of Federal parcels. Moreover, although we support the expansion of the Minden facility, we believe that funding of that construction should be included in the usual appropriation process. In addition, the President’s FY 2005 Budget includes a proposal to amend the Small Tracts Act, the Sisk Act, and the Townsite Act, which provide the Secretary the authority to sell or exchange land, to provide more efficient real estate management of lands and facilities throughout the entire National Forest System.

#### H.R. 3249—EXTENSION OF TERM OF FOREST COUNTIES PAYMENTS COMMITTEE

H.R. 3249 would extend the term of the Forest Counties Payments Committee to September 30, 2007. The Department would have no objections to the enactment of H.R. 3249.

The Forest Counties Payments Committee was created by Congress pursuant to Section 320, of the Department of the Interior and Related Agencies Appropriation

Act of 2001, Public Law 106-291. The Committee is charged with developing recommendations to Congress for making certain payments to states and counties for education and other public purposes. The Committee was also instructed to monitor payments made to states and counties under certain payments, loans and related laws which would include the Secure Rural Schools and Community Self-determination Act of 2000 (P.L. 106-393), to submit annual reports to Congress describing the amounts and sources of payments to states and counties, and be available to provide testimony, or comments on legislation or regulations to implement recommendations made in such reports.

The Forest Counties Payments Committee submitted its Report to Congress on February 6, 2003. The Report includes recommendations for future payments to states and counties, as well as findings and information pertaining to allocation of education dollars by states, the importance of sustaining the health of our forests and communities, and the success of citizen advisory committees in reaching agreement on various management projects.

Formal discussions between Congress and the Committee regarding recommendations and information contained in the Report have not taken place. This dialogue will be important as the Secure Rural Schools and Community Self-determination Act comes closer to its expiration date of 2006. Also, there may be a need to provide additional information, or evaluate other options that congressional committees may be interested in considering.

Extension of the termination date would allow the Committee to fulfill the requirements of the enacting legislation, continue the monitoring and evaluating of implementation of P.L. 106-393, and provide continued assistance to the six committees of jurisdiction.

#### CONCLUSION

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or the other members may have.

Senator CRAIG. Thank you very much, Mark.

Now let us turn to Tom Lonnie, the Assistant Director for Minerals, Realty and Resource Protection, the United States Department of the Interior. Tom?

#### **STATEMENT OF TOM LONNIE, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, DEPARTMENT OF THE INTERIOR**

Mr. LONNIE. Thank you for the opportunity to appear here today. I will briefly summarize my prepared testimony.

S. 1819 and H.R. 272 provide for the conveyance of two cemeteries in Nevada to Lander and Eureka Counties. I will confine my comments to the Eureka County provision of the bills and defer to the Forest Service on the Lander County provision.

The BLM supports section 3 of S. 1819 and the identical section 2 of H.R. 272, providing for the conveyance of the Maiden's Grave cemetery near Beowawe, Nevada to Eureka County, Nevada. Approximately 10 acres would be conveyed to the county which would maintain the area as a cemetery.

While we would typically expect to receive fair market value for such a transfer, we understand the unique circumstances in this case and the unique needs of Eureka County. We appreciate the opportunity to work cooperatively with local interests to the betterment of the community.

During consideration of H.R. 272 by the House of Representatives, amendments were made to address BLM's concerns which were primarily technical in nature, and we support both H.R. 272 and its identical companion, S. 1819.

We have submitted written testimony related to S. 1354, the Cape Fox Land Entitlement Act, a bill which the Department of

the Interior supports. However, the Department is concerned about the conveyance deadline in the bill and has recommended a modification to it that is described in my written testimony. Because the bill concerns lands administered by the U.S. Department of Agriculture, the Department of the Interior defers to the Secretary of Agriculture on other aspects of S. 1354.

Finally, we have no objection to enactment of H.R. 3249 which would extend the term of the Advisory Committee on Forest Counties Payments until September 30, 2007. The authorization for the advisory committee expired on October 11, 2003 before it was able to examine fully the impact of the Secure Rural Schools and Communities Self-Determination Act. Extension of the termination date will allow the committee to fulfill the requirements of the enacting legislation, continue the monitoring and evaluating of implementation of Public Law 106-393 and provide continued assistance to the six committees of jurisdiction.

Thank you for the opportunity to testify on these bills, and I would be happy to answer any questions you might have.

[The prepared statements of Mr. Lonnie follow:]

PREPARED STATEMENT OF TOM LONNIE, ASSISTANT DIRECTOR, MINERALS, REALTY,  
AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT

#### H.R. 272 AND S. 1819

Thank you for the opportunity to appear here today. S. 1819 and H.R. 272 provide for the conveyance of two cemeteries in Nevada to Lander and Eureka counties. I will confine my comments to the Eureka County provision of the bills and defer to the Forest Service on the Lander County provision. The BLM supports section three of S. 1819 and the identical section two of H.R. 272 which provide for the conveyance of the "Maiden's Grave Cemetery" near Beowawe, Nevada (*Bav-o-wah'-wee*) to Eureka County, Nevada. Approximately 10 acres would be conveyed to the county which would maintain the area as a cemetery. In addition, the Bureau of Land Management (BLM) would be required to grant access to the cemetery across adjacent public land.

"The Maiden's Grave" is the final resting place of Lucinda Duncan who on August 15, 1863, died on her way to the gold and silver fields of Nevada. Mrs. Duncan at 71 was "the mother of the wagon train" which consisted largely of her seven surviving children, their spouses and a multitude of grandchildren. Following her death, the wagon train held a ceremony and their leaving was memorialized by a member of the party:

"... we paid our last debt & respect to the remains of the departed mother. There upon that wild & lonely spot, we left her, until Gabriel shall sound his trumpet in the last day. The scene was truly a sad one to leave a beloved mother on the wild and desolate plains. A board with the name of the deceased was put up at the head & boulder was laid over the grave to keep wolves from scratching in it. After this the train moved on."

Today, the site continues to receive occasional burials. Therefore, it is considered a "modern cemetery" and does not qualify for the National Register of Historic Places. The BLM, through its planning process, has identified the cemetery as suitable for disposal and the county has indicated a strong interest in taking responsibility for this parcel.

While we would typically expect to receive market value for such a transfer, we understand the unique circumstances in this case, and the unique needs of Eureka County. Under other circumstances, we might have considered a Recreation and Public Purposes (R&PP) Act conveyance to lower the cost to the county, but the need for permanency in this transfer prevents this from being a viable option, thus the need for legislative intervention. We appreciate this opportunity to work cooperatively with local interests to the betterment of the community.

During consideration of H.R. 272 by the House of Representatives, amendments were made to address the BLM's concerns which were primarily of a technical nature and we support both H.R. 272 and its identical companion S. 1819.

## H.R. 3249

Thank you for the opportunity to present the views of the Department of the Interior on H.R. 3249. This bill would extend the term of the Advisory Committee on Forest Counties Payments until September 30, 2007, to coincide with the expiration date of the Secure Rural Schools and Community Self-Determination Act. The Department would have no objections to the enactment of H.R. 3249.

Litigation in the 1980s and early 1990s regarding the Northern Spotted Owl resulted in steep reductions in timber harvests in the Pacific Northwest, and correspondingly steep reductions in income to counties that depended on revenues from timber harvests on public lands and national forests to fund local government services. Timber harvests were greatly reduced in the 18 counties in western Oregon that the Bureau of Land Management (BLM) managed for sustainable timber production under the Oregon and California Grants Lands Act of 1937 (the O&C Act).

In 2000, Congress enacted Public Law 106-393, the Secure Rural Schools and Community Self-Determination Act, to make up the shortfall to counties dependent on Federal timber revenues by providing a temporary payment to counties covered under the O&C Act at 85 percent of the average of their three highest timber receipt years from 1986-1999. Public Law 106-393 also provided an additional 15 percent of the average of their three highest receipt years from 1986-1999 to support two types of projects: restoration (including watershed restoration, forest road maintenance, and road decommissioning or obliteration) and other county uses connected with BLM lands, including reimbursement for search, rescue, and other emergency services; reimbursement for expenses related to community service on Federal lands; and the purchase of conservation easements. As authorized by Public Law 106-393, since FY 2002, the BLM has paid directly to the 18 O&C counties \$332.2 million, and expects to pay an additional \$112.7 million to these counties during fiscal year 2005. The Act expires on September 30, 2007.

The Advisory Committee on Forest Counties Payments, authorized by Section 320 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (P.L. 106-291), was charged with developing recommendations, consistent with sustainable forestry, regarding methods to evaluate the Federal payments that States and counties in which Federal timber lands are situated (for BLM, the 18 O&C counties). The provisions of the Federal Advisory Committee Act (FACA) apply to this Advisory Committee. Its membership includes representatives of the Federal government (BLM Director, Chief of the U.S. Forest Service, and Director of the Office of Management and Budget), or their designees, and eligible counties (county-elected officials and elected members of school boards or superintendents of school districts).

Specifically, Section 320 states that the Committee was required to evaluate:

- the method by which payments under the O&C Act are made to eligible counties and States under provisions of the law;
- the impact on eligible counties and States of revenues derived from historic multiple activities of the Federal lands;
- the economic, environmental, and social benefits that accrue to counties containing Federal lands, including benefits to the recreation and natural resources industries, and the value of environmental services that result from Federal lands; and
- the expenditures by counties on activities on Federal lands which are Federal responsibilities.

The Advisory Committee's authorization expired on October 11, 2003—before it was able to examine fully the impact of the Secure Rural Schools and Community Self-Determination Act. Extension of the termination date would allow the Committee to fulfill the requirements of the enacting legislation, continue the monitoring and evaluating of implementation of P.L. 106-393, and provide continued assistance to the six committees of jurisdiction.

This concludes my statement. I would be happy to answer any questions.

## S. 1354

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to present the views of the Bureau of Land Management (BLM) on S. 1354, the Cape Fox Land Entitlement Adjustment Act of 2003.

## BACKGROUND

Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to Alaska Native Claims Settlement Act (ANCSA) for the Native Vil-

lage of Saxman, which is located near Ketchikan. Like the other nine southeast villages recognized for benefits under section 16 of ANCSA, Cape Fox received an entitlement of 23,040 acres. All other ANCSA Village Corporations were restricted from making selections within two miles of the boundary of home rule cities. Cape Fox, however, was uniquely affected by the original terms of ANCSA as it was restricted from making selections within six miles of the boundary of the city of Ketchikan. As a result of the six-mile restriction, the only land within Cape Fox's core township available for conveyance is a 160-acre parcel which the corporation does not want. Under current law, the BLM must transfer this parcel to Cape Fox and charge the acreage to the corporation's ANCSA entitlement.

The requirement for village corporations to take title to all available land within their core township is a basic component of ANCSA, applicable to all village corporations. Another basic component of the original settlement is that conveyances to village corporations will be restricted to lands withdrawn for that purpose under the original terms of ANCSA.

S. 1354 waives an existing statutory requirement that would compel Cape Fox to use a portion of its entitlement under ANCSA for a remote 160-acre mountainous parcel that is of no economic value to the corporation. The bill also directs the BLM to convey to Cape Fox, the surface estate to a 99-acre tract in the Tongass National Forest that was unavailable to the corporation under the original terms of ANCSA; the subsurface estate of this tract is to be transferred to Sealaska Corporation (Sealaska).

Because S. 1354 extends benefits to Cape Fox that were not available under the original terms of ANCSA, the Department of the Interior has carefully considered the merits of this proposal and agrees that the Cape Fox situation is sufficiently unique to warrant the legislative remedy that is provided in S. 1354. However, the Department is concerned about the conveyance deadline in Sec. 4(c) of the bill. If Cape Fox decides to accept title to the lands offered, the BLM must issue conveyance documents within six months of receiving the corporation's selection. Current regulatory requirements for ANCSA conveyances take longer than the six months—typically closer to 12 months—and must include identification of easements to be reserved, issuance of an appealable decision, and public notice of that decision. Unless the legislation specifies otherwise, or the ANCSA conveyance process is changed before then, the 99-acre tract must be conveyed under existing ANCSA regulations. The six month timeframe also could be unnecessarily disruptive to BLM conveyance transactions that are in progress.

The Department of the Interior recommends that Sec. 4(c) of the bill be modified to read as follows: "*TIMING.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section as soon as practicable after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).*" the Department understands the economic importance of this conveyance to Cape Fox and will transfer title as quickly as possible in concert with other existing land transfer plans and commitments.

Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska's selections and conveyances to avoid the creation of an additional split estate between National Forest System surface lands and Sealaska subsurface lands. Because this adjustment concerns lands administered by the U.S. Department of Agriculture, the Department of the Interior defers to the Secretary of Agriculture for a position on this aspect of S. 1354.

Senator CRAIG. Well, thank you very much, Tom.

Now let me turn to my colleague, Senator Murkowski, for any opening comments she would like to make, and why don't you follow that up with any questions you might have of either Mr. Rey or Mr. Lonnie.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. I do not have questions of either Secretary Rey or Mr. Lonnie this afternoon. I do appreciate your willingness to work with us on both of these Alaska bills and appreciate all the help that we have received thus far. We will keep working on it.

I want to thank both of you for attending the hearing this afternoon, and I would also like to extend a personal welcome to those



who have come so far to attend the hearing, both on S. 1778, the Craig legislation, as well as S. 1354, the Cape Fox legislation.

I might mention for the record that several of you have been here multiple times in anticipation of a hearing and with one natural disaster or a manmade disaster, we have not been able to do that. So I am glad to see that at least this end of the journey is over for you folks.

I would like to recognize Ms. Marilyn Blair, the president of Cape Fox Corporation from Ketchikan; Mr. Dennis Wheeler, the president of Coeur Alaska, who will also be testifying on this; Mr. Buck Lindekugel, the conservation director of SEACC from Juneau; and Mr. Dennis Watson, the mayor of the city of Craig.

I first would like to discuss S. 1778, the Craig Recreation Land Purchase Act. This is an important bill that will facilitate Forest Service land management on Prince of Wales Island and help community expansion and development. The city of Craig is the economic center of Prince of Wales Island, the third largest island in the Nation. The town contains the major retail shopping and service outlets on the island. Island residents drive up to 100 miles round trip to come to town for medical services and shopping. Craig also has the most active and largest commercial fishing harbor and fleet on the island.

Due to land selection conflicts between the Forest Service and the State of Alaska in the 1960's, the city of Craig received no municipal entitlement land. This legislation will help alleviate some of the loss to the city from the lack of an entitlement.

One of the Forest Service's main administrative facilities, the Craig Ranger District Station, is located in Craig, but currently there is no Forest Service land near the ranger station. My legislation would provide for a three-way conveyance process which would result in three parcels of land now owned by the city of Craig being conveyed into the Tongass National Forest and an inholding owned by a private company being acquired by the city. This legislation will provide recreational opportunities in the forest which will benefit both the public and the city of Craig and allow the city of Craig to obtain land that is truly vital to its future.

As far as S. 1354, the Cape Fox Land Entitlement Adjustment Act of 2003, this is legislation that passed the Senate with bipartisan support in the 107th Congress. This addresses an equity issue in one of Alaska's rural village corporations and also helps to diversify the economy of Juneau.

Cape Fox Corporation is an Alaska village corporation organized pursuant to the Alaska Native Claims Settlement Act by the native village of Saxman near Ketchikan. As with other ANCSA village corporations in southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16, but unlike other village corporations, Cape Fox was further restricted from selecting lands within 6 miles of the boundary of the home rule city of Ketchikan. All other ANCSA corporations were restricted from selecting within 2 miles of such a home rule city. So this 6-mile restriction went beyond protecting Ketchikan's watershed and damaged Cape Fox by preventing the corporation from selecting valuable timberlands, industrial sites, and other commercial property not only in its core township but in surrounding lands far removed from Ketchikan.

and its watershed. As a result of the 6-mile restriction, only the mountainous northeast corner of Cape Fox core township, which is nonproductive and has no economic value, was available for selection by the corporation. Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

So it is clear that Cape Fox was placed on an unequal economic footing relative to other village corporations in southeastern Alaska, and despite its best efforts during the year since ANCSA, Cape Fox has been unable to overcome the disadvantage that the law has built into this situation. It was for these reasons that I introduced this legislation to partially address the Cape Fox problem.

Now, much concern has been raised regarding the environmental effects of this land exchange upon the recreationists of Berners Bay, and I would let the committee know we held rather extensive hearings in Juneau last year. I listened very clearly to those concerns. I reviewed the letters that came into my office regarding this legislation, and it is my intent to offer an amendment that will address both the watershed and the public access concerns which were raised by my constituents in Juneau.

So I look forward to hearing from those constituents and witnesses today. I do hope that the witnesses that are present will continue to work with my office to further refine this amendment so that we can reach a consensus that will support not only a diversified economy, but without compromising the beauty and the natural state that we have in Berners Bay. I truly believe, Mr. Chairman, that we can achieve that goal.

With that, as I have indicated, I do not have questions of either witness. So I appreciate your consideration.

Senator CRAIG. Thank you very much, Senator. The committee will work with you to fine tune these pieces of legislation so they can move forward.

Senator MURKOWSKI. Thank you.

Senator CRAIG. And I thank you.

Secretary Rey, I note that this bill—the bill that I am referring to is the Carson City conveyance—is similar to a legislative initiative that was included in the 2004 and 2005 budget request by the President. Is that not correct?

Mr. REY. Roughly so, yes. The 2004 and 2005 budget request was not specific to a particular piece of land. It was legislation to give us the flexibility to convey unneeded assets and to retain the money received from those conveyances to do other work on the national forest system.

Senator CRAIG. As I understand, S. 1575 and H.R. 1092 would allow the Forest Service to sell parcels of land and to use the proceeds to help pay for the reconstruction of the Minden Interagency Dispatch Center, including the construction of barracks for a hot-shot crew. Would it be your preference that Congress begin to earmark the proceeds from such sales to those specific projects?

Mr. REY. No. Our first preference would be favorable consideration for the legislative authorities included in the fiscal year 2005 budget request, and should that authority be granted, we would

then establish a priority list in areas where conveyances take place to do that work on the basis of that kind of a priority list.

Senator CRAIG. You would prefer no earmarks.

Mr. REY. We would prefer in general legislation like that which we have proposed, that the proceeds from the conveyances not thereafter be subsequently earmarked.

Senator CRAIG. I also see that this legislation proposes that 5 percent of the proceeds from the sale of these parcels to the State of Nevada are for general education and 5 percent to Carson City Water Subconservancy. I am wondering if this is a good precedent and if we should not include a larger share for public education from every sale of Federal lands. Would the administration support such provisions in every land transfer?

Mr. REY. I think in general terms, that is sort of double dipping. One of the reasons that we convey excess Federal assets into non-Federal or private ownership is so that we can assist other units of government to meet administrative needs. Of course, if that is the case, then there is no point in paying them a part of that back. We might as well just negotiate the purchase price accordingly.

But where we convey those assets into private ownership, one of the reasons is to help affect local development, and we are adding those lands then to the local tax rolls, which tax rolls should be supporting education and other public service needs of local government. So I think our preference is, if we are going to convey unneeded Federal assets, that we use the proceeds for those conveyances to meet other Federal Government needs.

Senator CRAIG. Now I am talking about the Craig, Alaska conveyance. Also, some suggest that the proposal would saddle the Forest Service with a parcel of land that they may not want. I am told that the trail to the top of that knob in Murielle City center is scenic and that it would be utilized by many of the visitors to Craig. Given the fact that Craig, Alaska is one of the fastest growing communities in southeast Alaska, why would the Forest Service not want the—is it the Sunnahae site?

Mr. REY. Sunnahae Trail site.

Senator CRAIG. Sunnahae.

Mr. REY. Right. We are content to take the Sunnahae Trail site in exchange for the land that we would convey. There are a couple of parcels that would be of greater use to us and we have talked with the Alaska delegation and the city of Craig to see if we can adjust the exchange to include those two parcels, which would be of value to us for administrative purposes. They are relatively small parcels, however, and so they will not be enough to cover the equal value requirement of the exchange. So we will be content to take the Sunnahae Trail parcel as well and then maintain the trail for public use purposes.

Senator CRAIG. Tom, I am speaking in relation to S. 1819 and H.R. 272. This is the second time that this proposal has been heard by this subcommittee in the last two Congresses, and we have seen the Bureau of Land Management testify on it each time.

Other than the potential for being nibbled to death by small land conveyances, is there anything wrong with these proposals?

Mr. LONNIE. We see nothing wrong with these proposals, sir.

Senator CRAIG. Lisa, any questions?

Senator MURKOWSKI. I'm fine. Thank you.

Senator CRAIG. Well, gentlemen, thank you both. We will stay in close contact with both of the agencies as we work these pieces of legislation through the committee for any fine-tuning necessary. Thank you.

Now I would ask the second panel to come before us. That would be Marilyn Blair, Dennis Wheeler, Dennis Watson, and Buck Lindekugel. I am going to change the order and I am going to ask for Dennis Watson, the mayor of the city of Craig to go first. We will also question you, Dennis. I understand you have a tight time crunch and a flight to catch.

Mr. WATSON. Oh, I am OK right now. Actually I do not right now. Thanks. I am fine.

Senator CRAIG. You do not now?

Mr. WATSON. No.

Senator CRAIG. Well, we will start with you anyway. We will go ahead, Dennis, and start with you. Then we will step over to Dennis Wheeler. Anyway, the mayor of the city of Craig, Alaska. That city has got a great name to it. Thank you very much.

[Laughter.]

#### **STATEMENT OF DENNIS WATSON, MAYOR, CITY OF CRAIG, AK**

Mr. WATSON. I would like to mention that I am proud to be here and in the company of the people that helped to get the forest receipts legislation passed a couple of years ago. It has really helped us out.

Mr. Chairman, members of the committee, my name is Dennis Watson. I am the mayor of the city of Craig, Alaska. Thank you for the opportunity to testify before this committee and for hearing testimony on S. 1778. My testimony will explain the need for this bill for Craig and Prince of Wales Island.

S. 1778 is a mechanism that will provide the U.S. Forest Service with a net gain in acreage to the Tongass National Forest while also allowing the residents of Craig to better adjust to a changing economic climate. S. 1778 authorizes the Federal Government to accept the conveyance of 348 acres of land from the city of Craig and authorizes an appropriation of up to \$2.1 million for the land acquisition. The funding would be used by the city of Craig to purchase private land at Craig.

Craig is located on Prince of Wales Island in southeast Alaska. The island is home to some 4,500 residents. Since 1995, the economy of Craig and Prince of Wales Island has undergone a tremendous and painful economic contraction. The change in Tongass National Forest timber policy has reduced logging industry employment from 1,800 in 1992 to fewer than 600 in 2002. Unemployment rates in the Prince of Wales census area have reached seasonal highs of between 19 and 25 percent in the past 10 years. The annual unemployment rate for our census area is frequently three times or more the rate for the United States as a whole.

The loss of higher paying timber jobs has translated into related economic problems for our island. Despite the higher cost of living in Alaska compared to the continental United States, per capita earnings are much lower for POW residents than for residents of the contiguous lower 48. By the way, that is Prince of Wales Is-

land. The 2000 census reports that per capita income in the Prince of Wales Island census area is 15 percent less than the U.S. figure. Similarly, our median family income lags behind the United States as a whole and the proportion of families below the poverty level in the Prince of Wales Island/Outer Ketchikan area exceeds the national figure by more than 10 percent.

Despite these problems, area residents are bullish on the future. Increasing private sector opportunities in our economy will improve chances of recovery. Passage of S. 1778 will assist us in providing basic public infrastructure that will lead to private industry investment.

The single best site for redevelopment efforts in Craig is known as the old cannery property. The site contains 5 acres of uplands and 5 acres of tidelands. Acquisition of this parcel would allow the city to complete a needed harbor expansion. It would also make available a substantial area for commercial investment. This goal is important because unlike many other cities in Alaska, Craig did not receive its municipal entitlement lands it needed for community growth.

S. 1778 is integral to the acquisition of the cannery site because the city cannot afford to purchase this property from its owner, who has told us he is willing to sell us the property. This bill will authorize a three-way land transaction by which the city will sell a prime recreational parcel that is formerly the site of a U.S. Forest Service trail and cabin. The city will then use the proceeds of this sale to purchase the abandoned cannery site.

While it is often an overused term, this is truly a win-win transaction for all involved. The U.S. Forest Service will receive lands that will provide a recreation site close to the Craig Ranger District. Craig, in turn, will get the opportunity to purchase the cannery property.

This entire transaction will be subject to the standard Federal appraisal standards for both parcels and will be overseen by the Forest Service. S. 1778 requires that the exchange be based on a value-for-value basis. It also can take place only on a willing seller/willing buyer basis and it be accomplished only by the passage of this legislation that will authorize the appropriation for the transaction. While there is no guarantee that funds will be made available for this transaction, we are working with Senator Stevens, a cosponsor of this bill, to make these funds available, if the committee and the Congress will pass this bill.

Mr. Chairman, I have been involved in public policy on Prince of Wales Island for 25 years, and I can tell you that this property is absolutely the key to moving forward to diversify our economy in Craig. The city is reviewing a plan to redevelop this parcel if the bill is passed and the transaction is completed. The city had great success in attracting private sector development to our previously developed marine industrial park. We hope to build on this momentum at the cannery site.

The city of Craig supports the passage of this legislation and urges the committee to act on this bill as soon as possible.

Thank you for the opportunity to testify.

Senator CRAIG. Well, Mayor, thank you. Before we go on to the Cape Fox issue, we are going to ask questions of you. We will sepa-

rate the two. They are distinctively different types of legislation. So let me turn to my colleague from Alaska for any questions she would want to ask of the mayor.

Senator MURKOWSKI. Thank you, and thank you, Mr. Mayor. I appreciate your testimony.

I am glad to hear your comments about the residents of Craig. You used the term "bullish." They are bullish on their economy. And I felt the same when I was visiting there this summer. Craig has been hit very, very hard. It has a very depressed economy because of the downfall in the timber industry, but you would not know it from talking to the residents. They have got a great attitude about making it work, and this is one of those deals that I think, if we can offer a little assistance here, they really can pull together great things for the community, good economic opportunities and jobs for the residents, which is what everybody wants.

In recognizing that, you have to wonder, though, what we have to do in exchange in order to facilitate this economic development. Could you still do in the city what you wanted to do even without this exchange?

Mr. WATSON. The short answer is that we are short on land.

Senator MURKOWSKI. Those of us who have been to Craig really appreciate how short you are.

Mr. WATSON. Craig is actually an island that has a spit that was built to Prince of Wales Island, and the surrounding property that actually goes beyond the spit, during the Native Land Claims Act, that was basically all selected by the native corporations. What we have left in town is just a couple of acres. It is actually not left. We have a couple of acres downtown that has our municipal infrastructure there, city hall, and our clinic, and those various things. So we are basically used up right now. The cannery site is an old downtown property that is fairly large and it fits the bill just as good as anything can to get this done.

Senator MURKOWSKI. Is it fair to suggest that this is really the last or the only developable chunk of land in the Craig proper downtown?

Mr. WATSON. Yes, it is. It, of course, has the old cannery on it yet. But it is the only large parcel that is left in our community.

Senator MURKOWSKI. Now, the question was asked by Senator Craig of Secretary Rey about whether or not they really wanted the trail. Now, I have heard from some—and I am not going to suggest that this is true, but some folks have suggested that this parcel is not really all that desirable and the trail is not as desirable as one might want. Can you speak to that? We understand that the Forest Service will have authorization so they can reconstruct the trail so it can be usable and not so muddy. If you could just speak to that issue.

Mr. WATSON. Well, first off, I think the trail is in better shape now than it ever was when the Forest Service owned it, and they obviously thought it was a nice place then. And they built a cabin. Actually at one time there was a cabin on either end. It goes and there is a flat area. A muskeg is what it is actually. And there was a cabin on either end of it. At one time the Forest Service thought it was a good idea in those days.

We have spent thousands of dollars in reconstructing the trail, putting bridges and walkways and the different things in there through the years. It is a great experience. You can get up on the top and see 25-30 miles away to the Murielle National Monuments and several other things that you have got all kinds of landscape that is in the way of. It is actually a very beautiful place, similar to, say, like Deer Mountain in Ketchikan. It is a very popular tourist and local site to visit. So I disagree.

Senator MURKOWSKI. What you have done, you have really worked to do a lot of that reconstruction so that it is not a mud hole of a trail.

Mr. WATSON. It certainly is not.

Senator MURKOWSKI. And we recognize in southeast that if you do not do something with the trails, all you are going to have is a trail of mud with all that rain that we get.

Mr. WATSON. You have about a 1-year window of opportunity before the trail grows back in the forest again. We have been keeping after it.

Senator MURKOWSKI. Good.

Is there anything else that we need to know about the exchange, about the trail that we have not yet covered?

Mr. WATSON. No. I think that you have pretty much covered it all. I just think it is most important to understand that, as you mentioned earlier, our statehood act provided for the State to select lands so communities could get municipal entitlement lands to be able to expand. And we just, because of some difficulties in the Forest Service in those days, were unable. They basically blocked the selections around our area. We were unable to do what everybody else was able to do, and we are just trying to make up for that in creative ways.

Senator MURKOWSKI. Well, this is certainly something that since we began pursuing this as an exchange, hearing from the people of Craig, they have been very receptive to this idea. They would like the ability to move forward with the cannery property and this exchange will facilitate all kinds of good things. So what we have been hearing from all those in your town has been very positive and very encouraging in terms of what we are trying to accomplish here. So we appreciate that support.

Mr. WATSON. Well, thank you.

Senator MURKOWSKI. Thank you. Thank you, Mr. Chairman.

Senator CRAIG. Lisa, thank you. Mayor, thank you very much. We appreciate those comments.

Four or five years ago I had the opportunity to visit Craig and to spend time there, and I appreciate not only what you are saying. Many of our small communities in Western States become landlocked for reasons of Federal and public lands around them and the inability to grow or expand. Of course, you have got water on most sides and a limitation. So we will do all we can to help facilitate the ability for you to grow and expand in that area. It is a delightful community.

Mr. WATSON. Thank you very much, Senator.

Senator CRAIG. Now let us turn to testimony on the remaining pieces of legislation. Let me turn to Dennis Wheeler, CEO of Coeur d'Alene Mines Corporation of Coeur d'Alene, Idaho. Dennis, I say

for the record we have been good friends over the years and I appreciate your leadership in the industry that has played a critical role in our economy in Western States development and continues to do so. Welcome to the committee.

**STATEMENT OF DENNIS E. WHEELER, CEO AND CHAIRMAN,  
COEUR d'ALENE MINES CORPORATION, COEUR d'ALENE, ID**

Mr. WHEELER. Thank you, Chairman Craig and members of the committee. We are pleased to appear here today and support S. 1354. You have the context of my total remarks provided to the committee, so I will be brief today, but I do want to make just a few points.

As Assistant Secretary Rey has pointed out in supporting the bill on behalf of the Forest Service, this exchange does relieve the Federal Government from the complexity and costly inefficient management of a public land area that is fractionalized. For example, Coeur itself within the area in question has over 12,000 acres of unpatented mining claims. One of the benefits of this legislation will be to consolidate, for administrative purposes and regulatory oversight purposes, the land into one manageable area.

Second, although this is not a hearing on the environmental aspects of the project, I would like to point out that Coeur, as the largest primary silver producer in North America and a significant gold producer as well, has spent nearly \$23 million for 900—and I emphasize 900—environmental studies for this project. And we are recognized in the mining industry as a leader in environmental stewardship, just last week having won again from the State of Nevada a prominent environmental award in recognition for our bat preservation program in our operations there.

I would like to also remind the committee that the lands involved in this exchange are not virgin undeveloped properties. Rather, gold mining has taken place in the area since 1886 and historically half a dozen mines have operated there. We have been working on the project since 1987.

I think that significantly and most importantly for your consideration from a social perspective this exchange will allow Coeur to work even more actively with the Alaska Native groups to provide needed, high-paying jobs to the area and economic opportunity for them to participate in the project as a result of the approval of this exchange.

We are financially very strong, with nearly \$250 million in cash and equivalents today and are perfectly capable of assuring the committee and the public that this if this exchange is approved, we will carry out our responsibilities in doing the project right and working further with Cape Fox to the benefit of all involved, including the Federal Government.

So I appreciate the opportunity to appear here today and testify in support of this legislation.

[The prepared statement of Mr. Wheeler follows:]

**PREPARED STATEMENT OF DENNIS E. WHEELER, CEO AND CHAIRMAN,  
COEUR d'ALENE MINES CORPORATION, ON S. 1354**

I am Dennis E. Wheeler, Chief Executive Officer and Chairman of Coeur d'Alene Mines Corporation. Coeur Alaska is a wholly-owned subsidiary of Coeur d'Alene



Mines. Coeur Alaska, Inc. is pleased to present this testimony supporting Senate Bill 1354, the "Cape Fox Land Entitlement Adjustment Act of 2003".

Coeur Alaska Inc., a wholly owned subsidiary of Idaho based Coeur d'Alene Mines Corporation, is headquartered in Juneau, Alaska. Coeur owns patented lands and mining leases in Alaska. These properties encompass the Kensington and Jualin mine sites in the Tongass National Forest, 45 miles north of Juneau.

The historic Kensington and Jualin mines are situated within the northern reach of the historic Juneau Goldbelt. Gold was first discovered there in 1886 and led to the development and operation of half a dozen mines in the area. The Kensington and Jualin mines operated in various stages between 1886 and 1935. Since 1987, Coeur has been working to reopen the Kensington Mine, using the best available technology to design a mine which will be environmentally responsible and provide high paying jobs to Southeast Alaska.

Coeur has invested over \$150 million, including approximately \$23 million for environmental studies, to reopen and operate the Kensington Mine. Over 900 environmental and feasibility studies have been completed to date. The project has previously received all its major environmental permits, following completion of an Environmental Impact Statement (EIS) and Supplemental EIS (SEIS). Unfortunately, depressed gold prices prevented development of the project under that specific operating plan. Coeur is presently working closely with the U.S. Forest Service; the U.S. Environmental Protection Agency; and the Alaska Departments of Natural Resources, Environmental Conservation and Fish and Game, on the preparation of a second SEIS to reopen and operate the Kensington Mine in a manner that uses the best processes for mining, milling, tailings treatment and storage, transportation, and reclamation, and improves access and worker safety. The second SEIS is scheduled to be completed in the summer of 2004, following an extensive public process, including public meetings in Juneau and Haines, Alaska (the closest communities to the mine project). These meetings were conducted last week. The results of the meetings indicate substantial public support for the project, and emphasize the need for new job opportunities in a crippled Southeast Alaska economy. This SEIS is required as a result of reconfiguring the mine plan to make it operationally feasible under a wide range of gold prices. Importantly, the SEIS will be completed with or without the passage of S. 1354.

Coeur owns, and controls through mining leases from other land owners, approximately 1,720 acres of patented land at the Kensington and adjoining Jualin Mine sites. These lands were patented over the years under the 1872 Mining Law by various mining entities. These private lands represent substantial holdings within the Tongass National Forest.

The lands to be exchanged to the Cape Fox and Sealaska Corporations under S. 1354 surround Coeur's patented lands. The lands are heavily encumbered by 12,792 acres of unpatented mining claims held or leased to Coeur. These National Forest lands encompassing the unpatented claims are also classified by the Tongass Land and Resource Management Plan (Tongass Management Plan) for mine development. Transfer of these lands to Cape Fox and Sealaska will not affect the mining claim rights or represent a deviation from the Tongass Management Plan. Rather, the transfer will eliminate from the National Forest complicated mining claim and patented land boundaries. The transfer will also greatly simplify a currently complex and confusing management situation for the Forest Service, saving the public considerable administrative costs.

Mine development and operations will continue to remain subject to stringent federal and state environmental protection requirements, including the SEIS. At the same time, by simplifying land ownership and regulatory regimes, S. 1354 will further serve the public interest by facilitating an environmentally and economically sound development of the Kensington Mine. Further, the exchanges under the legislation will provide a unique opportunity for Coeur to work cooperatively with Alaska Native entities and their shareholders in the operation of this enterprise.

The proposed exchange is important to Coeur's plans for development of the Kensington project. It would allow consolidation of private land holdings held by Coeur at Kensington, and those leased to Coeur (held by Hyak Mining Co.) on the adjoining Jualin Mine property, with the Native lands conveyed by the Secretary to Cape Fox and Sealaska. Together, these lands would form a contiguous block of private land managed and regulated for development as a mining district. By facilitating a reduction in the number of isolated parcels, S. 1354 will not only decrease the cost and complexity of the Forest Service's management of the area, but will simplify and provide important certainty to operational permitting and long-range reclamation planning for the Kensington gold project. *Coeur re-emphasizes that the proposed land exchanges between the Forest Service, Cape Fox, and Sealaska will not short cut or eliminate key environmental requirements.* For example, although responsi-

bility for oversight of reclamation would move to the Alaska Department of Natural Resources, reclamation standards and obligations will not be diminished. Rather, the oversight and regulatory responsibilities for reclamation will shift to the State of Alaska. State regulation and oversight of the project, however, will add a much needed level of predictability for Coeur and other investors committing to development of this mining district.

Development of the Kensington gold project will bring significant and diverse economic benefits to Southeastern Alaska. The project will add high paying jobs, create additional indirect jobs, and add additional tax base to a region of Alaska plagued by underemployment and significant economic challenges. Coeur proudly boasts a strong local/Native hire and training policy. Our relationship with the Berners Bay Consortium since 1994 has further promoted local mining vocational education, working directly with the State Department of Labor and University of Alaska SE. The project is projected to last 15 years, including construction, startup and reclamation periods. Capital costs for construction and sustaining capital are expected to exceed \$100 million. To date, Coeur has invested over \$22 million at the site on environmental baseline studies, permitting and environmental impact studies.

Coeur d'Alene Mines Corporation is an environmentally responsible operator, having been acknowledged by over 20 major national and international environmental awards since 1987. Coeur is strongly committed to sound resource development, and economic diversity in Southeast Alaska.

Coeur urges the Committee to give favorable consideration to S. 1354.

Senator CRAIG. Well, Dennis, thank you very much for that testimony.

Now let me turn to Buck—I am going to get this correct, Buck.

Mr. LINDEKUGEL. Lindekugel.

Senator CRAIG. Lindekugel.

Mr. LINDEKUGEL. Hard on the D and that will help you.

Senator CRAIG. All right. Thank you very much. Conservation Director for SEACC, Juneau, Alaska. Welcome before the committee.

**STATEMENT OF BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK**

Mr. LINDEKUGEL. Good afternoon, Mr. Chairman, Senator Murkowski. My name is Buck Lindekugel and I am the conservation director for SEACC, and I want to thank the committee for inviting SEACC to testify today at this hearing.

Founded in 1970, SEACC is a grassroots coalition of volunteer citizen groups throughout southeast Alaska, 18 groups and 14 southeast communities from Ketchikan to Yakutat. SEACC is dedicated to preserving of southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our natural resources.

SEACC and a broad range of diverse local interests, including building contractors, hunters, fishermen, recreation business owners, and others who love Berners Bay strongly oppose this legislation. For example, here is a stack of letters, letters to Senator Murkowski, letters to the newspaper, petitions signed by hundreds of citizens in the region opposing this bill. With your permission, Mr. Chairman, I would like to introduce these letters and petitions into this hearing record.

Senator CRAIG. We will file them for the record. Thank you.

Mr. LINDEKUGEL. Coeur Alaska has stated it does not need this exchange to develop the Kensington gold mine. If Coeur's proposed mine is in fact developed, the right way to manage it is to keep the lands proposed for exchange in public ownership. This is the best way for the Forest Service to minimize or avoid adverse effects to

the wildland character of the adjacent land and resources that Congress chose to protect in perpetuity as the Berners Bay legislated LUD II. Therefore, leaving these public lands in public ownership is the best way for the subcommittee to protect the broader public interest and continued public access and use of Berners Bay's outstanding resources.

In contrast, authorizing this exchange would trade valuable, nearby, and easily accessible lands for isolated private clear-cuts and subsurface rights of dubious value, hundreds of miles away from Juneau. It would harm lands culturally and spiritually important to the original settlers of Juneau, the Auk Kwaan, threaten the public's existing access and use of these wildlands for hunting, fishing, and recreation, frustrate the finality of the Alaska Native Claims Settlement Act and invite additional land selection conflicts across Alaska, and rely on an appraisal process that is appropriate for assessing the value of lands for logging and mining, but leaves no way of quantifying the ecological, cultural, and recreational values, the true heart of Berners Bay.

Like so many deals in life, there are good deals and there are bad deals. We are counting on you Senators to screen out the bad deals like this proposed exchange and stop this bill in its tracks. Doing so will ensure that future generations enjoy the same opportunities and uses of Berners Bay that we now enjoy. We believe the best way for the subcommittee to judge whether this exchange is really in the public's interest is to come to Juneau, visit Berners Bay, and hear directly from local residents at a formal subcommittee hearing in Juneau.

We appreciate the Senator coming last fall to Juneau to attend a couple-of-hour public meeting where she heard and saw a lot of concern from local residents. Unfortunately, that record was not formalized and is not before the committee before it is making this decision to move this bill forward.

An example of a good deal. Please consider S. 1778, the city of Craig's proposed land purchase agreement with the Forest Service. For the record, SEACC supports this bill because it does not target a high value, old growth habitat. The land is within the city's municipal boundaries that have been previously industrialized. These lands are important for the city's economic diversification and will permit much-needed harbor expansion, downtown parking, and increases in necessary sales and property tax revenues.

With the chair's permission, I submit the following testimony on behalf of SEACC in support of S. 1778.

Senator CRAIG. Without objection.

Mr. LINDEKUGEL. Thank you for the opportunity to testify today. I would be happy to respond to any questions you may have.

[The prepared statement of Mr. Lindekugel follow:]

PREPARED STATEMENT OF BUCK LINDEKUGEL, CONSERVATION DIRECTOR, SOUTHEAST ALASKA CONSERVATION COUNCIL, JUNEAU, AK, ON S. 1354\*

My name is Buck Lindekugel and I am the Conservation Director for the Southeast—Alaska Conservation Council (SEACC). The following statement is submitted on behalf of SEACC. SEACC respectfully requests that this written statement and

\*A follow-up letter from Southeast Alaska Conservation Council can be found in the appendix.

accompanying materials be entered into the official record of this Subcommittee hearing.

Founded in 1970, SEACC is a grassroots coalition of 18 volunteer, non-profit conservation groups made up of local citizens in 14 Southeast Alaska communities that stretch from Ketchikan to Yakutat. SEACC's individual members include commercial fishermen, Alaska Natives, small timber operators, 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 uses of our region's resources.

We have submitted testimony twice before on this ill-conceived and shortsighted bill. On August 6, 2003, we submitted written testimony at the Subcommittee's field hearing in—Anchorage, Alaska. SEACC opposed an identical version of this bill, S. 2222, in our testimony before this Subcommittee on June 18, 2002. Most recently, we joined hundreds of residents from Juneau at a public meeting, held in Juneau by Senator Murkowski on September 20, 2003, where they expressed their strong opposition to this bill. The simple reason for this strong outpouring of public sentiment at the public meeting is the high cultural, ecological, economic, and recreational values of Berners Bay to residents of Juneau and Upper Lynn Canal. While we thank Senator Murkowski for taking the time to come to Juneau and listen to the heartfelt opinions of her constituents most directly affected by this proposal, we are extremely disappointed that she chose not to drop this bill from further consideration.

For all the residents of Juneau and Upper Lynn Canal who hold the spectacular Berners Bay dear, we again urge the Senator and this Subcommittee to act in the public's interest and stop this bill in its tracks. Any activities allowed in Berners Bay must be designed and conducted in a manner that sustains and safeguards this spectacular watershed's unsurpassed abundance and diversity of renewable living resources, along with its capacity to continue to provide food, income, and enjoyment to local residents and visitors. All of us believe it is our responsibility to ensure that future generations can enjoy the same opportunities and uses of Berners Bay's incredible riches that we now enjoy.

Please consider what this bill is really about:

- It is about giving away lands that belong *to all of us*. High-value, forested wildlands. To *private corporations*. Mostly in exchange for clearcuts, over 200 miles away.<sup>1</sup>
- It is about giving away sacred ancestral burial grounds and old village sites of the Auk Kwaan tribe, the original settlers of Juneau.
- It is about shutting the public out of lands which are very important for hunting, commercial and sport fishing, tourism, subsistence, and recreation.
- It is about speeding up development of a mine by eliminating the Forest Service's oversight of mining operations and reclamation. A mine which would provide jobs for about 12 years, yet invoke environmental damage for decades to come. A mine operated by Coeur Alaska, a corporation on the edge of financial insolvency as recently as April 2002.
- Interestingly enough, while this land exchange may facilitate mine development, *the mine could be developed without it*. Coeur Alaska's Senior Vice President Rick Richins said so himself: "the land we control through patented and unpatented mining claims could be developed at this time without the Cape Fox land exchange."<sup>2</sup> Coeur Alaska has possessed all necessary permits since 1998. They don't need this land exchange, they need a higher price of gold. It is only the people of Juneau and Upper Lynn Canal who will lose if these lands are privatized.
- It is about threatening the integrity of an incredibly productive and ecologically significant bay. That same mining corporation proposes to cross Berners Bay in large vessels several times daily and dump its wastes in a pristine lake draining into the bay. These activities could severely impact the rich eulachon and herring fisheries, salmon, bald eagles, Thayer's gulls, seals, Steller sea lions, and humpback whales.
- Lastly, it is about an "equal value exchange" that, sadly, is not equal. The appraisal process, which would take place after bill passage, will look at the "highest and best use" of the land at fair market value. Appropriate to assessing the value of lands for logging and mining, this method leaves no way of quantifying

<sup>1</sup>See Exhibit 1: Maps and analysis of the public and private lands proposed for exchange in S. 1354 (Sept. 12, 2003).

NOTE: Exhibits 1-6 have been retained in subcommittee files.

<sup>2</sup>See Exhibit 2: *What do you Think?*, Juneau Empire, (Aug. 17, 2003).

the ecological, cultural, subsistence, and recreational values—the true heart of Berners Bay.

Sealaska Corporation may explain to you its reasons for wanting Congress to bless this special interest legislation, but what is it really about? We believe there is far more behind Sealaska's support for this bill than meets the eye. For the record, SEACC acknowledges that Sealaska has remaining rights and entitlements to additional Tongass lands, from lands specifically withdrawn by Congress for that purpose in the 1972 Alaska Native Claims Settlement Act (ANCSA). Yet, this proposed exchange clearly looks like some kind of bonus, above and beyond Sealaska's land entitlement under ANCSA. Furthermore, correspondence from Sealaska suggests that its real interest in this proposed exchange may not be the land it would receive in the proposed exchange but possibly the land it hopes to get if it earns Coeur Alaska's support for reopening this historic land settlement.<sup>3</sup>

That letter from Sealaska is troubling. SEACC and many other Alaskans have been on record for years opposing efforts to reopen ANCSA by establishing new, for-profit Native Corporations in Southeast Alaska. Such a step will almost certainly open a Pandora's box of additional land claims in Alaska, a never-ending flood of potential public land and timber grabs, intertwined with timber giveaways, leading to extensive clearcutting of forests now part of a public trust for all Americans: the Tongass National Forest.

It is simply wrong to state that some Southeast Alaska communities had been “inadvertently and wrongly denied” corporation status in ANCSA.<sup>4</sup> This erroneous claim, made in the past by then-Senator Frank Murkowski, is unsupported by the facts. The Congressionally mandated study that reviewed this issue did not make a finding that Congress had inadvertently omitted the study villages from land benefits, and it did not conclude that Congress must now award them land.<sup>5</sup> We recognize that the Native people who are asking for these land benefits have histories and traditions in this region. We are sensitive to their concerns, but we must vigorously oppose proposals that, as a result, attack the Tongass and sacrifice a sustainable future for the entire region.

Previous attempts by the Alaska Delegation to reopen ANCSA to establish new Native corporations and grant them lands from the Tongass resulted in strenuous objections from a broad range of sportsmen, business, and community interests.<sup>6</sup> It must be noted that each time such an initiative has been launched in Congress, it has gone nowhere. If real problems with ANCSA emerge, they must be resolved by soliciting public input from all concerned Alaskans, respecting all forest users, and maintaining the integrity of the Tongass National Forest and other federal lands.

The best way to understand why so many Juneau residents object to this bill is in their own words.<sup>7</sup> The following quotations are taken from hundreds of letters opposing this bill:

- “The fact is, public lands that remain public are not locked up—they are *locked open*. Open to the public. Open to you and me. No land is more ‘locked up’ than private land. If anyone is trying to lock up (and destroy) Alaska, it’s the folks who want to privatize everything.”
- “Spirit Mountain, also known as Lions Head Mountain, is important to the culture of the Tlingit of the past, the Tlingit of the present, and the Tlingit of the future. Please do not give away our land. It is the only thing we have left.”
- “During our stay at the Berners Bay cabin, people in a dozen different boats plied the glacial rivers in search of moose. In the bay, boaters pulled crab pots and trolled for coho salmon. Thousands of people enjoy this amazing place each year, whether from the state ferry, an air boat, a kayak, or a cabin.”

<sup>3</sup>See Exhibit 3: Letter from Richard P. Harris, Sealaska Corporation Executive Vice President to Charles Paddock, Haines Enrollees Incorporated (July 31, 2003).

<sup>4</sup>143 CONG. REC. S6502 (daily ed. June 26, 1997) (statement of Senator Murkowski introducing S. 967, Technical Amendments to ANCSA and ANILCA).

<sup>5</sup>See Letter from Linda Leask, University of Alaska's Institute of Social and Economic Research to Buck Lindekugel, SEACC (May 29, 1996) (this letter, and the earlier letter referenced in it, are attached as Exhibit 4).

<sup>6</sup>See, e.g., Letter from Rod Arno, Alaska Outdoor Council to The Honorable Senator Burns, Co-Chairman, Congressional Sportsmen's Caucus (Feb. 27, 1998) (stating opposition to H.R. 2812 and S. 967 (Section 8)). Individually addressed letters were sent by AOC to the over 300 members of the Congressional Sportsmen's Caucus, the largest caucus in Congress. See also Congressional Drop from Alaska Outdoor Council's, *Alaska's Sportsmen are United in Their Opposition to H.R. 2812*. Both the letter and fact sheet are submitted with our testimony as Exhibit 5.

<sup>7</sup>See Exhibit 6: a list of Letters, News Articles, and Citizen Petitions Opposing Cape Fox Land Exchange, submitted by local citizens from April 30, 2002 through March 3, 2004.

- The value of our fishery that depends on healthy salmon runs exceeds by far the short term life of this mine.”
- “We can eat fish, but we can’t eat timber or gold.”
- “. . . the herring were so thick that I could reach under my kayak and actually grab them! Hundreds of eagles and thousands of gulls were feeding on them—I could see the herring still wiggling as the gulls swallowed them!”
- “I hunt, fish, and trap in Berners Bay, and I’ve been doing it since 1970. I have a cabin up there in the bay itself. I’m very disappointed that Sen. Murkowski wants to trade land that’s already been logged for premium land that hasn’t.”
- “To trade 12,000 acres of national forest land at the edge of this critical habitat area for 3,000 acres of clearcuts is not only a disgrace to the environment, it’s an insult to American taxpayers.”

Again, we urge the Subcommittee to stop S. 1354 in its tracks. Trades, such as proposed in S. 1354, should not be mandated by Congress but enacted through existing administrative mechanisms and based upon the presumption that the greater public good will be served.

Thank you for this opportunity to comment on this legislation.

Senator CRAIG. Well, Buck, thank you very much. Now let us turn to Marilyn Blair, president of the Cape Fox Corporation of Ketchikan. Marilyn, welcome before the committee.

**STATEMENT OF MARILYN BLAIR, PRESIDENT, BOARD OF  
DIRECTORS, CAPE FOX CORPORATION, KETCHIKAN, AK**

Ms. BLAIR. Mr. Chairman, Senator Murkowski, thank you for the opportunity to finally be here to testify on S. 1354. My name is Marilyn Blair and I am president of Cape Fox Corporation, the native corporation for the Village of Saxman, and today we need your help.

Unlike other village corporations, Cape Fox has faced unique legal and geographical challenges that have impaired our economic success. No other village corporation in the State has had so much land denied from their original mandated selection area. As a result of these restrictions, only the mountainous northeast corner of Cape Fox’s core township, which is of no economic value, was available for selection. We were compelled to select acres of marginal land, which had already been logged, and we were forced to forego other economic opportunities that would have been available had we been treated like everyone else.

The Village of Saxman has 431 residents and the unemployment rate is over 25 percent. Job creation is critical to the economic survival of our families. Cape Fox Corporation is instrumental in developing jobs for our village and these past inequities have denied Cape Fox the capital it so desperately requires to promote economic development. Now, when it seems a common sense solution has finally been developed for us, we are being accused of not being able to be good stewards of the land that our people have managed for thousands of years.

These accusations are being made by people who, when they leave this room, will pretend to care about our people, our culture, and our lands, but they refuse to let us help ourselves. We are not cultural museum pieces; we are families struggling to earn a living, but we will become museum pieces if you do not let us earn a living off of our lands.

This solution is fair. It has taken years to get to this point. We have listened to all the stakeholders and worked hard to incorporate their concerns into the legislation. In fact, I wonder if any

other private landowner in this room would be so accommodating with their own back yards.

Here is really what this legislation is all about and why it is fair to all concerned.

We have a responsible economic partner in Coeur Alaska. They have received 19 major national and international environmental awards since 1987.

This is a mining district and has been for well over 100 years since gold was first discovered in 1886. This land exchange is not going to change that fact. It will continue to be a mining district.

This project makes economic sense for the whole area. Our fishing industry is gone. Our timber industry is gone, but this project will add 225 direct high-paying jobs for our people and other people in the area at a payroll cost of \$16 million. It will also create up to 180 indirect jobs and add an additional tax base. Construction alone will inject over \$150 million into the economy. Coeur has already invested \$22 million at the site on environmental studies and permitting.

Cape Fox has long established a reputation for responsible private lands management and has always worked with public agencies to provide access when it made sense. In fact, all of our land in the Ketchikan area is open for recreational use. This legislation provides reasonable access through buffers and easements.

This exchange does not include any land within the Berners Bay LUD II recreational area. Concerns about massive clear-cutting near Berners Bay are totally unfounded. This is emotional manipulation and nothing more. There is very little commercial timber on the land to be exchanged. This legislation even protects the viewshed.

This is an equal value exchange. No manipulation of the numbers by opponents to this legislation will change that. We will give value for value received. In doing so, we will be able to earn an economic return from our lands and the Forest Service will get lands and recreational easements that they think are important for their management of the Tongass.

You have the culmination of years of hard work in front of you. It is fair. It is reasonable, and it makes sense. Nobody is getting something for nothing. We are not asking for a handout. We are asking you to let us help ourselves create a better life for our families and that is all.

Thank you.

Senator CRAIG. Well, Ms. Blair, thank you very much for that testimony. That is very direct and straightforward and we appreciate that always.

Let me turn to my colleague now, Lisa Murkowski, for additional questions of the panelists.

Senator MURKOWSKI. Thank you, Mr. Chairman. I would like to make clear for the record, Mr. Lindekugel mentioned the hearings that we held in Juneau. We had a field hearing, if you will recall, Mr. Chairman, in August in Anchorage and then several months later went down to Juneau to take additional testimony, but it was not part of that actual field hearing. It had been my understanding that we had already requested that all the comments that we received at that Juneau hearing be included as part of the committee

record. Apparently that request has not yet been made or if so, it has not been made available. But I would like to make it clear that it was clearly our intention that that be included.

Senator CRAIG. We will include all of that testimony given at that time in this hearing's record, so it will be made available for all Senators.

Senator MURKOWSKI. Good. I appreciate that, Mr. Chairman.

A couple questions first of you, Mr. Wheeler. Welcome and thank you, and I appreciate the comments that you made about Coeur's environmental record. We feel that we do a lot of things well in the State of Alaska and we want to encourage all those companies that do things well to continue with us.

Can you explain to the committee the status currently of the Kensington Mine permitting program? Where are we right now in the process?

Mr. WHEELER. Yes, Senator. It is important to make the point that the Kensington mining project has already been completely permitted and has received a full environmental impact statement approval. We are, however, and will soon complete a second SEIS for the project because we too have been listening to all segments of the public, and we have actually reconfigured the project by relocating most of the surface facilities on the other side of the Lynn Canal, out of view, and it is going to make the project smaller, but better, and Coeur will benefit economically as well.

I think those are really the highlights. We are in the final stages. The draft NPDS permit has been issued, and I think the Forest Service has put out for public comment the supplemental EIS and we expect that process will be completed soon.

Senator MURKOWSKI. One of the concerns that has been raised is the plans that Kensington has for the tailings, the tailings management at the site. Can you explain what you are planning to do with that and how you will handle any environmental issues with the tailings?

Mr. WHEELER. Yes, I can. In response to public comment and agency involvement, the initial project, which has been permitted involved a dry tailings facility that would have taken several acres of wetlands to put in place even though it was fully permitted.

We subsequently looked at submarine tailings disposal, which technologically would have been a preferred alternative, but we were concerned about ocean dumping as not being an appropriate method as far as the public was concerned.

So what we have done now is, in relocating the project, we have taken a small area known as Slate Lake. This has been supported by the fishing groups, the community groups, other than the testimony here that you have heard, and because it is not a salmon fishery, there are not prolific numbers of fish there. And actually in our reclamation of the Slate Lake's project, following the mining itself, we will have created a much more favorable habitat for future fish populations that Coeur will provide there. So in terms of the small area utilized for tailing disposal now—and Slate Lake is on the other side of the mountain—we will end up and the public will end up with a far better fishery than currently exists there.

Senator MURKOWSKI. So you are actually enhancing.



Mr. WHEELER. We are definitely going to enhance the environs. And as the Senator well knows, this area is recognized for mining under the Federal Tongass Forest Management Plan.

Senator MURKOWSKI. Thank you.

Ms. Blair, the people with the Cape Fox Corporation have been waiting a long time for this issue to be resolved, for them to get the lands that were promised them under the Alaska Native Lands Claims Settlement Act. What happens if this bill, if this legislation, does not become law? Where are you then?

Ms. BLAIR. Well, we will look for other ways to resolve the inequities that we have suffered due to that 6-mile limit. This is just one way to partially help Cape Fox resolve what we have suffered because of the 6-mile limit.

Senator MURKOWSKI. A couple comments have been made in reference to Cape Fox's intention of clear-cutting, and the issue of harvesting of the timber keeps being brought up. At the hearing that we held in Anchorage, at the testimony that we took in Juneau, my recollection was that the witnesses for Cape Fox indicated that they really had no intention of harvesting timber in this area, that it was not really marketable timber. But it was again suggested by Mr. Lindekugel that in fact what we may see, if this exchange takes place, is isolated private clear-cuts. Can you, once again for the record, indicate what Cape Fox's intention is?

Ms. BLAIR. Cape Fox has no intention of clear-cutting any lands that would be traded in the Berners Bay area. Where they are getting that information is beyond me, but it is not from Cape Fox. They have never once approached us or asked us anything about that. It is false. We will not clear-cut any land there.

Senator MURKOWSKI. I appreciate that.

Last, Mr. Lindekugel, I appreciate your comments on the record, your support of the Craig exchange. I thank you for that.

I did want to get clear again, because we seem to be going back and forth on whether or not we are going to be seeing these extensive clear-cuts. It has certainly been our intention, as we have been dealing with the parties, that Cape Fox is making the statements that they are making with genuine assertions, not making a claim that we are not going to do something today and then next week we are going to change our mind. So it is important to make that clear.

One of the things that we are also including, as we are drafting these amendments, is a provision that would allow for a viewshed protection. I guess what I would ask you is, as we are developing these, if SEACC, yourself or representatives from SEACC would be willing to work with my office as we draft this language to address some of the concerns that you have raised.

You have indicated that your preference is to basically kill the bill. I believe, otherwise I would not be going forward with this, that we can have the development of the mine, we can allow for the redress for Cape Fox, and we can allow for the continued recreational opportunities by those who use Berners Bay with the appropriate steps. I think that through the amendments I am looking at, we can get there, and I would ask you if you would help us in coming up with that amendment language.

Mr. LINDEKUGEL. Thank you, Senator. We would be happy to review the language and get back to you as quickly as possible.

Last session the subcommittee adopted some amendatory language to the bill. We do not think those amendments improved the bill too much. The bottom line is the bill still conveys a huge chunk of public lands that are valued for recreation, hunting, and fishing to private corporations for lands that are of little value for those uses.

If I could just point your attention to this picture to the side, that is a picture of Slate Cove. Where the road comes down here is where they intend to build the marine facility. So this area here would be significantly developed, and that assumes that that is the only development that occurs on that. That will be clear-cut in order to build that facility. So I do not think SEACC has been out of line with regard to that. The plans that folks have said they were going to do are going to involve cutting trees, clearing the land, and blocking public access to those lands.

The thing is once this bill becomes law and those lands become private, neither this subcommittee nor concerned residents of Juneau are going to be able to influence how those lands are managed. Right now while they are public lands, we have an opportunity to comment on how those lands are managed and to exercise our rights as citizens to pursue the uses that we think are appropriate.

As Mr. Wheeler commented, the Forest Service has just complete the comment period on the supplemental draft environmental impact statement regarding modifications to the Cape Fox land exchange. Those modifications propose dumping 7.8 million tons of mine waste into lower Slate Lake.

Mr. Wheeler mentioned the 900 studies that Coeur has prepared. We looked at the administrative record for this that the Forest Service has developed for this project to this date and, unfortunately, sir, there were not 900 studies. We would like to see those studies. We think that the information the Forest Service used to make a decision needs to be high quality, peer-reviewed, scientific data that can withstand close scrutiny.

Thank you, Senator.

Senator MURKOWSKI. Thank you. A comment was made—again, I want to just make a clarification for the record. I think you suggested that you had reviewed some amendments that we had adopted with regard to this legislation, and we have not formally made any amendments to the legislation.

Mr. LINDEKUGEL. A point of clarification, Senator. The amendments I referred to were to S. 2222 in the 107th Congress.

Senator MURKOWSKI. OK.

Mr. LINDEKUGEL. And addressed an equal value exchange. And we had problems with those amendments.

Senator MURKOWSKI. That is not mine.

Thank you, Mr. Chairman.

Senator CRAIG. Thank you, Senator.

Buck, in listening to your testimony, I am trying to determine the concern you have as it relates to the Cape Fox bill. I am wondering, are you more upset with the aspect that it might be mined

or are you upset with the land conveyance that would go to the Cape Fox Corporation and Sealaska?

Mr. LINDEKUGEL. We are concerned about maintaining the incredible productivity of Berners Bay for future generations. The same values and uses that we enjoy we are hoping to maintain and pass on to future generations, and we are concerned that this legislation, along with the most recent proposal by Coeur for their mine, is inconsistent with our vision for how this special place should be managed for the long-term benefit of all Americans.

As Mr. Wheeler mentioned, they have a permitted project. That project is outside of the larger Berners Bay watershed and would not directly affect Berners Bay if developed. They have not developed it primarily because the low price of gold in the past few years made it uneconomical.

Mr. WHEELER. Mr. Chairman, if I might just say a couple of comments.

Senator CRAIG. Mr. Wheeler, yes.

Mr. WHEELER. We have never been able to get the support from SEACC and Mr. Lindekugel for this project regardless of how it was configured.

And the suggestions about clear-cutting any area for our facilities I would just like the record to show, as the Senators know, there are certain rights for the use of timber on unpatented and patented mining claims that do accrue to a holder like Coeur. I will say we have no intention of clear-cutting this area at all. We are not in the logging business.

There have been a myriad of public comments with regard to the numerous studies that have been done with regard to this project. To my knowledge, we have never had a request from Mr. Lindekugel or his group to come in and look at any information that has been made available anytime anybody has requested it.

So with that, I would like to just conclude by thanking you for the opportunity to set some of the record straight here as to what I have heard.

Senator CRAIG. Well, Dennis, is it not reasonable to assume, though, that if you are going to build a docking facility, there may be some trees cut down for the purpose of facilitating a construction site?

Mr. WHEELER. Absolutely that would likely have to occur.

Senator CRAIG. My guess is that if you were going to build a building and a site, you would clear that immediate area.

Mr. WHEELER. Exactly, Senator, but not in the context of clear-cutting.

Senator CRAIG. Well, that is what I am trying to establish for the record. Buck, you have said they are going to clear-cut that immediate area. Are you defining the clearing of an area for the purpose of the construction of a loading facility a clear-cut?

Mr. LINDEKUGEL. Regardless of how the land is managed after it is cut, if you clear all the trees from a large block of land, that is a clear-cut, even age management. That is how I was using the term.

Senator CRAIG. Dennis, what would be the approximate size or acreage involved in the establishment of a transfer facility?

Mr. WHEELER. I do not have that exact acreage, Senator. We can provide it to you. It is not a large portion of the land in question here.

Senator CRAIG. Well, obviously, we can all play semantics.

Mr. WHEELER. Exactly.

Senator CRAIG. I know what a clear-cut is and I know what the Federal law calls a clear-cut, and I know that when you clear an area for the purpose of the construction of a facility, that is not termed a clear-cut by anybody's definition. Now, you may wish to call it that, Buck, and that is your obvious privilege to do so. But I have been involved in overseeing the forest products industry for a long time, and I know what a clear-cut is by definition both in size and scope and watershed shape and all of that. So we will leave it at that.

But it is my concern, I guess, in working with Alaskans for nearly 28 years that we have worked to try to establish an economy in that State which will sustain a population, and in a State where you have about 88 percent or greater public lands, that is very difficult, beyond the hunting and the fishing, to establish anything that relates to resource development.

Has your organization ever supported mining in the State of Alaska? Do you support active mining in any form?

Mr. LINDEKUGEL. We have not supported a specific mining project in southeast Alaska. That does not mean that we do not—we have not taken a “we are against mining, all mining”—we have not taken a position that we are against all logging. We have supported fishing. We have opposed farm fish. We are doing the best we can, consistent with our objectives, to further long-term interests of the region.

Senator CRAIG. But it is safe to assume that you have not actively or openly supported any specific mining project to date.

Mr. LINDEKUGEL. Correct.

Senator CRAIG. Thank you.

As it relates to the Alaska Claims Settlement Act, which was a legitimate and responsible way to Native Alaskans certain of the lands which rightfully they should claim, and when it comes to Cape Fox and the restrictive character that they have been put to as a result of certain types of land designation, has your organization ever proposed alternatives in land exchange so that the Cape Fox Corporation could, in fact, effectively identify what would be rightfully theirs under the Alaska Native Claims Act?

Mr. LINDEKUGEL. Thank you, Senator. Under the law, we were not in a position to do that. However, we have supported Cape Fox's proposal to develop a hydropower facility at Mahoney Lake, which is in their selections near Ketchikan. They were going to sell that power to the city of Ketchikan. Unfortunately, that effort was stymied by the efforts of Senator Murkowski's father and the other delegation members in halting Cape Fox's efforts to sell that power to Ketchikan in order to build an intertie connection, a corridor through Tongass wildlands, that at this point they lacked the money to actually build the infrastructure to support the intertie connection.

Cape Fox had selected that land. It was within their selection rights. They had selected it for the purposes of hydropower devel-

opment, and they were frustrated in carrying out that intent. We supported that intent. However, because we did that, does not mean that we are going to support these lands in this location. It is a different place.

We would be happy to try to identify lands that would be more appropriate, closer to the Village of Saxman, closer for their workers to access. If that was the interest of the committee and Senator Murkowski, we would try to do that.

For your information, we understand there is a timber sale that the Forest Service put out for public notice a short time ago. I have not had a chance to look at it very closely, but it appears to be national forest lands that are surrounded by lands that are owned by Cape Fox, and they might be eligible lands for replacing or achieving the objectives of this legislation without putting at risk the valuable public lands at Berners Bay.

So we are happy to work with the Senator and you, Mr. Chairman, as you see fit.

Senator CRAIG. Well, I appreciate those comments because I know that under the Alaska Native Claims Act, there were limitations as it relates to distance and location and all of that. I guess my frustration is that when you oppose one exchange it would seem reasonable, if you agree with the basis of the law itself—and you may or may not—that you at least work to facilitate others that are legitimate and within those limitations.

Mr. LINDEKUGEL. That is it, Mr. Chairman. We do not believe this exchange is within the limitations of ANCSA. It is added. It is trying to fix a problem. We understand their problem. We understand they had an opportunity to address that problem, and they have been frustrated in doing that. In our opinion, we do not believe this bill is about entitlements under ANCSA. We think it is above and beyond that.

Senator CRAIG. Thank you.

Ms. Blair, I heard something different from you. Do you have anything you wish to add to that?

Ms. BLAIR. Thank you. I do not believe that we needed their input or their help in the Mahoney Lake hydroelectric facility. It is nice to know that they supported it, but it is not anything that was required of Cape Fox to get their support.

Also, as far as the inequities that we have been suffering because of that 6-mile, Cape Fox and its staff and the board of directors are perfectly capable of finding other ways, aside from this one, without the help of SEACC. And we would like to be free to always do that on our own and try and find some other resolution. Cape Fox is a very responsible landowner.

I agree with your—the clear-cutting. Any piece of land, if you want to build a house on it and there are trees on it, you are going to have cut down trees to build that house. And that is all this is. We would not cut any more trees than are necessary for roads or the development of the facilities. It is development. That is all it is.

Thank you.

Senator CRAIG. Thank you.

Dennis, a couple of questions of you. One of them has been addressed in your comments. I am looking at an alert from SEACC

here that talks about how the Coeur d'Alene Corporation would use Slate Lake—or turn it, I think it says, into a mine's tailing dump. The mine is already—and I am quoting—permitted to do dry tailings storage, but the corporation wants to cut the cost by dumping tailings into the lake instead.

Was this part of the original EIS or the supplemental EIS on the Kensington Mine proposal?

Mr. WHEELER. Yes, it is included within the supplemental EIS.

Senator CRAIG. If this conveyance comes to pass and you want to use this site as a tailings site, would you not have to meet all of the State of Alaska standards, as it relates to site and site development?

Mr. WHEELER. Yes. This exchange will have no impact whatsoever in terms of removing the Federal and State compliance that we will have to meet on all of the environmental laws and regulations that are in place. It has no impact on them whatsoever.

Senator CRAIG. And I think Buck mentioned in passing, at least in part, SEACC's concern about whether or not the Coeur d'Alene Mining Corporation might get into financial trouble. With the price of gold where it is today, what is the likely prospect of that expression?

Mr. WHEELER. Well, our estimated cost of the project today is \$80 million, Senator. I commented that we had over \$250 million in the bank today. We are one of the strongest balance sheet companies in the precious metals sector today, and there are no concerns about our ability to meet our obligations here.

Senator CRAIG. I appreciate that.

Well, I thank you all very much for your testimony. I know that these are always controversial issues. They are whether they are in Alaska or in my State of Idaho. I have not at all been shy in being supportive of mining, but I have also been supportive of mining playing by all of the rules and that the rules comply with the Clean Air Act and the Clean Water Act and all of those very important environmental standards. In Alaska, with the unique fisheries and the marvelous fisheries that it has, you have an additional burden, but I have also seen it done very, very successfully in ways that do not damage fisheries and do add the kind of economies necessary to a State to afford a population base.

So we will review these things with due caution, to make sure that the record is complete before the committee makes the appropriate decision in relation to these conveyances because I must tell you that when it comes to public lands, we take these matters seriously.

But I am also one who has not at all been bashful about recognizing a balanced use of our public lands, and I do believe that mining plays a role, as does logging. We now know better how to do it than we have ever done it before to assure water quality and that we sustain habitats in a way that do not damage them or impair them in any form, or at least in a substantial way that is not recoverable in appropriate fashion.

With that, I thank you all. The record for the committee will stay open for 10 days.

Senator Murkowski.

Senator MURKOWSKI. Before we close, I just want to make an observation here. In listening to the testimony from Mr. Wheeler about this mining project that we anticipate will be a huge economic boon to the Juneau area in terms of jobs, in terms of revenues, in terms of a boon to the Cape Fox Corporation and in settling an outstanding issue of so many years and resolving that and with the amendments that I have proposed that would allow for limited access from the water's edge up to a certain portion so that those people that are kayaking in the bay have that opportunity to continue the recreation, additional provisions as they relate to some kind of a viewshed, I really feel that this legislation can work to the benefit of so many, not only the economy, not only the recreational users in the area, but the folks down in the Saxman area that have been waiting for resolution for a long time. So I would like to think that we can work this so that all interests are served.

And I appreciate the chairman's support of this very important issue. Thank you.

Senator CRAIG. Well, I thank you for your leadership, Senator.

Mr. LINDEKUGEL. Excuse me, Mr. Chair.

Senator CRAIG. Yes.

Mr. LINDEKUGEL. If I may just add one thing to Senator Murkowski. The Forest Service just extended yesterday or 2 days ago the comment period on the supplemental draft EIS for the Kensington project. It might be appropriate to ask the Forest Service. They have the technology, the information base to evaluate the viewsheds and other potential ways of mitigating the impacts from this exchange if it does go forward. I would just urge that that is an opportunity the Senator may wish to explore.

Senator CRAIG. I appreciate that advice and it is good advice. When we are dealing with these kinds of resources on public lands, we always include the managing agency of the land at the time of the exchange and their comments and recommendations as it relates to these kinds of activities. That is an appropriate suggestion. Thank you.

And we thank you all very much for your testimony.

The subcommittee will stand adjourned.

[Whereupon, at 3:53 p.m., the hearing was adjourned.]





## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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COEUR D'ALENE MINES CORPORATION,  
*Coeur d'Alene, ID, April 26, 2004.*

Hon. LARRY E. CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR SENATOR CRAIG: With regard to the questions raised in your letter of March 31, 2004, please find attached a courtesy copy of our responses which were previously provided to Senator Murkowski. If you have any further questions or concerns, please do not hesitate to contact Mr. Wheeler or myself.

Best regards,

HEATHER R. TURNER,  
*Manager, Public, Community & Governmental Relations.*

[Enclosure.]

*Question 1.* What is the status of the Kensington mine permitting program, and will the land exchange in any way affect this program?

Answer. All State permits have been submitted, the Forest Service is currently developing responses to all comments on the DSEIS. The EPA has released the Preliminary DNPDES permit for government to government review. Federal, state and local permitting requirements will be completed prior to enactment of the land exchange, and conveyance of the lands, since an appraisal must be completed to ensure that an equal value exchange can be consummated. This is required by S. 1354. This is the third EIS that has been performed on the project, and approximately 900 studies and \$25 million have been spent through a variety of environmental studies.

*Question 2.* If S. 1354 is passed in 2004, will Coeur complete the EIS and permitting given the fact the USFS will not be the landowner?

Answer. The Clean Water Act requires that an EIS is prepared for a "new source." The Kensington mine project is a new source. Therefore, an EIS would be required for the project, regardless of whether or not the land exchange legislation is passed. Having said this, it is important to note that Coeur has developed a schedule to place Kensington into production in early 2006. Delays to this schedule would be detrimental to the long-term strategy of the company and our shareholders. We have already experienced permitting delays that could jeopardize the viability of the project.

*Question 3.* Does Coeur intend to log the area for the purpose of constructing mining and processing facilities?

Answer. Yes, Coeur will be required to remove timber in those areas impacted by the construction of mine facilities. These include: the processing facilities (located on private land—patented mining claims, the tailings pipeline (located on private and federal land), and the tailings storage facility (located on private land). The new Coeur proposal would reduce the size of the tailings storage facility and necessary borrow areas from about 200 acres to 20 acres. The operating plan contemplates minimum tree clearing, stream buffers, and visual screening. The tailings management facility cannot be seen from Berners Bay or Lynn Canal.

*Question 4.* Explain your plan for tailing management at the site (this is a SEACC claim of "dumping toxic tailings into pristine lake"?)

Answer. Coeur plans to place inert (non-toxic) tailings into Slate Lake under a 404 Permit issued by the Corps of Engineers. The discharge from this facility will be monitored through a 402 Permit, issued by the RPA. This preferred alternative results in less wetland disturbance than the currently permitted alternative, and provides for a tailings disposal method that meets applicable water quality standards. For clarification, the tailings from the Kensington project have less metal content than the sediments that currently exist in Slate Lake. In its current state, Slate Lake is not a high quality fishery. The lake supports a small Dolly Varden fishery. Approximately 11 acres within the 20-acre lake are considered "anoxic." This means that low dissolved oxygen levels prevent benthic organisms and fish from living in the "zone." Light does not penetrate into this zone. The Coeur lake restoration plan increases the size of the lake to 56 acres. The bottom contours of the lake, after tailings placement, create new habitat in that sunlight penetrates to a depth that supports aquatic habitat. New spawning areas for Dolly Varden will be created around the fringes of the larger lake, and new wetlands habitat will be created for wildlife. Coeur also intends to trap and relocate most of the Dolly Varden fishery, prior to placing tailings in the lake. Once operations cease, a new population of fish will be introduced to the lake. Public access will also be provided for recreation and fishing, once the mining operation has ceased.

*Question 5.* Does Coeur intend to log the site, and sell timber commercially?

Answer. No. USFS regulations (current) do not allow Coeur to log and sell timber commercially, as a result of approval of the Plan of Operations, EIS, and Record of Decision. If the land exchange legislation is enacted, Sealaska and Cape Fox will own the surface rights and commercial timber values. Both corporations have publicly stated they do not intend to log the area. Sealaska has indicated they plan to develop a portion of the exchange lands as a cultural management site. Both corporations would lease or rent the affected mining area (less than 200 acres) to Coeur, in order to conduct the mining operation. The post-mining reclamation plan described earlier highlights Coeur's intentions to rehabilitate the land.

*Question 6.* Does Coeur have a local hire policy?

Answer. Coeur maintains a local and native hire and training preference. They have and will continue to provide mining vocational training and education courses, working with the Berners Bay Consortium, University of Alaska, and Alaska Department of Labor. At Coeur's four other active mining operations, approximately 80-90 percent of the employees are "local hire."

*Question 7.* Will Coeur limit access to the minesite?

Answer. Coeur will be required, by the Mine Safety and Health Administration, to limit access in active mine areas.

*Question 8.* Does the Clean Water Act prohibit tailings disposal in Slate Lake?

Answer. No. The Clean Water Act (the Act) defines strict water quality standards that apply to mining operations. The Act allows for the discharge of fill into waters of the U.S., provided all requirements of the Corps of Engineers and EPA are met. Further, any discharge from the Slate Lake treatment facility must meet water quality standards, and protect the existing uses of the stream. EPA has issued a preliminary draft discharge permit for the Kensington mine. The permit cannot be issued, unless all applicable EPA water quality standards are met.

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SOUTHEAST ALASKA CONSERVATION COUNCIL,  
Juneau, AK, April 26, 2004.

Hon. LARRY E. CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Your letter, dated March 31, 2004, gave the Southeast Alaska Conservation Council (SEACC) over two weeks to give "prompt consideration" to the question from Senator Lisa Murkowski to SEACC for the record regarding S. 1354. Unfortunately, as is sometimes the case with mail coming to Alaska, we did not get your letter until April 19, 2004, nearly a week after our response was due.

Last week I spoke with Trish Aspland from Senator Murkowski's staff and left a message with Frank Gladics from your office notifying them of the letter's late receipt and our intent to respond to your query promptly. Given the circumstances, we respectfully request this response to Senator Murkowski's question be included in the official subcommittee hearing record on S. 1354.

The question posed by Senator Murkowski was as follows:

*Question.* Mr. Lindekugel, with the concerns you have raised regarding loss of public access to these lands and the potential degradation to the viewshed from the waters of Berners Bay, would your organization be willing to work with my office

on language that would address these issues and protect these lands to your satisfaction?

Answer. We would like to take this opportunity to reconfirm the statement I made to a similar question from Senator Murkowski at the March 10, 2004 subcommittee hearing in Washington, DC. As I stated then, SEACC is willing to review specific draft language proposed by Senator Murkowski's office to see if it addresses our concerns.

As I elaborated at the subcommittee hearing, however, we are concerned that any new amendments will fail to improve S. 1354. We feel this way because it is our view that the amendments adopted by the subcommittee last session fell far short of fixing the serious problems with this bill. The bill introduced by Senator Murkowski as S. 1354 on June 26, 2003, included all of the amendments from last session. Rather than addressing the fundamental problem with this legislation, the giving away of large chunks of public lands currently used by Juneau residents for hunting, commercial and sport fishing, and recreation to private corporations for clearcut lands hundreds of miles away, last session's amendments actually made this giveaway worse. Below, we address some of the specific failings of last session's amendments that Senator Murkowski carried forward into S. 1354:

1) Last session's amendments dropped the provision originally contained in S. 2222 that prohibited the Secretary of Agriculture from offering "all land from the mean high tide mark to a point five hundred feet inland to all marine shorelands in and adjacent to the waters of Berners Bay." This "beach fringe" is the most productive and highly used portion of the land to be given away by S. 1354.

2) Another amendment accepted last session that fell far short of improving the bill dealt with the loss of Tongass old growth forest under this bill. Instead of replacing all the oldgrowth forest acreage that could be lost on lands given to Cape Fox and Sealaska, this amendment only applies to about one-third of the old growth forest transferred to these corporations.

3) Last session's amendments also stated that the lands exchanged were to be of "equal value." S. 1354, however, does not even require the Forest Service to follow the Uniform Appraisal Standards for Federal Land Acquisitions, as required by the agency regulations. *See* 36 C.F.R. § 254.9. We further question whether an appraisal process designed to assess the value of lands for logging and mining purposes is even appropriate in this instance because it provides no way to quantify this bill's effect on the heart of Berners Bay—its tremendous cultural, ecological, and recreational values.

4) Last session the subcommittee amended S. 2222 to provide that lands conveyed to Cape Fox and Sealaska corporations under Section 5 or 6 would have no effect on those corporations' land entitlements under the Alaska Native Claims Settlement Act. Such an approach ignores the fact that this exchange basically increases both corporations' land entitlement by allowing them to obtain beach front property with high resource and public values for lands of lesser and dubious value.

While we stand ready to address the issues of public access and protection of viewsheds, we are keenly interested in the specific language Senator Murkowski, working with your committee staff, may propose to address the above-mentioned issues. The question posed SEACC in your letter refers specifically to concerns raised by ourselves and a broad range of diverse local interests relating to public access and the viewshed. We wish to clarify that while important, the identified issues relating to public access and protection of the viewshed do not reflect all the concerns that SEACC and others have with this proposed legislation. We hope the testimony and exhibits SEACC has previously submitted for the record on this proposed legislation serve to identify the host of issues that exist with this legislation, including its adverse effect on the culturally significant ancestral burial grounds and old village sites of the Auk Kwaan, the original settlers of the Juneau area. If you have any questions concerning this material, please do not hesitate to contact us.

Thank you for the opportunity to formally respond to Senator Murkowski's question. Again, we are willing to review any specific draft language proposed by Senator Murkowski to address the concerns we have raised with this legislation.

Best regards,

BUCK LINDEKUGEL,  
*Conservation Director.*



## APPENDIX II

### Additional Material Submitted for the Record

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GOLDBELT CORPORATION,  
*Juneau, AK, January 22, 2004.*

Hon. LARRY E. CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Committee on Energy and  
Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: My name is David Goade, Executive Vice President of the Goldbelt Corporation. I am writing to express my wholehearted support for Senate Bill 1354, the Cape Fox Land Entitlement Adjustment Act of 2003 ("land exchange"). My viewpoint integrates my 21 years of public and private sector experience in Alaska land management and development issues. My view also embodies what is in the best long-term economic interest of Goldbelt.

Goldbelt unequivocally supports the land exchange and the well-reasoned position statements already submitted by the Cape Fox and Sealaska Corporations. As a fellow Alaska Native Corporation, Goldbelt applauds their untiring efforts to resolve longstanding land conveyance inequities and to bring long-lasting economic benefits to their respective Alaska Native shareholders. The proposed land exchange provides a means to meet both these critical objectives. Goldbelt shares this long-term vision and commitment.

Goldbelt is headquartered in Juneau, Alaska and has over 3,300 Alaska Native shareholders. The corporation owns 1,382 acres of waterfront land at Echo Cove, which is only 10 miles from the proposed exchange lands at Berners Bay. Aside from the direct benefits to Cape Fox and Sealaska noted above, the land exchange provides at least one more major benefit—a benefit to Goldbelt.

The operation of the Kensington Mine presents many important long-term business opportunities for Goldbelt. Such opportunities involve mineworker transportation and housing service contracts. It also provides long-term jobs for Alaska Natives of which many will be Goldbelt shareholders. Any circumstance that enhances the enduring economic viability of the mine operation is of great benefit to Goldbelt. The land exchange enables the mine operator to, in this case, be more efficient in its decisionmaking process by shifting land ownership to Native Corporations and primary government oversight to Alaska state agencies. This translates into real, significant time and cost savings for the mine operation by reducing regulatory duplication and increasing agency access, consistency, and predictability over time. In my view, this circumstance created by the land exchange will enhance the long-term economic viability of the mine project.

In summary the land exchange:

- Resolves long-standing land conveyance inequity issues for the Cape Fox Corporation.
- Brings many long-lasting economic benefits to the Sealaska, Cape Fox, and Goldbelt Corporations and their respective Alaska Native shareholders.
- Enhances the long-term economic viability of the Kensington Mine project.
- Increases the likelihood that Goldbelt will receive sustainable, long-term economic benefits through owning and operating mineworker transportation and housing services. Such operations will provide many job opportunities for its 3,300+ Alaska Native shareholders.

Thank you for the opportunity to comment on this land exchange matter.

Sincerely,

DAVID D. GOADE,  
*Executive Vice President.*

Hon. LISA MURKOWSKI,  
*Public Lands and Forests Subcommittee, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR SENATOR MURKOWSKI: I am writing this letter in support of two pieces of legislation before the Public Lands and Forests Subcommittee of the Energy and Natural Resources Committee. I request that this letter be entered into the record of the hearing of the Subcommittee to take place on February 4, 2004.

First, I support the passage of S. 1354, the "Cape Fox Land Entitlement Adjustment Act of 2003." The Cape Fox Corporation faced many restrictions on its land selection according to the Alaska Native Claims Settlement Act. These restrictions forced Cape Fox to select lands that were not economically productive. The land exchange between Cape Fox and the Tongass National Forest proposed in this bill will provide Cape Fox with productive lands and a base for economic development.

I also support the amendment you plan to introduce to this bill. The amendment will ensure that a right-of-way can eventually be granted to the State of Alaska for the construction of the Juneau Access road and maintenance facility. This road and maintenance facility are necessary to remedy the situation where Juneau, Alaska's state capital, is not accessible to the continental road system.

Also at issue will be S. 1778, the "Craig Recreation Land Purchase Act." I support this legislation to allow the City of Craig to purchase lands in Wards Cove while relinquishing title to other lands. This bill will give the City of Craig access to needed lands for economic development while conserving other lands in the public domain.

Thank you for your consideration of my views. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

FRANK H. MURKOWSKI,  
*Governor.*

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SOUTHEAST ALASKA CONSERVATION COUNCIL,  
*Juneau, AK, March 19, 2004.*

Hon. LARRY CRAIG,  
*Chairman, Subcommittee on Public Lands and Forests, Energy and Natural Resources Committee, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN CRAIG: This letter follows up on your recent hearing in Washington, DC, regarding S. 1354, the Cape Fox Land Entitlement Adjustment Act, which would give away valuable public lands and invite further land selection conflicts by waiving the Alaska Native Claims Settlement Act's (ANCSA) land selection requirements. In addition to the written statement we provided for the March 10, 2004 hearing in Washington, DC, we submit this followup statement responding to some of the claims made by other witnesses at the March 10th hearing. We respectfully request that these supplemental comments be included as part of the official, written hearing record.

Given our past testimony before this Subcommittee, including exhibits and materials introduced into the record at the March 10 Subcommittee hearing, you are well aware of the staunch opposition to this bill from SEACC and a broad range of diverse local interests. This bill has also provoked unfavorable reactions from members of Congress, who have urged its rejection. We recommend the Subcommittee consider the strong dissenting views voiced by Democratic Members of the House Committee on Resources on the House companion bill for S. 1354 in 2003.<sup>1</sup>

All who oppose this public land giveaway share some common concerns. This land giveaway, and the mine development it will facilitate, are the first steps in the industrialization of the Berners Bay watershed; the first of a multitude of projects that threaten the Bay's ecological, cultural, and recreational values. Any activity or use allowed in Berners Bay must be designed and conducted in a manner that sustains and safeguards this spectacular watershed's unsurpassed abundance and diversity of renewable living resources, along with its capacity to continue to provide food, income, and enjoyment to local residents and visitors. All of us believe it is our responsibility to ensure that future generations can enjoy the same opportunities and uses of Berners Bay's incredible riches that we now enjoy.

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<sup>1</sup> See H.R. REP. NO. 108-313 at 6-7 (2003) (dissenting Views on H.R. 1899).

I. RESPONSE TO STATEMENTS OF DENNIS E. WHEELER, CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF COEUR D'ALENE MINES CORPORATION

One of the witnesses who testified before the Subcommittee in favor of S.1354 was Dennis Wheeler, Chief Executive Officer and Chairman of Coeur d'Alene Mines. Mr. Wheeler's testimony before the Subcommittee contains several statements that we believe do not tell the whole story.

*Wheeler Statement No. 1:* "Further, the exchanges under the legislation will provide a unique opportunity for Coeur to work with Alaska Native entities and their shareholders in the operation of this enterprise."

*SEACC Response:* This legislation is "unique" indeed. Even before then-Senator Frank Murkowski introduced S. 1354's predecessor, S. 2222, on April 23, 2002, Coeur d'Alene Mines had negotiated and entered into land-use agreements with Sealaska and Cape Fox corporations for property around the mine site.<sup>2</sup> *How can it be in the public interest for 3 private corporations to put their heads together to decide how to divvy up lands that do not belong to them, but to all Americans, and then seek Congressional approval for this "private" deal?* Is the Subcommittee aware of what terms and conditions are included in these land-use agreements? If so, then we believe it is the Subcommittee's responsibility to share the contents of these agreements with the public. If not, then this Subcommittee should take no further action on this bill until these land-use agreements are provided for review by the Subcommittee and public.

*Wheeler Statement No. 2:* "Development of the Kensington gold project will bring significant and diverse economic benefits to Southeastern Alaska. The project will add high paying jobs, create additional indirect jobs, and add additional tax base to a region of Alaska plagued by underemployment and significant economic challenges."

*SEACC's Response:* There are inherent costs of hitching any local economy to a liquidating industry such as metal mining. An increased role of mining in a region's economy virtually always leads to increased instability in job levels and payroll, at least to the short and medium term, and usually in the long term.<sup>3</sup> The Greens Creek mine on Admiralty Island provides a good example of this. This mine opened in 1989 but shut down about 4 years later because of low metal prices, before reopening in 1996.

Benefits from increased property taxes may accrue to the local government. This assumption, however, ignores the adverse effect that the environmental degradation associated with industrialization of Berners Bay could have on people's willingness to live, work, and do business in Juneau. According to the Kensington Gold Project Draft Supplemental Environmental Impact Statement (DSEIS) (4-97 through 4-100), "Short-term direct adverse impacts would be expected" for housing, schools, and public services (e.g. fire and police protection, health care, and emergency services).

Experts opine that "the characteristics of a local area that allow it to attract and hold people are an important part of the area's economic base. If this is not recognized, that part of the economic base may be irreversibly damaged."<sup>4</sup> We contend that a significant reason why residents choose to live in Juneau is the level of access to the natural environment that we enjoy, and the breadth and quality of the recreation opportunities we have, particularly in Berners Bays.<sup>5</sup>

*Wheeler Statement No. 3:* "Over 900 environmental and feasibility studies have been completed to date [for the Kensington Mine]."<sup>6</sup>

*SEACC's Response:* Where are these studies and how can we get a copy of them? Our review of the "Reference" section of the Forest Service's planning record for the Kensington Gold Project DSEIS reveals just over 200 studies. If these studies are as critical "to ensure the highest environmental standards and to protect Slate Lake and Berners Bay" as Mr. Wheeler states in his letter to the editor, why are they not contained in the Forest Service's planning record?

*Wheeler Statement No. 4:* "The second SEIS is scheduled to be completed in the summer of 2004, following an extensive public process, including public meetings in

<sup>2</sup>See Press Release, Coeur d'Alene Mines Corporation, *Kensington gold project moving forward* at 2 (April 25, 2002) (attached as Exhibit 1).

<sup>3</sup>See generally, Thomas Michael Powers, *The Role of Metal Mining in the Alaskan Economy*, (Feb. 2002). This report can be found at our web site, [www.scacc.org](http://www.scacc.org).

<sup>4</sup>Powers, *supra* note 3, at 37. See also Russell Heath, "My Turn: Juneau gets nothing from Berners Bay land trade," *Juneau Empire* (Mar. 15, 2004) (attached as Exhibit 2).

<sup>5</sup>See U.S. Forest Service, *Shoreline Outfitter/Guide Draft Environmental Impact Statement* R10-MB-425 at 63 (July 2002).

<sup>6</sup>See also Dennis Wheeler, Letter to the Editor, *Mine proposal creates jobs, meets standards*, *Juneau Empire* (Feb. 26, 2004) (attached as Exhibit 3).

Juneau and Haines, Alaska . . . The results of the meetings indicate substantial public support for the project . . .”

*SEACC's Response:* We seriously question the basis for Mr. Wheeler's conclusion. The Forest Service limited the referenced public meetings to a “question and answer” format; the Forest Service did not accept oral testimony for or against the mine or make a formal record of the public comment received at these public meetings. Consequently, there is no way the Forest Service or Mr. Wheeler could capture the comments or “results” of those meetings.<sup>7</sup>

*Wheeler Statement No. 5:* “Coeur d'Alene Mines Corporation is an environmentally responsible operator, having been acknowledged by over 20 major national and international environmental awards since 1987.”

*SEACC's Response:* Lets look at what entities have granted Coeur these national and international awards. Many of these awards were granted by trade and industry groups, including the American Institute of Mining, Chile's National Mining Society, the American Institute of Mining, Metallurgical, and Petroleum Engineers (AIME), and the Northwest Mining Association. Coeur's reliance on environmental awards from industry groups like this fails to assuage Juneau residents' concerns about Coeur's proposed gold mining project adjacent to Berners Bay.

Coeur is especially proud of an award received from oil and chemical giants Conoco and Dupont because that award's selection committee included groups like the Mineral Policy Center, a non-profit organization dedicated to protecting communities and the environment against the adverse impacts of mining. The Mineral Policy Center has publicly disavowed its role in granting this award because:

After it was issued, information came to light that Coeur's Rochester mine was polluting the groundwater with toxic pollutants. The problem has continued. Last year the state of Nevada issued a notice of violation because cyanide levels were in violation of state water quality standards. . . .<sup>8</sup>

Consequently, it is no wonder that a significant number of Juneau residents object to Coeur's ill-fated plan to increase company profits by dumping nearly 8 million tons of mine waste into a pristine mountain lake with resident fish populations and which drains directly into the resource-rich Berners Bay.

## II. RESPONSES TO STATEMENTS OF MARILYN BLAIR, PRESIDENT OF THE BOARD OF DIRECTORS FOR CAPE FOX CORPORATION.

Another witness who testified at the March 10th Subcommittee hearing was Marilyn Blair, President of the Board of Directors for the Cape Fox Corporation, the Native Corporation for the village of Saxman, located about 5 miles south of Ketchikan. We take this opportunity to respond to several of her comments as well.

*Blair Comment No. 1:* “Unlike other village corporations, Cape Fox has faced unique legal and geographic challenges that have impaired our economic success. No other village corporation has had so much land denied from their original mandated selection area.”

*SEACC Response:* The argument that ANCSA needs to be modified as proposed in S. 1354 to address the equity of ANCSA's land selection criteria over thirty years later is not compelling. First, Cape Fox did not have “land denied from their original mandated selection area.” In fact, the lands Congress decided to withdraw from the Tongass National Forest for selection by Cape Fox were specified in ANCSA. See 43 U.S.C. 1621(1). Cape Fox received the same amount of land as every other Southeast village and urban corporation under ANCSA (approximately 23,000 acres).

Second, constraints on the selection of lands resulted in some disparities between the value of timberlands conveyed to each village and urban corporation in Southeast Alaska. However, the economic benefits realized per shareholder from logging these lands were divided between widely varying numbers of people. Cape Fox Corporation has fewer original shareholders (230 shareholders) than all but one other

<sup>7</sup> See Aaron Brakel, Letter to the Editor, “Comments were lost at mine meeting,” Juneau Empire (Mar. 3, 2004); Dave Albert, “Hold public hearing about Berners Bay,” Juneau Empire (Feb. 27, 2004); Skip Gray, “My Turn: Let's bring back public hearings,” Juneau Empire (Mar. 9, 2004). The referenced materials are attached as Exhibit 4.

<sup>8</sup> See Bonnie Gestring, Letter to the Editor, “Policy, Center promotes responsible mining,” Juneau Empire (Mar. 10, 2004) (attached as Exhibit 5).



village corporation.<sup>9</sup> Consequently, the direct financial benefit per shareholder was higher for Cape Fox than nearly all village corporations in Southeast Alaska.<sup>10</sup>

Cape Fox, like other Southeast Alaska village and urban ANCSA corporations, has cut virtually all the timber from the lands it selected under ANCSA in roughly 20 years. Plainly, S. 1354 sets the precedent that Congress will make additional grants of valuable Tongass National Forest lands as recompense for the unsustainable land management practices carried out on private lands by Cape Fox and other Southeast Alaska ANCSA corporations. This giveaway of public lands will frustrate the finality of ANCSA and invite additional land selection conflicts across Alaska.

*Blair Comment No. 2:* “This project will add 225 direct high paying jobs, for our people and other people in the area at a payroll cost of \$16 million.”

*SEACC Response:* This optimism about anticipated “high quality jobs for our people,” does not comport with the Forest Service’s analysis of socioeconomic impacts associated with the Kensington Gold Project. As noted in the January 2004 draft supplemental environmental impact statement (DSEIS) for the Kensington Gold Project, the Forest Service assumes that 80% of the construction and operations workforce would be hired from outside the Juneau area.<sup>11</sup> There is a need to import workers because there is a highly limited pool of local workers with the technical skills needed to construct and operate the mine.<sup>12</sup> Based upon the DSEIS analysis for the alternative proposed by Coeur, the 16-month construction phase would provide 64 locally-hired jobs while the 10-year operation phase would only employ 45 locally-hired workers.<sup>13</sup> Once these few locally-hired positions are divided among Juneau, other nearby communities, and Cape Fox shareholders, the anticipated job opportunities are sharply diminished. While few local residents would benefit directly from jobs at the mine, many more will be negatively impacted by the industrialization of Berners Bay.

*Blair Comment No. 3:* “This solution is fair. It has taken years to get to this point. We have listened to all of the stakeholders and worked hard to incorporate their concerns into this legislation.”

*SEACC Response:* On August 6, 2003, at the Subcommittee’s field hearing in Anchorage, Alaska, Tribal Leader Rosa Miller testified on behalf of the Auk Kwaan, the original settlers of Juneau. She described the cultural significance of the Auk Kwaan’s ancestral lands in Berners Bay. Looming over Berners Bay is Lions Head Mountain, which the Auk Kwaan consider sacred because the spirits of their shamans dwell in it. Berners Bay also contains several village sites, and where there were villages, there are also burial sites.<sup>14</sup> Tribal Leader Miller further testified:

Senate Bill 1354 proposes to give away our ancestral lands to both the Sealaska and Cape Fox Corporations. In the old days, when you traveled to someone else’s territory, you could not land your canoe until you got permission from the clan who lived in the area. We’ve heard absolutely nothing from either corporation about their intentions for our lands in Berners Bay. We fear that the relentless drive for corporate profits will override culture, tradition, and the protection of sacred grounds.

To date, we are unaware of any efforts by Cape Fox to meet with Tribal Leader Miller to address the Auk Kwaan’s concerns.

*Blair Comment No. 4:* “[W]e were forced to forego other economic opportunities that would have been available had we been treated like everyone else.”

*SEACC Response:* We agree with this statement. In the past, actions taken by the Alaska Delegation have frustrated an important economic development opportunity pursued by Cape Fox on land conveyed to it under ANCSA. This opportunity, one that SEACC supported, was the development of the Mahoney Lake hydroelectric project by Cape Fox. “[Cape Fox] selected this site under ANCSA primarily for its

<sup>9</sup>Only the village of Kasaan had fewer, with 119 shareholders. See Knapp, *Native Timber Harvests in Southeast Alaska*, Table 2 at p.7, USDA Forest Service, PNW-GTR-284 (1992) (This exhibit was attached as Exhibit 9 to the testimony submitted by SEACC for the Subcommittee’s August 6, 2003 field hearing on S. 1354 in Anchorage, Alaska).

<sup>10</sup>See Institute for Social and Economic Research, University of Alaska, Anchorage, *A Study of Five Southeast Alaska Communities*, at 94-98 (1994) (attached as Exhibit 6).

<sup>11</sup>DSEIS at 4-89; 4-93.

<sup>12</sup>*Id.* at 4-89.

<sup>13</sup>*Id.* at 4-93; 4-96.

<sup>14</sup>See Statement of Rosa Miller, Tribal Leader of the Auk Kwaan, Regarding S. 1354 (submitted to the Subcommittee on Public Lands and Forests, U.S. Senate Energy Committee, for the Anchorage, Alaska field hearing on August 6, 2003).

hydroelectric potential.”<sup>15</sup> But instead of helping Cape Fox pursue this project, the Alaska Delegation worked to stifle this private initiative by promoting other projects over the objections of Cape Fox.”<sup>16</sup>

In closing, we appreciate this opportunity to supplement our previous testimony on S. 1354. We are counting on this Subcommittee to screen out the “bad” deals, like the proposed Cape Fox giveaway, and to stop this bill in its tracks. To protect the public’s interest in these special lands, it is imperative that the Subcommittee take a hard look at the land use agreements entered into between Coeur and the Sealaska and the Cape Fox Corporations for these lands before this giveaway bill moves another inch.

Thank you for your careful attention to our supplemental testimony.

Best Regards,

BUCK LINDEKUGEL,  
Conservation Director.

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PREPARED STATEMENT OF ALFRED MCKINLEY, SR., ON BEHALF OF THE  
WOOSHKETAAN, ON S. 1354

My name is Alfred McKinley, Sr. My Tlingit name is *Aan xis koox*. I am of the Wooshkeetaan (Eagle/Shark) Clan and am submitting this testimony, as the recognized Wooshkeetaan spokesman, in support of Sealaska Corporation receiving the land at Berners Bay in Southeast Alaska.

The Wooshkeetaan people are the recognized original owners of the Berners Bay area. Our traditional ownership has been recorded on page 38 in *Haa Aani, Our Land, Tlingit Land Rights and Use*, by Walter R. Goldschmidt and Thomas H. Haas, edited with an introduction by Thomas F. Thornton. Chart 6: Juneau-Douglas Territory, in Appendix C of this published book also shows the Wooshkeetaan as the aboriginal owner of the area.

The Tlingit people accept *Haa Aani* as an accurate report on our land ownership and traditional property rights. It is the result of an assignment in 1946 from the Commissioner of Indian Affairs to help settle land ownership disputes with the increase in Western migration to Alaska. Dr. Goldschmidt, an anthropologist, and Mr. Haas, an attorney, traveled throughout Southeast Alaska interviewing Elders and Clan leaders in the villages to gain a first hand account of who owned the land and the waters and under what rules. They were accompanied by Joe Kahklen, Sr., a respected Tlingit Elder, who has since passed away. I have enclosed a copy of page 38 and Chart 6 for your information.

Sealaska Corporation met with representatives of the Wooshkeetaan Clan in Juneau last year regarding this issue. As the traditional people of Berners Bay, we support Sealaska Corporation receiving this land because it will allow us to have places like Slate Creek, which is one of our old village sites, back in Native ownership. The *Native Cemetery & Historic Sites of Southeast Alaska* report, prepared in October of 1975 by consultants Wilsey & Ham, Inc., reports that this site is “Identified as a 500 to 600 year old permanent village site, probably with remains present.” (p. 654). I first went there as a young man with my uncle, John B. Fawcett. Over the years, we used the area for fishing and hunting, and it remains important to me and my Clan today. Returning this significant historical site to Native ownership is one of main reasons the Wooshkeetaan support this project.

We understand that there may be others who purport to speak for us or on our behalf. These people, though well intentioned, are not authorized to represent our Clan or speak about our property.

In conclusion, the Wooshkeetaan Clan supports Sealaska Corporation receiving the land at Berners Bay.

ALFRED MCKINLEY, SR.,  
Spokesman, Wooshkeetaan Clan.

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Juneau, AK, February 2, 2004.

DEAR HONORABLE SENATORS: Greetings from Juneau, Alaska. I am writing in regards to S. 1354 the Cape Fox Entitlement Adjustment Act (S. 1354, H.R. 1899).

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<sup>15</sup> See Letter from Gigante, Cape Fox CEO, to Senator Frank Murkowski, at 2 (Feb. 16, 2001). This letter was submitted with SEACC’s testimony for the August 6, 2003 Subcommittee field hearing held in Anchorage, Alaska as Exhibit 10.

<sup>16</sup> See Letter from Alaska Delegation to Boergers, FERC (Feb. 8, 2001). This letter was submitted with SEACC’s testimony for the August 6, 2003 Subcommittee field hearing held in Anchorage, Alaska as Exhibit 11.

The land exchange proposed by Senator Murkowski, albeit justified in meeting obligations due to native corporations in Alaska, is unfair as an economically equivalent exchange to owners of the public land. If the land management style (clear cuts, excessive road building) that these native corporations have shown on their current properties occurs on these newly exchanged lands, one of the strongest coho salmon producing streams in SE Alaska is vulnerable. Exchanging approximately 12,000 acres to Cape Fox and Sealaska Corporations along with rights to log, subdivide, sell, and develop a large swath of wild lands on the northwest side of Berners Bay for 3,000 acres of mostly timber harvested lands and certain subsurface interests near Ketchikan is unfair. The Cape Fox land exchange offers a quick “fix it” solution to an treaty issue that has been lingering for almost 30 years. An exchange should occur, but not with such a huge gap in the gains to one group (native corporations) and the loss to another (the public).

Please do not pass S. 1354, until other solutions are explored. If this parcel must be exchanged please consider the suggestion offered at a public meeting that Senator Murkowski offered in Juneau. The suggestion was to only exchange the subsurface rights—those the Cape Fox and Sealaska Native Corps are particularly interested in this exchange. A majority of the 300 attendees at this public meeting were against this land exchange.

Thank you for your time and considerations.

Sincerely,

ANDREW ELLER,  
*Juneau, AK.*

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PREPARED STATEMENT OF CHRIS E. MCNEIL, JR., CHIEF EXECUTIVE OFFICER,  
SEALASKA CORPORATION, ON S. 1354

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of Sealaska Corporation regarding Senate Bill 1354, the “Cape Fox Land Entitlement Adjustment Act of 2003.” Sealaska is the Alaska Native Regional Corporation for Southeast Alaska under the Alaska Native Claims Settlement Act (“ANCSA”).

Sealaska Corporation supports the enactment of S. 1354 because it:

- allows for native ownership of a recognized Native historic site;
- creates a potential opportunity for jobs for Sealaska shareholders;
- creates business opportunities for Sealaska and other Native Corporations in services relating to mine development;
- makes another step towards the fair resolution of the Alaska Native Land Claims Settlement Act; and
- resolves management inefficiencies for Sealaska and the United States Forest Service on the Tongass National Forest by resolving split estates.

In sum, the bill resolves the outstanding Cape Fox and related Sealaska entitlement issues in a fair manner that furthers the objectives of ANCSA, benefits Tongass National Forest management, and otherwise serves the public interest. The bill provides for adjustments to resolve inequities in Cape Fox’s outstanding land entitlements under ANCSA. The adjustments to Cape Fox surface land and selection rights in turn require adjustments concerning Sealaska’s title and ANCSA conveyance rights to subsurface lands underlying the Cape Fox lands. S. 1354 provides for these adjustments.

The bill also resolves land encumbrances that negatively impact the U.S. Forest Service management of certain split-estate lands (where the U.S. Department of Agriculture is the surface owner and Sealaska is the subsurface owner) and ensure that valid subsurface selection rights, in which Sealaska has conveyance rights to the subsurface beneath Tongass National Forest surface lands, do not create additional split-estate. This legislation will ensure that the split-estate areas do not present a continuing encumbrance and management problem for the Forest Service.

In regards to split estates, Sealaska would like to note that S. 1354 would be an appropriate place to address another split estate created by a previous Act of Congress, the Kake Tribal Corporation Land Transfer Act, P.L. 106-283. This Act left unresolved the status of the Sealaska-owned subsurface of lands transferred by Kake Tribal Corporation to the SEAL Trust for protection of the City of Kake’s watershed. The Act did, however, authorize the Secretary of Agriculture to acquire from Sealaska Corporation the subsurface estate to the approximately 1,127 acres of lands through a land exchange. *See* 43 U.S.C. § 1629h(c)(3). Accordingly, Sealaska would like to propose an amendment to S. 1354 to incorporate the approximately

1,127 acres left unresolved in P.L. 106-283 into the lands to be exchanged to the United State by Sealaska Corporation in S.1 354, at subsection 6(c).

The resolution of these issues in S. 1354 involves exchanges of Cape Fox and Sealaska lands and conveyance rights for equal value lands in the Kensington and Jualin mining district area on the Tongass National Forest. The transfer to Sealaska and Cape Fox of adjacent tracts in this area, as provided in the bill, will eliminate from the national forest lands that are already heavily encumbered with unpatented mining claims. This is an area that is already designated under the Tongass Land Management Plan for mining development. This area surrounds patented claim, private land inholdings.

The simplification of national forest boundaries and management that will be achieved through the exchanges are of substantial benefit to the Forest Service and the general public. The exchanges will not have any significant effects on Forest resources, uses, or values. In addition, the exchanges do not involve any Berners Bay LUD II lands. Any mine development in the area will remain subject to federal and state environmental protection requirements.

The mining claim holders are supportive of these exchanges. The ANCSA conveyances to Cape Fox and Sealaska in these exchanges will remain fully subject to all existing mining claims, State of Alaska selections and rights-of-way, and other existing third-party rights. The exchanges will provide Alaska Natives an opportunity for partnership with the claim holders and to gain experience in mine development and related enterprises, including potential jobs for Sealaska shareholders.

The Sealaska/Forest Service exchange provided for in S. 1354 also allows Sealaska to receive conveyance to a site of historical value to Native shareholders in the vicinity of Slate Creek Cove. This site has not been eligible for selection and conveyance under Section 14(h)(1) of ANCSA because of the presence of mining claims. Once conveyed, guidance for the protection of this site will be provided through the Sealaska Heritage Institute ("SHI"), its Board of Trustees and Committee of Traditional Scholars. SHI was organized to preserve the language and culture of Tlingit, Haida and Tsimshian Indians.

Sealaska is confident that the parties can expeditiously reach agreement regarding the equal value of the particular lands to be specified for the exchange, as provided in S. 1354. Significant progress has already been made to that end. Sealaska and the Forest Service have already achieved substantial progress on other elements of the Sealaska/Forest Service land exchange provided for in the bill.

The Sealaska exchange in the bill could be accomplished administratively with the Forest Service, without the need for legislation, as an additional modification of the existing Sealaska/Forest Service Split Estate Exchange Agreement under Section 17 of the Alaska Land Status Technical Corrections Act of 1992, Pub. L. 102-415. However, enactment of S. 1354 would facilitate and expedite the exchange, and assure that the Sealaska exchange is completed in conjunction with the resolution of the Cape Fox entitlement issues incorporated in the bill.

In conclusion, Sealaska supports prompt enactment of S. 1354 into law. Sealaska stands ready to actively cooperate with the Secretaries of Agriculture and the Interior and with Cape Fox to implement S. 1354 once enacted.

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PREPARED STATEMENT OF ALEC BRINDLE, CHAIRMAN, WARDS COVE PACKING  
COMPANY, ON S. 1778

Mr. Chairman and members of the Committee, my name is Alec Brindle. I am the Chairman of Wards Cove Packing Company. Thank you for the opportunity to submit this statement to the committee in support of S. 1778. We strongly support passage of this bill and will work to implement the transaction authorized in the bill if passed.

In 2002, after 75 years in the salmon business in Alaska, Wards Cove decided to sell its Alaskan salmon operations to other operators, while concentrating its ongoing Alaskan operations in other fisheries and in retailing. One result of this decision is that Wards Cove began selling many of its real estate holdings in Alaska. Unlike our other properties in Alaska, Wards Cove agreed to delay marketing its Craig site so that the City of Craig would have the first opportunity to acquire the property. I understand from conversations with city officials that the municipality has plans for the property that include a number of developments benefitting the general public in Craig and on Prince of Wales Island.

Wards Cove has now held its Craig property off the market for more than two years. As a family company founded in Alaska, we have benefited greatly from Alaska, and would like where possible to work with communities for the benefit of all concerned. While the company is willing to continue delaying the marketing of the

site for a bit longer, we can not hold this property indefinitely. Most of our other Alaska salmon sites have already been sold, and our divestiture must be complete in the near future. Ultimately Wards Cove Packing will move to market this property to other potential buyers if the city is unable to arrange for its purchase.

Mr. Chairman, I support the City of Craig's efforts to acquire this property from Wards Cove Packing. The site is in Craig's downtown. The city's efforts to meet the community's needs through ownership of this parcel is the ideal way to redevelop the land. The City of Craig's willingness to transfer ownership of other land that they own to the Forest Service in exchange for the Wards Cove parcel makes this exchange a fair and equitable one both on its face and in practice.

It is my hope Mr. Chairman that this committee and the Congress will approve this legislation. Thank you for considering my comments.

