

SENATE JOINT RESOLUTION NO. 15

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 3/7/18

Referred: Judiciary

A RESOLUTION

1 **Urging federal government employees to follow lawful Acts of the United States**
2 **Congress; urging the federal government to terminate federal agency employees who fail**
3 **to follow the law; and urging the United States Secretary of Agriculture to review the**
4 **actions of and inaction by the United States Forest Service relating to unlawful**
5 **management of the Tongass National Forest in ways that are damaging to citizens of**
6 **Alaska.**

7 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 **WHEREAS**, far too often, the rule of law has been neglected or undermined in ways
9 that directly affect the state, including by actions of federal government officials in the
10 instances of

11 (1) the issuance by then Deputy Attorney General James M. Cole of a
12 memorandum on "Guidance Regarding Marijuana Enforcement" (Cole Memorandum); and

13 (2) the opposition of the United States Forest Service to adopt and implement
14 a forest plan for the Tongass National Forest that would seek to meet the demand for timber

1 by industry; and

2 **WHEREAS**, on August 29, 2013, then Deputy Attorney General James M. Cole
3 drafted a document known as the Cole Memorandum that issued guidance to federal
4 prosecutors concerning marijuana enforcement, despite federal marijuana prohibition; and

5 **WHEREAS**, during the Obama Administration, the Cole Memorandum had the full
6 force and effect of law, and some states, seeking potentially lucrative marijuana revenue,
7 relied on the Cole Memorandum to avoid federal marijuana prohibition enforcement; and

8 **WHEREAS** the Cole Memorandum was issued without action from the United States
9 Congress to change federal marijuana laws and without changes to federal regulations, which
10 are subject to the requirements of the Administrative Procedure Act that provide for public
11 notice and a comment period; and

12 **WHEREAS**, on November 16, 2017, Attorney General Jeff Sessions issued a
13 memorandum on "Prohibition on Improper Guidance Documents" that effectively revoked the
14 Cole Memorandum and specifically stated that the "United States Department of Justice has
15 the duty to uphold the laws of the United States and to ensure the fair and impartial
16 administration of justice"; and

17 **WHEREAS** Attorney General Sessions stated that the federal government "must
18 abide by constitutional principles and follow the rules imposed by Congress and the
19 President," which include "the fundamental requirement that agencies regulate only within the
20 authority delegated to them by Congress"; and

21 **WHEREAS** the practice by unelected federal agency employees of drafting and
22 issuing guidance documents that have not been subject to public process is not lawful because
23 the documents have been interpreted to have the same force and effect of law and effectively
24 bind private parties; and

25 **WHEREAS**, although the federal law is clear, the marijuana industry in the state has
26 blossomed because of reliance on the Cole Memorandum by private parties, and the societal
27 effect of that reliance is still unknown; and

28 **WHEREAS** the principle of restoring the rule of law also applies to the management
29 of the Tongass National Forest in the state, where unelected federal agency employees must
30 follow a lawful process for meeting the demand for old growth timber; and

31 **WHEREAS** the federal Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. 528 -

1 531, directed the United States Forest Service to manage the Tongass National Forest for
2 multiple uses, including the production of timber; and

3 **WHEREAS** the National Forest Management Act of 1976, P.L. 94-588, requires the
4 United States Secretary of Agriculture to assess forest land, develop a management program
5 based on multiple-use, sustained yield principles, and implement a resource management plan
6 for each unit of the National Forest System; and

7 **WHEREAS**, in 1990, the United States Congress passed the Tongass Timber Reform
8 Act, 16 U.S.C. 539d, which required the United States Forest Service to adopt and implement
9 a forest plan for the Tongass National Forest that would seek to meet the demand for timber;
10 and

11 **WHEREAS**, instead of meeting the annual or planning cycle demand for timber, the
12 United States Forest Service has failed to provide a fraction of the demand, resulting in the
13 closing of mills and the loss of jobs in the state; and

14 **WHEREAS** the United States Forest Service has adopted a management plan for the
15 Tongass National Forest that does not provide for the long-term harvesting of old growth
16 timber, despite old growth timber being in highest demand for timber from the Tongass
17 National Forest; and

18 **WHEREAS**, in 1997, the United States Forest Service released the Tongass Land
19 Management Plan, which reduced the harvest amount to 267,000,000 board feet a year; and

20 **WHEREAS** timber sales were halted by an injunction by the Ninth Circuit Court of
21 Appeals in 2005 because of the United States Forest Service's error in methodology for
22 calculating timber volumes, which remained in effect until an amended forest plan was
23 produced by the United States Forest Service in 2008 that also allowed for a harvest amount
24 of 267,000,000 board feet a year; and

25 **WHEREAS** the United States Forest Service settled litigation over the Roadless Area
26 Conservation rule ("roadless rule"), 36 C.F.R. 294, in 2003 and agreed to provide a valid
27 temporary exemption to the "roadless rule" in the Tongass National Forest and to go through
28 permanent rulemaking, which has not been accomplished; and

29 **WHEREAS** the "roadless rule" generally prohibits road construction, reconstruction,
30 and timber harvesting in designated areas; and

31 **WHEREAS** the United States Congress has granted the state the immediate right to

1 statutory easements on the Tongass National Forest, in sec. 4407 of the Safe, Accountable,
2 Flexible, Efficient Transportation Equity Act: A Legacy for Users, in exchange for state land,
3 and clarified its intent to grant the easements in the Fixing America's Surface Transportation
4 Act of 2015; and

5 **WHEREAS** the state has granted land to the United States Forest Service, but the
6 United States Forest Service continues to oppose granting some of the statutory easements to
7 the state; and

8 **WHEREAS** numerous federal regulatory actions of the United States Forest Service,
9 including intentionally not meeting the demand for old growth timber and inaction in granting
10 statutory easements to the state, have prohibited or limited the use of Tongass National Forest
11 land to benefit the people and have contributed to the loss of thousands of timber jobs, which
12 were crucial in supporting families who wanted to continue to reside in the state; and

13 **WHEREAS** the principle of the rule of law must be respected, and federal agencies
14 should not develop plans or issue guidance memoranda that have the force and effect of law
15 without accounting for other federal rights granted to states or required by the United States
16 Congress; and

17 **WHEREAS** federal agencies should not refuse to follow the law simply because some
18 individuals in the agency disagree with the law;

19 **BE IT RESOLVED** that the Alaska State Legislature urges federal agencies to
20 terminate federal agency employees who are insubordinate with direction from leadership or
21 who fail to follow the law; and be it

22 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States
23 Secretary of Agriculture to review the actions of and inaction by federal agency employees in
24 the United States Forest Service and to take immediate steps to provide relief to the citizens of
25 the state, including those living on the Tongass National Forest; and be it

26 **FURTHER RESOLVED** that the Alaska State Legislature urges the federal
27 government to discontinue taking or failing to take certain actions without regard for the law,
28 as these practices have resulted in damage to the citizens of the state.

29 **COPIES** of this resolution shall be sent to the Honorable Lisa Murkowski and the
30 Honorable Dan Sullivan, U.S. Senators, and the Honorable Don Young, U.S. Representative,
31 members of the Alaska delegation in Congress.