

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 0074

10663 SENATE RESOURCES

508

Subject: [Fwd: HB 508]

Date: Mon, 25 Mar 2002 08:48:46 -0900

From: Representative Drew Scalzi <Representative_Drew_Scalzi@legis.state.ak.us>

To: Pat Hartley <Pat_Hartley@legis.state.ak.us>

Subject: HB 508

Date: Sat, 23 Mar 2002 14:12:39 -0900

From: "Adair, Janice" <Janice_Adair@envircon.state.ak.us>

To: "Representative_Drew_Scalzi@legis.state.ak.us" <Representative_Drew_Scalzi@legis.state.ak.us>

CC: "Siroky, Mary" <Mary_Siroky@envircon.state.ak.us>, "Brown, Michele" <Michele_Brown@envircon.state.ak.us>

Dear Representative Scalzi:

Please accept this email as testimony on HB 508. I apologize for submitting this via email (it seems very casual) but I am out of state and cannot participate in the hearing on Monday. Although the department will have a representative at the hearing, this is my only means to communicate with the committee.

We wholeheartedly support Section 2 of the bill. Hopefully, by having DEC participate in the development of the operating plan, many of the issues we've had in the past will be non-existent.

We do have two serious concerns with Section 1. We have been planning to do some sort of electronic posting of PSP results for members of SARDFA, however Section 1 applies to all PSP testing that we would do for any shellfish operation.

Many of them do not have access to the internet so posting on the web will be meaningless to them.

Although PSP results are public information, we are very concerned about posting them on the internet where they can be accessed by anyone, and potentially misused or misunderstood. We would hate to see the marketing of Alaska shellfish hampered or hurt in any way because someone interprets high PSP levels from one lot or species as applying to all lots or species.

In my dealings with seafood processors, they have been very sensitive to this kind of issue. Therefore, I believe that other shellfish operators must be contacted regarding Section 1.

In order to not slow the bill down, a solution might be to remove Section 1 as a law in statute and replace it as legislative intent language, something along the lines of:

It is the intent of the legislature that the department to find a way to post PSP test results on the internet as soon as they are available if such posting will speed the delivery of the PSP results to the shellfish operator who requested the testing.

As I said, we have been headed this way for geoduck PSP tests. No other shellfish operator has asked that we post their results on the internet but once we figure out an efficient way to do it for SARDFA, we could easily apply the system to any other shellfish operator.

Thank you for consideration of these concerns.

[Fwd: HB 508]

Janice Adair
Director
Division of Environmental Health
Department of Environmental Conservation

HB

527

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 527
 (H) Publish Date: 5/3/02
 Dept. Affected: Natural Resources
 BRU: Oil and Gas Development
 Component: Oil and Gas Development
 Component Number: 439

Revision Date/Time (Note if correction): _____
 Title: Minto Flats Game Refuge
 Sponsor: House Resources Committee
 Requester: House Oil and Gas Committee

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	**** See Below					
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: none
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds that entry for the purposes of oil and gas exploration and development shall be permitted when compatible with the purposes for which the refuge was established.

****In April 2001, Division of Oil and Gas received a request from Andex Resources for an exploration license which included most of the Minto Flats SGR. If Andex rejects the license, the state would lose \$499,840 in application fees as well as eventual royalties and rental fees if the license is converted to leases.

Prepared by: Mark D. Myers Phone 269-8800
 Division: Oil and Gas Date/Time 2-May-02
 Approved by: Pat Pourchot Date 2-May-02
 Agency: Natural Resources

Alaska State Legislature

Representative Beverly Masek
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House Resources Committee

Sponsor Statement

HB527: An Act relating to entry into the Minto Flats State Game Refuge for purposes of exploration and development of oil and gas resources.

This bill will facilitate economic development in the state of Alaska by allowing for the responsible exploration and development of oil and gas resources within the Minto Flats Game Refuge.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Commissioner's Office

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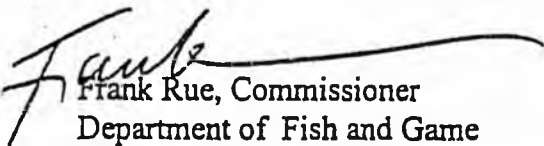
MAY 01 2002

TONY KNOWLES, GOVERNOR

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

MEMORANDUM

TO: Pat Pourchot, Commissioner
Department of Natural Resources

FROM:  Frank Rue, Commissioner
Department of Fish and Game

DATE: May 1, 2002

SUBJECT: Oil and Gas Exploration in the Minto Flats State Game Refuge

This memo clarifies the Department of Fish and Game's position regarding oil and gas exploration and development in the Minto Flats State Game Refuge (MFSGR). In the absence of sufficient site-specific information to render a compatibility determination at this time, the department's position was summarized in our March 15, 2002, recommended Licensee Advisory. That advisory stated in part,

Licensees are advised that ADF&G may require additional mitigation measures for activities within the refuge and may, in some instances, not find all oil and gas development compatible with the refuge's purposes and management plan. Licensees must coordinate closely with ADF&G early in the exploration and development process to ensure that proposed activities are consistent with the refuge management plan and can be developed in a manner that protects core refuge habitats and public use values.

We remain committed to working with the Department of Natural Resources, the project proponents, and the affected public to find ways to advance this project consistent with the MFSGR's statutory purposes, management plan, and public use values. Final decisions regarding the compatibility of gas resource development in the MFSGR will be made on their own merits once project siting and design information is available.

Regional staff will be submitting additional resource and public use information to DNR during the open public review and comment period. We will continue to work with DNR and the

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MAY 01 2002

project proponents to identify alternative mitigation measures to avoid or minimize impacts. We encourage DNR to maintain open channels of communication between all affected interests.

cc: Representative Hugh Fate
Representative Scott Ogan, Chair, House Special Committee on Oil and Gas
Senator John Torgerson, Chair, Senate Resources Committee
Chip Dennerlein, ADF&G, Habitat and Restoration
Mark Meyers, ADNR, Division of Oil and Gas
Jim Hansen, ADNR, Division of Oil and Gas
Al Ott, ADF&G, Habitat and Restoration
Jim Mery, Doyon, 1 Doyon Place, Suite 200, Fairbanks, AK 99701
Jim Dodson, Andex, 1720 S. Bellaire St., Suite 807, Denver, CO 80222

HCR

8

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHCR 8(O&G)
 (H) Publish Date: 3/30/01

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: North Slope Natural Gas Pipeline Routing BRU: _____
 Sponsor: Rep. Jim Whitaker Component: _____
 Requester: House Oil & Gas Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Hay, Committee Aide Phone 465-2283

Representative Representative Scott Ogan Date 3/28/01
 Committee Chair

Alaska State Legislature



Representative Jim Whitaker
House of Representatives
District 31

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SPONSOR STATEMENT

HCR 8

North Slope Natural Gas Pipeline Routing

The State of Alaska is on the verge of a new natural resource development. The natural gas pipeline has become a topic of great concern among legislators. It is incumbent upon the legislature to make a strong statement regarding its intent to uphold its constitutional mandate.

The legislature, in the Alaska State Constitution, is charged with ensuring development of Alaska's resources in the maximum best interest of the people of Alaska. For all the reasons laid out in the resolution, the so-called "northern route" is not in the best interest of the people of Alaska, and therefore, need be opposed by the legislature.

HJR

6

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HJR 6
(H) Publish Date: 01/17/01

Revision Date/Time (Note if correction): _____
Title: ROADLESS POLICY
Sponsor: WILSON
Requester: TRANSPORTATION COMMITTEE

Dept. Affected: NONE
BRU: _____
Component: _____
Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: MIKE KRIEBER
Division: HOUSE TRANSPORTATION Comm. AIDES
Approved by: _____
Agency: _____

Phone: 465-4858
Date/Time: 5:30 p 1/16/01
Date: _____

For distribution information, call the Governor's Legislative Office

AMENDMENT #1

OFFERED IN SENATE RESOURCES

BY Senator Torgerson

TO: CS HJR 6(RES)

- 1 Page 3, following line 20
- 2 Insert "and **WHEREAS** the Alaska State Legislature expresses its
- 3 appreciation of the recent temporary delay for 60 days of the Roadless Area
- 4 Conservation Rule;"



Official Business

Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK 99801-1182

Representative Peggy Wilson

SPONSOR STATEMENT – CSHJR 6.

This resolution opposes the inclusion of national forests in Alaska within former President Clinton's Roadless Area Conservation rule.

On January 5, 2001, shortly before leaving office, former President Clinton announced the final Record of Decision for the Roadless Rule including the Tongass and Chugach National Forests.

Alaskans from across this state must join forces to overturn the inclusion of Alaska forests within former President Clinton's Roadless Rule.

This presidential action is an affront to all Alaskans and continues the federal government's history of breaking promises to Alaskans regarding land management.

This Roadless Rule is in blatant disregard of the processes that have been agreed to. Countless hours, over eleven years and 13 million dollars were spent making revisions to the Tongass Land Management Plan. The Chugach Forest Plan revision process has been underway for over three years requiring considerable investment of time money and resources. Now these processes have been completely disregarded

This Roadless Rule violates the "no-more" clauses of ANILCA and creates approximately 15 million acres of new defacto wilderness within Alaska.

I, like many Alaskans, am vehemently opposed to the inclusion of the Tongass and Chugach National Forests in this Roadless Rule and ask that we work together and support the overturning of this inclusion by litigation, by congressional action or by action of President Bush.

SOUTHEAST CONFERENCE

Working for strong economies, healthy communities, and a quality environment in Southeast Alaska

**Statement of Loren Gerhard, Executive Director, Southeast Conference
In Support of SJR 2
Senate Resources Committee
February 9, 2001**

I had prior commitments which preclude testifying before the Committee, but I would like my comments entered into the record of the hearing. Southeast Conference and the Southeast Conference of Mayors are very concerned with the negative impacts the ex president's Roadless Directive will have on our regional economy. We are a regional development organization, whose mission is promoting a strong economy, healthy communities and a quality environment. I will focus on affects of the Directive on Southeast Alaska, although many of these points apply to the Chugach National Forest as well. We are still trying to cope with the impacts from the dramatic 75% decline in the timber industry occasioned by the Tongass Land Management Plan process. The future impacts of the Roadless designation, if it remains intact, will deal a death blow to that once significant portion of our regional economic base.

Over 96% of the total area of the Tongass National Forest was protected from further development before the Roadless proposal. The Roadless designation reduces available timber harvest on The Tongass National Forest by 2/3rds, to an amount which cannot even support the single veneer plant in Ketchikan, a valiant effort by business and the community of Ketchikan to salvage some kind of timber industry there. There are twelve sawmills operating in Southeast Alaska, all under a cloud of unknown future harvest levels. If this administrative action stands, 2/3rds of them will be gone in 5 years. This action will cost the region another 1000 jobs, direct and indirect. The large multinational timber companies are gone, what we are talking about now are Alaskans doing business in Alaska, and they will be put out of work by this action. The environmental advocates asked for a smaller scale, sustainable level of harvest, supporting a scaled back, value added processing industry, and that's what they got. The Roads ban goes way beyond that to an almost non existent industry, way below the known thresholds of sustainability.

The directive is an affront to the legal process mandated in federal law to manage the national forests. It ignores the National Forest Management Act, the law that mandated the Tongass Land Management Plan, which has been in process for over 10 years with 13 million dollars spent on it. The roads ban is the crowning achievement of an administration determined to lock up lands without the consent or involvement of the U.S. Congress.

Advocates for the roads ban reference heavy support in Alaska for this proposal, citing percentages of attendees at public meetings held in the state last summer. The Forest Service never measured those percentages, they are self serving estimates by the people in environmental advocacy organizations that packed these meetings with their supporters. There was an all out campaign last summer across the country, with millions

of dollars spent on full page ads in big city newspapers, and millions of prepared post cards, handed out on street corners and in shopping malls to people to send to the white house. It was a well executed effort to create the illusion of broad support across the country, which has never really been proven. In fact, when the directive was signed, an msnbc live poll indicated 53% of respondents were opposed to the president's plan. None of these measures are scientifically valid, and the point is that forest management is mandated by law to be undertaken by a more scientific process, less influenced by mass media public opinion manipulation.

The Roadless EIS clearly shows that the majority of Alaskans do not favor this designation. There are multiple resolutions in Volume 4 from communities all around the state opposing it. You may have some of them in your packet, and I can provide at least 10 resolutions from Southeast communities. It is totally appropriate for the Legislature to go on record opposing this regulatory end run by a lame duck president, seeking to build his legacy. It is yet another example of federal officials taking liberties with people's lives thousands of miles from the beltway, with no regard to the economic consequences or for the process of law. Undersecretary of Agriculture Jim Lyons told us in the Southeast Conference annual meeting in Sitka in fall of 1999, that the resolution of appeals to the 1999 Record of Decision was the final action this administration would take "to provide some certainty with regard to future uses of the Tongass". A month later, Clinton launched the roadless process. 4 times over in the last 20 years starting with ANILCA, the Federal government has promised us "no more" and every promise has been broken. We need to get the message back to Washington that enough is enough.

We applaud the Governor's action in pursuing legal remedies to this injustice, and urge the Legislature to support him in that effort. The former president has no right to ignore laws on the books dealing with forest management, and this directive should be scrapped. Your unequivocal support will help in that effort.

Loren Gerhard



Alaska Salmonid Biodiversity Program

February 5, 2001

Regarding the Alaska Legislature's resolution to oppose inclusion of Alaska national forests in the Roadless Area Conservation rule: The Alaska Salmonid Biodiversity Program of Trout Unlimited urges that before demanding new forest roads, repair damage from the old.

Nationwide, roads are the greatest source of fish habitat loss in our national forests. The Forest Service estimates it would cost about \$8-10 billion to fix and properly maintain its badly deteriorated 440,000-mile road system. The failure to pay the true costs of timber harvest sacrifices future fish production.

Alaska is the world's largest producer of wild salmon and the major reservoir of salmon genetic diversity. In contrast, nearly three quarters of the stocks in the Columbia River Basin have been extirpated or are at some level of risk. In the last 100 years, wild salmon abundance in the Pacific Northwest and California has declined 90 percent on average for all species! On the Pacific coast of the United States alone, salmon have been lost from 40 percent of their one-time range, and stocks are threatened or endangered in another 27 percent. Nonetheless, the status of Alaska's salmon—particularly the populations of the smaller stocks that are not significant to commercial fisheries—is relatively unknown. For instance, of the approximately 9,300 spawning aggregates that have been identified in Southeast Alaska (compared to a total of a mere 435 spawning aggregates for all of Washington), only 10 percent have sufficient data to analyze escapement trends—whether escapement has been increasing, stable, or declining.

In Alaska and the Pacific Northwest, salmon have been affected by logging roads, especially in areas of high rainfall: Water running off of poorly designed and poorly maintained forest roads into the streams causes siltation that smothers salmon-spawning areas and kills aquatic organisms essential to salmon rearing. Runoff also increases stream velocity, which in turn erodes the stream banks, destroying natural stream channels, and raises water temperatures, all of which combine to diminish salmon production. Further, road construction can destabilize slope stability, causing landslides. For instance, a landslide inventory of the Ketchikan Pulp Company's Operating Area documented 162 landslides—47 slides were due to road construction, 13 slides to rock pit development, and 102 slides to timber harvest. Six slides directly entered fish habitat.

Road culverts in particular are a major threat to salmon in the Tongass National Forest. After several years, the Forest Service in cooperation with Alaska Department of Fish and Game completed the Tongass-wide fish passage assessment survey last year. The

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draft survey analysis tentatively concludes that 53 percent of culverts (164 of 301 culverts) *are* impeding passage of juvenile salmon under certain conditions, while another 29 percent (80 of 301 culverts) *may* be impeding passage.

The decrease in salmon production due to loss of freshwater habitat is further compounded by poor ocean conditions. The ocean survival of many salmon populations is forecast to be significantly lower in the next two decades than during the last two because of the natural oscillation in sea surface temperature—exacerbated by global warming. Consequently, with a less productive ocean, the existing damage to spawning and rearing areas caused by forest roads could drive some salmon populations to extinction.

Extirpation or depletion of salmon populations could affect some subsistence fisheries. Recent litigation by tribes to force the State of Washington to fix culverts is indicative of the importance salmon-dependent communities place upon habitat restoration. By the State of Washington's own estimate, the economic return from fisheries resulting from fixing the culverts would far outpace the cost of the work.

Similarly, the estimate for repairing the culverts in the Tongass is at least \$20 million. This restoration would be an economic boon to Southeast Alaska, good for the environment and crucial to salmon production, upon which the long-term economy of the region depends. Therefore, before new roads are to be built, logic would dictate that the best thing for Southeast Alaska's economy and environment would be to repair the damage from the old roads.

The State of Alaska ought to be as eager to litigate to restore productive salmon habitat in the Tongass as it is to prevent the application of the roadless rule there. Those who advocate construction of new roads should pledge no expenditures for new roads until the existing ones are fixed. Moreover, if new forest roads were to be built, the State of Alaska should demand no net loss of habitat from road construction—just as British Columbia now requires.

Finally, for the record, Trout Unlimited supports the Forest Service's Roadless Conservation Policy. A poll by the Theodore Roosevelt Conservation Alliance—whose members include the Rocky Mountain Elk Foundation, Wildlife Forever, the Wildlife Management Institute, and Trout Unlimited—showed that 84 percent of hunters and 86 percent of anglers “supported efforts by sportsmen to keep the remaining roadless areas in national forests roadless.”

Respectfully submitted,

Jan Konigsberg
Director



Alaska Salmonid Biodiversity Program

February 2001

SAFE PASSAGE?

Alaska law (AS 16; 5AAC 95) requires that passage of fish be maintained and certain activities in fish streams must be approved by the Alaska Department of Fish and Game (ADF&G) issuing a Fish Habitat Permit. *

One of the more significant threats to Alaska's wild salmon is literally under foot, but usually well hidden from view. That threat is culverts. From a habitat perspective, culverts are the least preferable in-stream-crossing structure: In most of the cases where culverts are placed in medium- to high-gradient streams—regardless of how well-engineered—these culverts will eventually become an obstacle to fish passage by causing debris blockages, vertical barriers, or extreme water velocities.

Virtually all transportation and transmission corridors involve roads or other infrastructure that cross streams. According to Alaska Department of Transportation and Public Facilities, Alaska has one mile of road for every 42 square miles of land area (the U.S. average is one to one). Alaska's total public road mileage is about 16,500. Less than 20 percent of the total mileage is paved. Public roads are not the only significant right-of-ways that involve stream crossings, so do private roads, the Alaska Railroad, the Trans-Alaska Pipeline System, other oil and gas pipelines. It is difficult to know how many culverts are in place and their location because there is no unified database for this information.

While concern about potential adverse impacts to fish passage from culverts has been long-standing, only during the past few years have some systematic assessments of the problem been undertaken.

SCOPE OF THE PROBLEM

Described below is a summary of the progress in surveying in-stream-crossing structures for fish passage problems.

* While most federal agencies acknowledge ADF&G's authority to approve in-stream activities on federal lands, the Forest Service does not, albeit it now consults with the department prior to instream construction.

Roads

State Highways

There are about 6,000 miles of roads, located mostly in Southcentral and the Interior, ns for which the state Department of Transportation (DOT) is responsible. There has yet to be a systematic survey of stream-crossing structures. ADF&G has been negotiating with DOT for nearly three years for DOT to fund a three-year fish-passage survey of culverts under state highways in Southcentral and the Interior regions—estimated to cost at least \$200,000. Apparently, initial funding in 2000 from U.S. Fish and Wildlife Service in cooperation with Trout Unlimited to begin assessing highway culverts in the Kenai Peninsula has inspired DOT to participate in the funding.

Borough and Municipal Streets

Borough and municipal streets account for about 5500 miles of roads across the state. (There are also private roads within the boroughs and cities that are not included in this total). With funding from U.S Fish and Wildlife Service in cooperation with Trout Unlimited in 2000, ADF&G surveyed culverts in the Bodenburg, Cottonwood, Wasilla, Fish, Lucille Creek, and Little Susitna River watersheds within the Mat-Su borough. Other than this, there have been a few major culvert-reconstruction projects in municipalities and boroughs but no other systematic culvert surveys in any other major borough or municipality.

Private Roads

Total number of miles of private road associated with residential access in the bush as well as roads in unincorporated villages is not known. But it is likely that fish passage problems would be found if a systematic survey were to be conducted.

Forestry Roads

State of Alaska

There are almost 300 miles of roads in state forest land. There has been no assessment of stream-crossing structures associated with these roads.

Federal

There are about 3644 miles of permanent "system" roads and about 1600 miles of temporary "non-system" roads. System roads are under the jurisdiction of the Forest Service and are needed for the long-term management of the forest. Non-system roads are constructed under timber sale contracts as single-use short-term roads; such roads are intended to be closed to vehicular traffic, stabilized after use, and returned to vegetative production within 10 years.

The Forest Service has been conducting the "Alaska Region Road Condition Survey", one objective of which is to locate and characterize all the drainage structures within fish streams in the Tongass National Forest. Thus far, over 90 percent of the permanent road has been surveyed for fish passage. This includes 301 culverts in Class I streams (streams important for salmon and steelhead) and 619 culverts in Class II streams (streams with resident, non-anadromous fish). The culvert condition assessment established criteria thresholds for culvert gradient, stream constriction, debris-blockage, and vertical barrier to predict if the particular structure provides for fish passage for juvenile salmon. Depending upon the degree to which it impedes fish passage, the culvert is categorized as "Green", "Red", or "Gray"—"Green" means fish can pass freely, "Red" means fish passage is impeded, and "Gray" means additional analysis is required to determine if the culverts are either Green or Red. 18 percent (57 culverts) in Class I streams and 10 percent (65 culverts) in Class II streams are "Green"; 58 percent (164 culverts) in Class I streams and 72 percent (475 culverts) in Class II streams are "Red"; and 29 percent (80 culverts) in Class I streams and 18 percent (119 culverts) in Class II streams are "Gray".

The Forest Service explains that categorizing a stream as red or gray does not imply that the stream totally blocks fish. In fact, most of the streams have fish located upstream of the problem culverts, but in each case the Forest Service has decided that passage is probably impossible for juvenile fish during periods of high stream flow, even though adult fish may be able to pass.

Private

There is no database that makes it easy to ascertain the number of miles of private road on private timberlands in Alaska, most of which are owned by Native village and regional corporations. The Alaska Department of Natural Resources did not begin compiling road mile statistics for proposed roads under new harvest plans until 1997. In 1997, total proposed road mileage on private timberlands was 375; 1998, it was 162; and in 1999, it was 273 (this does not mean that these roads were actually constructed).

ADF&G has completed fieldwork assessing about 200 miles—about 90 percent—of private logging roads on the Kenai Peninsula, involving about 145 stream-crossing structures. The analysis has been done and the final report is in progress. (Funding for the study came from National Marine Fisheries Service.) Interestingly, according to ADF&G, stream-crossing structures on private timber roads in Southeast Alaska, for the most part, do not constitute a long-term problem for fish passage, because the culverts are removed after timbering is completed.

Alaska Railroad

The Alaska Railroad has about 450 miles of rail from Seward north to Fairbanks, and about 24 miles of track to Eielson AFB and 12 miles to Whittier. The railroad has 175 bridges, including trestles; culverts are used for all other stream crossings, but the total number of culverts is not documented nor has there been any survey of culvert condition.

Pipelines

Trans-Alaska Pipeline System

The Trans-Alaska Pipeline System (TAPS) runs about 800 miles from arctic Prudhoe Bay to tidewater at Valdez, crossing about 800 streams and rivers, not all of which are fish-bearing. Many streams have multiple crossing locations. There are about 1800 low-water crossings and 4500 culverts associated with the pipeline and pipeline access/service roads.

The Joint Pipeline Office (JPO) provides governmental oversight of pipeline operations and maintenance. JPO periodically monitors stream-crossing structures and low-water crossings for fish passage concerns. Low-water crossings typically are associated with the 154 pipeline-access roads where the road simply goes through the stream because no bridge or culvert was required. In these instances, the road and associated traffic can alter stream geometry and/or flow to the point where it becomes too shallow for fish passage.

JPO issued its most recent report on fish passage issues in February 2000. The report concludes that 20 percent (2 culverts) culverts and 65 percent (17 low-water crossings) sampled by ADF&G in 1999 were not in compliance with fish passage requirements, but the problems were corrected in 2000.

Other Oil/Refined Products Pipelines

In the arctic and in addition to TAPS, there is another 160 miles of additional crude oil pipeline, about 805 miles of oil field-gathering lines and about 90 miles of refined product pipeline. Together these pipelines and access to them involve about 75 culverts, with few low-water crossings.

An oil pipeline transports oil from the Swanson River oil field within the Kenai National Moose Range, there are about 29 miles of pipeline access roads with 9 culverts. A recent survey of the culverts indicated no fish passage issues associated with these in-stream-crossing structures.

Natural Gas Pipelines

There are no in-stream-crossing structures associated with about 8 miles of road servicing the Beaver Creek gas field in the Kenai National Moose Range.

There are also nearly 300 miles of natural gas transmission line operated by Enstar in its Southcentral service area. Except for a few in-stream-crossing structures of the access road associated with the natural gas line that runs along Mystery Creek in the Kenai Peninsula, the remainder of Enstar's pipeline system is serviced by snow and ice roads and are buried beneath stream and river beds at crossings

In addition to the Enstar system, there are about 190 miles of other natural gas transmission pipeline, of which 140 miles is the transmission line between Pump Stations 1 & 4 of TAPS. There are no additional in-stream-crossing structures or low-water crossings associated with this gas line.

WHAT IS TO BE DONE?

As can be readily discerned from above, the full extent of fish passage problems due to in-stream-crossing structures is unknown. While an all-inclusive fish-passage survey of all existing in-stream-crossing structures and low-water crossing may not be feasible, a survey encompassing all public roads, forest roads the Alaska Railroad and crude oil lines is essential if the State of Alaska is to enforce its responsibility to ensure safe passage for Alaska's anadromous fish and resident fish. These surveys require funding as well as intergovernmental and interagency cooperation.

The costs associated with surveys, of course, pales in comparison to the costs of road reconstruction to solve the fish passage problems caused by stream-crossing structures and agencies are naturally concerned that reconstruction would have to be paid out of maintenance budgets that are already sorely taxed. Historically there has been relatively ready funding for new road construction, but a marked stinginess for maintenance. For instance, of every \$100 of federal highway funds conveyed to the State of Alaska, only \$5 is designated for maintenance! The Tongass Forest estimates it has spent about \$1.5 million annually in recent years addressing deferred maintenance associated with culverts and estimates it would cost up to \$20 million to correct the known, fish passage problems.*

While the perception that Alaska has abundant salmon runs has undoubtedly vitiated a sense of urgency in regard to ensuring safe fish passage as required by law, it would be a mistake to believe that historic abundance suggests the impact from impeded fish passage is insignificant. During this period of declining ocean productivity in the North Pacific Ocean and the likelihood that global warming will further exacerbate the decline in ocean productivity—thereby further increasing mortality of wild salmon in the ocean and freshwater environments—it is even more important that the full range of freshwater habitat be available to these fish. If stream passage is impeded, then habitat, however pristine, is functionally impaired from the standpoint of salmon production. If Alaska is to boast about caring for wild salmon when, for instance, it advocates breaching the Snake River dams to allow for safe passage, then it needs to demonstrate a stronger commitment to identifying and remediating fish-blocking, in-stream-crossing structures.

* The Tongass Forest now requires that logging companies pay for the costs of repairing culverts on existing roads that will use for their new timber contracts.

Subject: HJR 6 Support...

Date: Thu, 25 Jan 2001 11:54:00 -0900

From: Cliff Skillings <cskillings@gatewayfp.com>


To: "Representative_Peggy_Wilson@Legis.state.ak.us" <Representative_Peggy_Wilson@Legis.stat

Good work. Please find attached the GFP testimony.

Contact me if I can be of further assistance or provide additional support.

Cliff Skillings
Director of Corporate Relations
Gateway Forest Products
(907) 247-1647

<<HJR6 SUPPORT.doc>>

 <u>HJR6 SUPPORT.doc</u>	Name: HJR6 SUPPORT.doc Type: Winword File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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Gateway
Forest
Products

P.O. Box 779 Ward Cove, Alaska 99928 (907) 247-1647 (907) 247-1646 (fax)

January 24, 2001

TO: House Resources Committee

RE: GFP Testimony supporting House Joint Resolution No. 6

Madam Chairman and distinguished Committee members:

My name is Cliff Skillings and I am testifying today on behalf of Gateway Forest Products and its 149 full time employees, urging you to support HJR 6 and seek expedited passage of this important Resolution.

Gateway Forest Products is a company of full time, year round employees operating a production Sawmill, a veneer mill, an operational sort yard and an industrial complex. Our mission is to provide a manufacturing process that best utilizes the lower quality sawlog from the Tongass and adds to the new integrated independent wood processing industry in Southeast. We are active participants in the Forest Service's independent/SBA timber sale program and rely on its continued existence at a level that supports not only our mill, but also the other independent wood products facilities located in Southeast.

The Clinton Roadless Initiative fails to recognize the fact that significant management initiatives have been applied to the Tongass. These include the Alaska National Interest Lands Act (ANILCA), the Tongass Timber Reform Act (TTRA) and continuously updated versions of the Tongass Land Management Plan (TLMP). Every one of these received a high level of commitment from regional Department of Agriculture employees, local citizens and time commitments from the United States Congress relative to ratification. In the 8 years of the Clinton Administration, Southeast Alaska has seen an ASQ that dropped from 550 million board feet (mmbf) to 267 mmbf (1997 TLMP ROD) to 187 mmbf (1999 TLMP Lyons ROD) and the loss of two production pulp mills and various independent sawmills.

This latest initiative offers no science but rather an emotional plea from national special interest groups and legacy opportunity for an outgoing Administration. You have heard the best probable numbers should this Initiative be applied to the Tongass: 50 mmbf board foot maximum harvest, further decrease in the manufacturing base in the region, etc. All of this is correct. Our present industry of 7 small independent sawmills will surely be decreased to two with implementation. Our veneer mill, although being able to

run on one shift in this scenario, will do so at the cost of our sawmill that may at best operate on a part time basis if the supply is available.

The Tongass is fully capable of supporting a viable timber manufacturing industry to the ASQ stated in the 1997 TLMP decision and then condoned by the Governor that same year. This ASQ decision of 267 mmbf provides a level of harvest that maintains year round, family supporting jobs, healthy local economies and an industry that has the ability to plan ahead for operations and make investments in manufacturing processes.

Under present land management plans and historical legislative actions, areas identified as environmentally sensitive are protected. In actuality, the industry is already limited as to areas it can access and the quality of timber that can be extracted. Numerous areas that are available for harvest and have high volume/quality timber are inaccessible due to Habitat Conservation Areas (HCA) set around the profitable timber, giving industry access to the lower quality timber and allowing the higher volume HCA classified stands to blow down in these small, exclusive set asides.

The Roadless Initiative also ties the hands of land managers in the future relative to forest practices to improve forest health and denies access of our resource rich region to those visitors who may be bound by physical limitations and wish to see it first hand.

In closing, I do not believe that a "majority of Alaskan's" support this action as you may hear in opposing testimony. Local representation is hard'y met by visitors who may sign a prewritten post card after being coerced into signing. Significant locals submitted letters and memos of opposition to the Clinton Administration relative to this Initiative and I do not believe that one can base the opinion of the region by those who chose to stand at microphone.

Gateway Forest Products and the timber industry of Southeast Alaska can ill afford to be subject to additional inaccessibility to the resource due to management decisions based on emotional appeals over sound science. We adamantly support your actions to ratify HJR6, opposing the Roadless Initiative and supporting the Governors litigative efforts, and hope that you do so in an expeditious manner.

**Testimony of Loren Gerhard, Executive Director, Southeast Conference
House Resources Committee 1/24/01**

I will speak mainly to the issues in the Tongass National Forest, as those are the ones I am most familiar with, as our organization focuses on issues in Southeast Alaska, although some of this applies to the Chugach National Forest as well. Southeast Conference and the Southeast Conference of Mayors are very concerned with the negative impacts the ex president's action will have on our regional economy. We are still trying to deal with the impacts from the dramatic 75% decline in the timber industry occasioned by the Tongass Land Management Process. The future impacts of the Roadless designation, if it remains intact, will deal a death blow to that once significant portion of our regional economic base.

Over 96% of the total area of the Tongass National Forest was protected from further development before the Roadless proposal. The Roadless designation reduces available timber harvest on The Tongass National Forest by 2/3rds, to an amount which cannot even support the single veneer plant in Ketchikan, a valiant effort by business and the community of Ketchikan to salvage some kind of timber industry there. There are twelve sawmills operating in Southeast Alaska, all under a cloud of unknown future harvest levels. If this administrative action stands, 2/3rds of them will be gone in 5 years. This action will cost the region another 1000 jobs, direct and indirect. The large multinational timber companies are gone, what we are talking about now are Alaskans doing business in Alaska, and they will be put out of work by this action. The environmental advocates asked for a smaller scale, sustainable level of harvest, supporting a scaled back, value added processing industry, and that's what they got. The Roads ban goes way beyond that to an almost non existent industry, way below the known thresholds of sustainability.

The directive is an affront to the legal process mandated in federal law to manage the national forests. It ignores the National Forest Management Act, the law that mandated the Tongass Land Management Plan, which has been in process for over 10 years with 13 million dollars spent on it. The roads ban is the crowning achievement of an administration determined to lock up lands without the consent or involvement of the U.S. Congress.

Advocates for the roads ban reference heavy support in Alaska for this proposal, citing percentages of attendees at public meetings held in the state

last summer. The Forest Service never measured those percentages, they are self serving estimates by the people in environmental advocacy organizations that packed these meetings with their supporters. There was an all out campaign last summer across the country, with millions of dollars spent on full page ads in big city newspapers, and millions of prepared post cards, handed out on street corners and in shopping malls to people to send to the white house. It was a well executed effort to create the illusion of broad support across the country, which has never really been proven. In fact, when the directive was signed, an msnbc live poll indicated 53% of respondents were opposed to the president's plan. None of these measures are scientifically valid, and the point is that forest management is mandated by law to be undertaken by a more scientific process, less influenced by mass media public opinion manipulation.

The Roadless EIS clearly shows that the majority of Alaskans do not favor this designation. There are multiple resolutions in Volume 4 from communities all around the state opposing it. You may have some of them in your packet, and I can provide at least 10 resolutions from Southeast communities. It is totally appropriate for the Legislature to go on record opposing this regulatory end run by a lame duck president, seeking to build his legacy. It is yet another example of federal officials taking liberties with people's lives thousands of miles from the beltway, with no regard to the economic consequences or for the process of law. Undersecretary of Agriculture Jim Lyons told us in the Southeast Conference annual meeting in Sitka in fall of 1999, that the resolution of appeals to the 1999 Record of Decision was the final action this administration would take "to provide some certainty with regard to future uses of the Tongass". A month later, Clinton launched the roadless process. 4 times over in the last 20 years starting with ANILCA, the Federal government has promised us "no more" and every promise has been broken. We need to get the message back to Washington that enough is enough.

We applaud the Governor's action in pursuing legal remedies to this injustice, and urge the Legislature to support him in that effort. The former president has no right to ignore laws on the books dealing with forest management, and this directive should be scrapped. Your unequivocal support will help in that effort.

Thank you for the opportunity to speak to this, and I welcome any questions.

Forest Resources



A Report on Forestry Issues from the American Forest & Paper Association

January 15, 2001

Parting Shots from the Administration

- **Roadless Policy.** As expected, President Clinton announced the final decision on the National Forest Roadless areas on Jan. 5. The final decision, published on Jan. 12, included several significant changes from what had been proposed for public comment.
- First, the decision applies not just to the roadless portions of inventoried roadless areas, but also to those portions that were allocated to multiple uses in forest plans and may have been roaded and harvested since the last Roadless Area Review (RARE II). The decision also prohibits the cutting, sale, and removal of timber not just in unroaded areas, but also in roaded and previously managed areas. There are very limited exceptions to the rule and, from a practical standpoint, it is unlikely that access or harvesting would be approved. Lastly, the rule applies immediately to the Tongass National Forest in Alaska, overriding the current forest plan and the \$13 million dollars spent to develop it over the last few years.

This decision also overrides local-level planning at the national forest level as required by the National Forest Management Act. In fact, a provision added to the final roadless regulation specifically prohibits local-level forest plan amendments and revisions to "reconsider, revise, or rescind" any of the prohibitions and restrictions in the regulation. The regulation's requirements will make it difficult, costly, and time-consuming for local-level managers to do any resource management in these areas.

Of particular concern will be their ability to carry out forest health and fuels reduction programs, wildlife habitat improvement programs, or obtain access to private land inholdings. To access and cut trees in inventoried roadless areas, a project must maintain or improve roadless characteristics and comply with just-approved transportation regulations (see article below) requiring an environmental impact statement and decision by the regional forester. For private land access, this will be costly, time-consuming, and will significantly inhibit the agency from providing access, even if such roads are allowed.

→ **Road Policy and Regulations.** The Forest Service also issued new transportation/road policy regulations and Forest Service manual direction. The new regulation and policy are linked to the roadless area regulations and the recently approved planning regulations. They require the completion of detailed and complex transportation analyses and plans on all national forests. They also require that the Forest Service manual include interim direction for inventoried roadless areas as well as a new category of lands called "contiguous unroaded areas." This interim direction significantly restricts actions in these other unroaded areas until the transportation analysis and plan are completed. In effect, the Forest Service is restricting access and resource management on millions more acres than announced in the roadless decision, through these regulations. As most of these "contiguous unroaded areas" are not mapped, determining the impact of these regulations will be difficult.

There is no question that each forest should have adequate transportation analysis and plans to carry out their resource management needs. Such plans will help managers and the public know where and under what conditions the Forest Service can provide access to public lands. It is unfortunate that the agency has used planning and analysis regulations to accomplish land allocation and restriction objectives.

Migratory Birds. President Clinton issued an Executive Order, on Jan. 10, establishing migratory bird conservation as a priority for all federal agencies. The order requires every federal agency to sign a Memorandum of Understanding with the Fish and Wildlife Service (FWS) addressing all agency programs that could "take," either intentionally or unintentionally, a migratory bird and what steps the agency will undertake to further conservation of these birds. In December, the Commission on Environmental Cooperation (CEC) issued a staff recommendation to prepare a "factual record" on allegation that FWS is failing to enforce the Migratory Bird Treaty Act (MBTA) by not requiring permits for logging activities.

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DISTRICT OF ALASKA

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES DEPARTMENT)
 OF AGRICULTURE, THE UNITED STATES)
 DEPARTMENT OF AGRICULTURE)
 FOREST SERVICE, ANN VENEMAN)
 and MICHAEL DOMBECK, in their official)
 capacities respectively as Secretary of)
 Agriculture and Chief, Forest Service,)
 Defendants.)

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

CASE NO. 901-039 CV

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INTRODUCTION

1. This is an action by the State of Alaska seeking a judgment declaring that by the Roadless Area Conservation Final Rule and Record of Decision (Roadless decision) defendants revised and significantly amended the revised Tongass Land Management Plan (TLMP) and the Chugach Land Management Plan (CLMP) in violation

APPENDIX 1 TO COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

1 of the Administrative Procedure Act (APA), the National Forest Management Act
 2 (NFMA) and its implementing regulations, the National Environmental Policy Act
 3 (NEPA) and its implementing regulations, the Alaska National Interest Lands
 4 Conservation Act (ANILCA), the Tongass Timber Reform Act (TTRA), the Organic
 5 Administration Act (OAA), the Multiple-Use Sustained-Yield Act (MUSYA), and the
 6 Wilderness Act. This action also seeks permanent injunctive relief against amending the
 7 revised TLMP and CLMP by the Roadless decision. By failing to follow these laws and
 8 by amending the revised TLMP and CLMP in an arbitrary and capricious manner,
 9 defendants have irreparably harmed the State of Alaska.¹

12
 13 **JURISDICTION AND VENUE**

14 2. This action is brought pursuant to the Administrative Procedure Act,
 15 5 U.S.C. §§ 701 to 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
 16 The United States has waived sovereign immunity in this type of action in 5 U.S.C. §
 17 702.
 18

19 3. This Court has subject matter jurisdiction over this action under 28
 20 U.S.C. §§ 1331 and 1361 because this case arises under the National Forest Management
 21 Act (NFMA) of 1976 (Pub. L. 94-588 (October 22, 1976)), the Tongass Timber Reform
 22 Act (TTRA) of 1990, (Pub. L. 101-616, 104 Stat. 4430 (November 28, 1990)), the Alaska
 23

24
 25 ¹ A Table of Acronyms and Abbreviations is provided as Appendix 1 to this
 26 Complaint.

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1 National Interest Lands Conservation Act (ANILCA) of 1980 (as amended) (16 U.S.C.
2 § 3101 *et seq.*), the National Environmental Policy Act (NEPA) of 1969 (as amended)
3 (42 U.S.C. § 4321 *et seq.*), the Organic Administration Act (OAA) (16 U.S.C. § 475), the
4 Multiple-Use Sustained-Yield Act (MUSYA) (as amended) (16 U.S.C. §§ 523 to 531),
5 and the Wilderness Act (16 U.S.C. § 1131 *et seq.*)
6
7

8 4. Venue in this action is proper in the District of Alaska under 28
9 U.S.C. § 1391(b)(2) and § 1391(e).

10 **PARTIES**

11 5. Plaintiff State of Alaska is a sovereign State of the United States.
12
13 The Tongass National Forest and the Chugach National Forest, the nation's two largest
14 forests, are located within the State of Alaska.

15 6. Defendant United States Department of Agriculture is the
16 department of the executive branch responsible for overseeing the activities of the United
17 States Department of Agriculture Forest Service, the agency charged with the
18 administration of the national forests.
19

20 7. Defendant United States Department of Agriculture Forest Service is
21 an agency of the United States Department of Agriculture and is charged with the
22 administration of the national forests, including the Tongass National Forest and the
23 Chugach National Forest.
24
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26

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1 8. Defendant Ann Veneman is the Secretary of Agriculture and is sued
2
3 in her official capacity. The Forest Service is an agency of the United States Department
4 of Agriculture and is subject to the direction and control of defendant Veneman in her
5 official capacity.

6
7 9. Defendant Michael Dombeck is the Chief of the Forest Service and
8 is sued in his official capacity. Defendant Dombeck is responsible for operations and
9 activities of the Forest Service on National Forest System lands under delegations of
10 authority from the Secretary of Agriculture to the Chief of the Forest Service.

11
12 **FACTS**

13 10. Pursuant to NFMA (16 U.S.C. § 1604 and 36 C.F.R. § 219.1 *et*
14 *seq.*), defendants are required every ten to fifteen years to prepare, revise and implement
15 land and resource management plans for units of the national forest system, including the
16 Tongass National Forest, which is located in Southeast Alaska, and the Chugach National
17 Forest which is located in Prince William Sound in Southcentral Alaska.

18
19 11. In ANILCA Congress specifically limited the executive branch's
20 authority to withdraw lands in Alaska.

21
22 a. First, Congress found:

23 "This Act provides sufficient protection for the national interest in
24 the scenic, natural, cultural and environmental values on the public
25 lands in Alaska, and at the same time provides adequate opportunity
26 for satisfaction of the economic and social needs of the State of
Alaska and its people; accordingly, the designation and disposition
of the public lands in Alaska pursuant to this Act are found to

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represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."

(ANILCA § 101(d), 16 U.S.C. § 3101(d).)

b. Congress then directed:

"(a) No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.

"(b) No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress."

(ANILCA § 1326, 16 U.S.C. § 3213.)

c. In addition, Congress directed that

"unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the national Wilderness Preservation System."

(ANILCA § 708(b)(4).)

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Tongass Land Management Plan

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12. Defendants prepared the first Tongass Land Management Plan (TLMP) in March of 1979. That plan provided a commercial forest land base of 2.4 million acres from which timber harvest was authorized, and an allowable sale quantity (ASQ) of 450 million board feet (mmbf) of net sawlog timber volume. The 1979 plan also administratively set aside approximately 5.5 million acres for consideration by Congress as wilderness. Except on this 5.5 million acres, access to forest land for power transmission, transportation, mining, recreation, water management projects and fish management projects was allowed.

13. The March 1979 TLMP's land use and ASQ decisions were affirmed by Congress in ANILCA, which provided that at least 450 mmbf of sawlog timber would be made available for harvest, and designated as wilderness the 5.5 million acres which had been administratively set aside in TLMP.

14. In 1987, defendants began a process to revise the TLMP. In June 1990, defendants released for public comment a draft environmental impact statement (DEIS), but withdrew it due to changes in land designations and management of the Tongass National Forest anticipated to result from passage of the TTRA, which was then under consideration by Congress.

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15. The TTRA was enacted on November 28, 1990. The TTRA amended section 705(a) of ANILCA by requiring the Forest Service, subject to applicable law, including NFMA, and consistent with multiple-use and sustained-yield principles, to seek to provide a supply of timber to meet market demand. The TTRA also designated 2.5 million acres of the Tongass as wilderness and .727 million acres of the Tongass as Roadless LUD II Areas.

16. In February 1991, the TLMP was amended by the Forest Service to incorporate the requirements of the TTRA. The Forest Service released a DEIS in September 1991 that was subsequently withdrawn for reasons outside the scope of this complaint.

17. The agency released a revised supplemental DEIS (RSDEIS) to the public in 1996. The TLMP Planning Team prepared nine alternatives for the RSDEIS, under the direction of the Regional Forester, Policy Group Co-leaders and others.

18. On May 23, 1997, the Regional Forester signed the 1997 Record of Decision (ROD) for the final environmental impact statement (FEIS) and adopted a revised TLMP for the Tongass National Forest. The 1997 revised TLMP reduced the commercial forest land base from 2.4 million acres (as provided under the original TLMP of 1979) to 676,000 acres. Except on the 5.5 million acres designated as wilderness in ANILCA and the .3 million acres set aside as wilderness in the TTRA, access to forest

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7
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 land for power transmission, transportation, mining, recreation, water management
2 projects, and fish management projects was allowed.

3
4 19. On April 13, 1999 the Under Secretary of the Department of
5 Agriculture issued a 1999 ROD modifying the 1997 TLMP ROD and revised TLMP. No
6 EIS was prepared for the 1999 ROD although it contains significant amendments to the
7 revised TLMP and 1997 ROD.
8

9 20. Under the 1999 ROD, some 7.4 million acres of inventoried roadless
10 areas in the Tongass National Forest are included within land use designations that do not
11 allow road construction. The remaining 2 million acres of inventoried roadless areas are
12 in designations that allow road construction and are essential to achieving the ASQ set
13 out in either the 1999 ROD or the 1997 ROD and the TTRA.
14

15 21. Application of the Roadless decision to the Tongass National Forest
16 prohibits road construction on these lands and results in a substantially reduced ASQ of
17 approximately 50 mmbf. (Roadless FEIS, p. 3-378)
18

19 Chugach Land Management Plan

20 22. The 5.49 million acre Chugach National Forest contains 5.43 million
21 acres of inventoried roadless areas, which is 98.9% of the forest. (Roadless FEIS,
22 p. A-11.)
23

24 23. In 1980, ANILCA designated 1.97 million acres of the Chugach
25 National Forest as a Wilderness Study Area (WSA). Pursuant to NFMA, defendants
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prepared the first Chugach Land Management Plan (CLMP) in July of 1984. The 1984 CLMP provided for an annual harvest of 370 acres and an ASQ of 7.5 mmbf of net sawlog timber volume. The 1984 CLMP recommended 1.7 million acres of the WSA and an additional 48,000 acres outside the WSA for designation by Congress as Wilderness. Although the recommendation was never submitted to Congress, the Forest Service has nevertheless been managing the WSA as de facto wilderness pending congressional action. Except on the land managed as de facto wilderness, access to forest land for power transmission, transportation, mining, recreation, water management projects, and fish management projects was allowed. In addition, under the 1984 CLMP, 2.796 million acres of inventoried roadless areas are in land use designations that allow road construction.

24. A Notice of Intent to revise the CLMP was published in April 1997 and a scoping letter was released to the public in May 1997.

25. In September 2000, defendants released the proposed revised CLMP and accompanying DEIS. The comment period closed December 14, 2000. The CLMP DEIS evaluates eight alternatives for management of the forest. (Executive Summary for the CLMP DEIS and the proposed revised Land and Resource Management Plan at pp. 6-13.) The Forest Supervisor's preferred alternative emphasizes natural processes across the forest with active management in select areas while providing recreational

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1 opportunities. (*Id.* at p. 7.) The preferred alternative models the local preference of
2 residents in and near the forest. (CLMP DEIS at pp. 3-447 to 3-455.)
3

4 26. The CLMP DEIS acknowledges that at the national level the Forest
5 Service was proposing the Roadless Area Conservation Rule and considers the
6 environmental consequences of the rule as a separate alternative, Alternative F. (CLMP
7 DEIS at pp. 3-312 to 3-313.) This alternative was not chosen as the preferred
8 alternative. (Executive Summary for the CLMP DEIS and the proposed revised Land and
9 Resource Management Plan at p. 7.)
10

11 27. A major concern for the Chugach National Forest is that there are
12 1.3 million acres of dead trees on the Kenai Peninsula resulting from the spruce bark
13 beetle outbreak that began in 1987. (DEIS at pp. 1-3, 3-112.) The beetle outbreak has
14 caused concern about the buildup of fuels and options for treatment that decrease fire
15 hazard, and maintain scenery, vegetation and wildlife habitat for years to come. (Letter
16 dated September 12, 2000 announcing the availability of the proposed CLMP and DEIS.)
17 Timber harvesting provides an opportunity to implement an ecological approach for
18 prevention of serious pest outbreaks and to remediate the effects on scenic quality, which
19 is among the most prized resources of the Chugach National Forest. (CLMP DEIS at
20 pp. 3-122, 3-325.)
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24 28. Another major concern for the Chugach National Forest is the fact
25 that demand for recreation activities is growing. (CLMP DEIS at p. 1-3.) Participation in
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1 outdoor recreation is a way of life for Alaskans, and tourism use on the forest is rising.
2 (CLMP DEIS at pp. 3-266, 3-267.) In particular, use of cabins and campgrounds is
3 nearing full capacity. (CLMP DEIS at p. 3-267.)
4

5 29. The Forest Supervisor's preferred alternative includes more roads for
6 facilities, trail construction, and conversion of trails to roads to increase access to the
7 forest. (Executive Summary for the CLMP DEIS and the proposed revised Land and
8 Resource Management Plan at p. 17.) Recreational pursuits would be affected by
9 limitations prescribed by the Roadless decision. (*Id*)
10

11 30. Road construction in all of the alternatives, including the no action
12 alternative, falls below threshold levels that would increase fine sediments in spawning
13 habitat above natural levels or that would alter the hydrologic behavior of small
14 watersheds. (CLMP DEIS at pp. 3-101, 3-102.) Therefore, there is a lack of scientific
15 support for application of the Roadless decision to the Chugach Forest.
16
17

18 The Overlapping Regulatory Proposals

19 31. Citing Forest Service budgetary concerns about maintenance of the
20 existing road system and a perceived public concern to protect inventoried roadless areas
21 in the National Forest System, the Forest Service suspended all road construction and
22 reconstruction in certain roaded areas of the National Forest System for an "interim"
23 period of 18 months beginning March 1, 1999. The terms of suspension are set forth in
24 36 C.F.R. 212.13. The Tongass National Forest was excluded from the interim
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1 suspension on the ground that the revised TLMP had been completed after January 1,
2 1996. The Chugach National Forest was included.

3
4 32. On October 13, 1999 President Clinton issued the Roadless Area
5 Conservation Initiative which directed the Forest Service "to develop, and propose for
6 public comment, regulations to provide appropriate long-term protection for most or all of
7 these currently inventoried 'roadless' areas and to determine whether such protection is
8 warranted for any smaller 'roadless' areas not yet inventoried." (FEIS at 1-6.)

9
10 33. On October 19, 1999, the Forest Service issued a Notice of Intent to
11 prepare an EIS for a nationwide roadless policy consisting of two parts. (64 Fed. Reg.
12 56306.) Part One would restrict activities such as new road construction in inventoried
13 roadless areas. Part Two would establish a national direction for managing inventoried
14 roadless areas and for determining whether similar restrictions should be extended to
15 uninventoried roadless areas. The scoping and comment period for the proposal closed
16 on December 20, 1999.

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18
19 34. In soliciting scoping comments on the Roadless Initiative, the Forest
20 Service asked whether the 9.3 million acres of inventoried roadless areas in the Tongass
21 National Forest should be covered by the final rule. In addition to the inventoried
22 roadless areas, the 16.9 million acre Tongass National Forest contains 5.8 million acres of
23 congressionally designated wilderness.
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35. On March 3, 2000, the Forest Service published a proposed rule to govern the development, use, maintenance and management of the National Forest Transportation System. (65 Fed. Reg. 11680 (2000).) The proposed Transportation Rule requires a "comprehensive road inventory and road analysis [to be conducted and integrated into each] Forest Plan," and provides that in the interim, road construction and reconstruction will be prohibited within roadless and unroaded areas except for "compelling needs," including "critical resource restoration and protection, public safety, and access to carry out a statute or treaty or pursuant to reserved or outstanding rights." (65 Fed. Reg. at 11691.)

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36. The preamble to the proposed Transportation Rule provides that "[t]his new policy emphasizes investing in the process of decommissioning unneeded roads and reconstructing and maintaining the most heavily used roads." (65 Fed. Reg. at 11681.)

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37. The Forest Service prepared an Environmental Assessment (EA) to accompany the proposed Transportation Rule. The Transportation EA states that the proposed action would "result in fewer miles of new roads being constructed [and] more miles of roads being reconstructed and decommissioned than have been in the past." (EA at 19.) The EA was accompanied by a Finding of No Significant Impact (FONSI).

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38. The final Transportation Rule was published in the Federal Register on January 12, 2001 and was effective immediately. (66 Fed. Reg. 3219.) The

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1 Transportation Rule creates a new category of lands called "contiguous unroaded areas"
2 on which multiple use activities are significantly restricted until completion of complex
3 transportation plans and analyses on each national forest.
4

5 39. In December of 1997, the Secretary of Agriculture convened a 13-
6 member Committee of Scientists to review the Forest Service forest planning rules and
7 offer recommendations for improvements. On March 15, 1999, the Committee of
8 Scientists issued its final report.
9

10 40. Relying in part on the report of the Committee of Scientists, a team
11 of Forest Service employees from national, regional, and local offices drafted a proposed
12 rule to comprehensively revise the 1982 planning rule. The proposed Planning Rule was
13 published on October 5, 1999. (60 Fed. Reg. 18886 (1999).)
14

15 41. In conjunction with the proposed Planning Rule, the Forest Service
16 prepared an EA. The EA was published on July 21, 2000, and was accompanied by a
17 FONSI, signed by Defendant Dombeck. The EA did not contain any analysis of the
18 environmental impacts that may be associated with restricting road construction and other
19 activities within unroaded areas, other than to note that the "proposed procedural criteria"
20 in the Roadless Area Conservation Rule "would provide the procedures that could be
21 used to consider the roadless areas and unroaded areas called for in the Final Planning
22 Rule for plan revisions." (Planning Rule EA at 32.)
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1 42. At some point after publication of the Planning Rule EA, the Forest
2 Service decided to substantially amend the Planning Rule by incorporating the "proposed
3 procedural criteria" for identification and protection of unroaded areas which had
4 previously been part of the proposed Roadless Rule. This was done without any notice to
5 the public or opportunity for public comment. Nor did the Forest Service undertake any
6 analysis of the environmental impacts of the "procedural criteria." Rather, on November
7 7, 2000, the Forest Service issued a four-paragraph "update" to the Planning Rule EA, in
8 which it noted that while the Roadless Area Conservation Initiative was still in draft
9 form, the "portion of the draft [roadless area conservation] rule pertaining to planning has
10 been incorporated into the final planning rule." No further analysis of the associated
11 environmental impacts was provided.

12 43. On November 9, 2000, the Forest Service published the final rule for
13 National Forest System Land and Resource Management Planning (Final Planning Rule).
14 (65 Fed. Reg. 67514.) The Final Planning Rule incorporated, verbatim, portions of the
15 procedural rule originally included in the proposed Roadless Rule.

16 44. On May 10, 2000, the Forest Service published a DEIS entitled
17 "Forest Service Roadless Area Conservation." (65 Fed. Reg. 30275.)

18 45. The Roadless DEIS accompanied proposed rules that: (1) prohibited
19 road construction and reconstruction in inventoried roadless areas (hereinafter the
20 "prohibition rule"); and (2) required local managers to identify unroaded areas other than
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1 inventoried roadless areas and determine, at the time of land and resource management
2 plan revisions, which unroaded areas warranted protection and the level of protection to
3 be afforded (hereinafter the "procedural rule").
4

5 46. The Roadless DEIS included four "prohibition alternatives:" 1) a no-
6 action alternative; 2) a prohibition on road construction and reconstruction within the
7 unroaded portions of inventoried roadless areas; 3) a prohibition on road construction,
8 reconstruction, and timber harvest except for stewardship purposes within the unroaded
9 portions of inventoried roadless areas; and 4) a prohibition on road construction,
10 reconstruction, and all timber harvest within the unroaded portions of inventoried
11 roadless areas. The preferred alternative was the second alternative, prohibiting road
12 construction and reconstruction within the unroaded portions of inventoried roadless
13 areas, but allowing timber harvest where such harvest could occur without the
14 construction of roads.
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18 47. The DEIS also included four "procedural alternatives:" 1) a no-
19 action alternative; 2) a requirement for evaluation and implementation of protections for
20 unroaded areas at the next forest plan revision; 3) a requirement that the local manager
21 evaluate whether and how to protect roadless characteristics on a project-by-project basis
22 and 4) a requirement for consideration of roadless characteristics on a project-by-project
23 basis pending completion of a forest plan revision (a combination of 2 and 3). The
24 preferred alternative was the second alternative, requiring evaluation and implementation.
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1 of protections for unroaded areas at the next forest plan revision. The Final Planning
2 Rule incorporated portions of these procedural alternatives.
3

4 48. The DEIS also included four "Tongass alternatives:" 1) including
5 the forest in the alternative selected for the rest of the forest service lands; 2) exempting
6 the forest from the alternative selected; 3) not immediately including the forest in the
7 alternative selected, but at the 5-year TLMP review determining whether road
8 construction in roadless areas should be prohibited; and 4) prohibiting road construction
9 only in old-growth and remote recreation areas. The third alternative was the preferred
10 alternative, postponing a decision on whether to apply the prohibitions to any or all of the
11 unroaded portions of inventoried roadless areas in the Tongass until the 5-year review of
12 the 1999 revised TLMP in April 2004. It specifically required the Forest Supervisor to
13 consider § 101 of TTRA as part of this determination.
14

15
16 49. On November 13, 2000, the Forest Service published the Final
17 Roadless EIS (FEIS). In a change from the DEIS, the Forest Service chose Road
18 Prohibition Alternative 3, prohibiting construction, reconstruction, and timber harvest
19 except for stewardship purposes, and applying the prohibitions to both the roaded and
20 unroaded portions of inventoried roadless areas. The FEIS also eliminated analysis of the
21 Procedural Alternatives, since the procedural rule had been incorporated in the Final
22 Planning Rule adopted on November 9, 2000. (36 C.F.R. 219.9(b)(8).) Finally, the FEIS
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1 fully applied the Roadless Rule to the Tongass National Forest but deferred
2 implementation on the Tongass until April 2004.

3
4 50. Notwithstanding Congress' finding that ANILCA provided sufficient
5 protection for the national interest in the scenic, natural, cultural and environmental
6 values on the public lands in Alaska, the stated purpose of the Roadless action is to
7 "conserve and protect the increasingly important values and benefits of roadless areas by
8 [] prohibiting activities that have the greatest likelihood of degrading desirable
9 characteristics of inventoried roadless areas...." The FEIS states that the action is needed
10 because "[r]oad construction, reconstruction and timber harvest activities in inventoried
11 roadless areas can directly threaten the fundamental characteristics of these areas by
12 altering natural landscapes including habitat fragmentation and changes in native plant
13 and animal communities." The FEIS goes on to explain that the action is needed because
14 "[l]ocal land management planning efforts may not always recognize the cumulative
15 national significance of inventoried roadless areas and the values they represent,
16 especially given the increasing development of the nation's landscape." (FEIS at 1-14
17 through 1-15.)

18
19 51. The Roadless FEIS admits that the economic effects of prohibition
20 alternatives 2 through 4 would cause Tongass mill closures and reduce Tongass logging
21 activity which "would trigger direct job losses of 364 to 383 employees in the private
22 sector and direct income losses estimated at \$16.7 to \$17.6 million." The job losses
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1 would occur in Ketchikan, Coffman Cove, Craig, Thorne Bay, Klawock, Metlakatla,
2 Wrangell, Petersburg, and Hoonah. "Over the long term as the effect of the direct job
3 losses and business closures progressed through the economy, another 218 to 230 jobs
4 may eventually be lost along with an additional \$10.1 to \$10.6 million in income."
5 Finally, approximately 141 Forest Service jobs along with a loss of income of \$7.1
6 million would be lost under the prohibition alternatives, along with 141 indirect jobs and
7 \$3.4 million in personal income. The total direct and indirect job and income losses from
8 application of the prohibition alternatives on the Tongass would be 864 to 895 jobs along
9 with a loss of \$37.3 to \$38.7 million dollars in income. (FEIS at 3-379 to 3-380.)
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13 52. The Roadless FEIS admits that application of the prohibition
14 alternatives to the Tongass would prevent the Forest Service from exercising its
15 discretion to meet market demand: "Relative to current industry operations and projected
16 timber demand, the prohibition alternatives may result in a harvest shortfall of
17 approximately 73 to 77 MMBF of timber annually. In the short-term, the immediate
18 effect of supply shortages is likely to be intense competition and bidding activity for
19 timber sales that are made available. As time goes by, competition will drive out the least
20 efficient operations, thereby reducing mill capacity and the associated long-term demand
21 for Tongass timber. In the long term, a sustained level of 50 MMBF may support some
22 but not all of the existing and planned timber processing facilities in the region." (FEIS
23 at 3-378 to 3-379.)
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3 53. In a change from the FEIS, the Final Roadless Rule and ROD
4 (Roadless decision), which was signed on January 5, 2001 and published on January 12,
5 2001, immediately applies the roadless restrictions to the Tongass National Forest. The
6 ROD states that approximately two-thirds of the total timber harvest planned on the
7 Tongass over the next five years is projected to come from inventoried roadless areas on
8 the Tongass. The ROD further acknowledges that an immediate prohibition on road
9 construction will eliminate 95% of the timber harvest from those areas. Therefore, the
10 ROD provides that the prohibitions do not apply to roadless areas of the Tongass where:
11 notice of availability of a DEIS allowing road construction, reconstruction and the
12 cutting, sale, or removal of timber from a roadless area was published in the Federal
13 Register prior to the date of publication of the Roadless decision in the Federal Register.

14
15 54. The application of the Roadless decision to the Chugach National
16 Forest effectively terminates the CLMP land planning process by dictating the principal
17 land use for over 98.9% of the forest. The Roadless decision mandates that the CLMP
18 ROD adopt Alternative F, even though it was not the Forest Supervisor's preferred
19 alternative and public comments have not yet been analyzed or considered.

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22 55. The Final Roadless Rule explicitly makes permanent the
23 prohibitions and restrictions on road construction, reconstruction and timber harvest in a
24 inventoried roadless areas. The prohibitions and restrictions may not be reconsidered,
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1 revised or rescinded in subsequent project decisions or management plan amendments or
2 revisions. (36 C.F.R. 294.14(e).)

3
4 **FIRST CLAIM**

5 (NFMA)

6
7 56. Plaintiff repeats and incorporates by reference the allegations of
8 Paragraphs 1 through 55 of this complaint.

9 57. Defendants violated NFMA and its implementing regulations by
10 failing to comply with 16 U.S.C. § 1604 and 36 C.F.R. Part 219 in the following ways:

11 (a) The Roadless decision, which revised and significantly amended
12 the 1997 and 1999 TLMP RODs and the 1984 CLMP ROD, was not prepared by an
13 interdisciplinary team based on inventories of the applicable resources of the Tongass
14 National Forest or the Chugach National Forest, and was prepared without first
15 identifying and considering the issues and applicable information from each national
16 forest and without analyzing the impacts and effects of the Roadless decision upon the
17 existing plans.

18
19 (b) The Roadless decision revised and significantly amended the
20 1997 and 1999 TLMP RODs without adequately analyzing:

21 (i) the social and economic impacts of the decision, including
22 the impacts upon communities and schools within the Tongass National Forest;
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(ii) the impacts of the decision on transportation within the Tongass National Forest and among communities within the Forest, including impacts to the Southeast Transportation Plan;

(iii) the impacts of the decision on power transmission from and within the Tongass National Forest, including the impacts on the Southeast Alaska Intertie and the Lake Dorothy Project near Juneau, Alaska;

(iv) the impacts of the decision on fish and game management;

(v) the impacts of the decision on consumptive and nonconsumptive water use projects and on water resource management projects;

(vi) the impacts of the decision on recreation;

(vii) the impacts of the decision on mining;

(viii) the impacts of the decision on timber harvest; and

(ix) all of the other issues discussed in the 1996 TLMP FEIS impacted by the decision.

(c) The Roadless decision dictates the amendment of the 1984 CLMP without adequately analyzing:

(i) the requirements and integrity of the NFMA revision process;

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- (ii) the uniqueness of the forest's use, size and lack of development;
- (iii) local preferences;
- (iv) the ability to control pests and diseases;
- (v) the ability to decrease fire hazard, and maintain scenery, vegetation and wildlife habitat for years to come; and
- (vi) the ability of the Regional Forester to make the best, most knowledgeable recommendation for the Chugach National Forest.

(d) The Roadless decision revised and significantly amended the 1997 and 1999 TLMP RODS and the 1984 CLMP ROD without providing for multiple-use and sustained-yield of the resources from each national forest or coordinating outdoor recreation, timber, watershed, wilderness, and fish and wildlife:

(i) In the case of the Tongass National Forest, the Roadless decision land withdrawals were not coordinated with land withdrawals made in the 1997 and 1999 RODs and the cumulative impacts of the withdrawals were not considered, thereby arbitrarily and capriciously reducing the goods and services which can be produced by, and the uses of, the Forest.

(ii) In the case of the Chugach National Forest, the Roadless decision land withdrawals were not coordinated with the ongoing CLMP revision process, thereby interdicting the CLMP revision and rendering it meaningless.

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1 (e) The Roadless decision revised and significantly amended the
2 1997 and 1999 TLMP RODs and the 1984 CLMP ROD without first evaluating the
3 effectiveness of the existing plans for each forest to determine whether they would meet
4 the Purpose and Need for the Rule without necessitating the land withdrawals which
5 application of the rule will cause in each forest.
6

7
8 (f) The Roadless decision revised and significantly amended the
9 1997 and 1999 TLMP RODs and the 1984 CLMP ROD without involving state and local
10 governments in the Roadless decision planning process, including the identification of
11 issues and the coordination of resource management plans and programs.
12

13 (g) The Roadless decision revised and significantly amended the
14 1997 and 1999 TLMP RODs without taking into account in the FEIS the historic record
15 of the Forest Service's failure to offer the full timber volume of the ASQ.
16

17 58. The above actions by defendants were arbitrary and capricious, an
18 abuse of discretion, and not in accordance with or in observance of law within the
19 meaning of the APA, 5 U.S.C § 706(2). As a result of the foregoing violations, the
20 Forest Service is implementing unlawful forest plans. Such implementation of the
21 improperly revised TLMP and 1984 CLMP has caused and will continue to cause
22 immediate, direct, adverse and irreversible harm to the State of Alaska.
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SECOND CLAIM

(NEPA)

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4 59. Plaintiff repeats and incorporates by reference the allegations of
5 Paragraphs 1 through 58 of this complaint.

6 60. Defendants violated NEPA by failing to provide a reasonable range
7 of alternatives in the Roadless decision DEIS and FEIS.

8
9 61. Defendants violated NEPA by failing to consider the impacts of the
10 Roadless decision on the revised TLMP and the 1984 CLMP and the current CLMP
11 revision DEIS.

12
13 62. Defendants violated NEPA by directing a final single land use for
14 98.9% of the Chugach National Forest at the DEIS stage of the planning process.

15
16 63. Defendants violated NEPA by segmenting the various rules and thus
17 failing to consider the cumulative impacts of the Roadless decision, the Transportation
18 Rule, and the Planning Rule on the 1997 and 1999 TLMP RODs, on the 1984 CLMP
19 ROD, and on the current CLMP Revision DEIS.

20
21 64. The defendants violated NEPA by failing to assess in the
22 Transportation Rule EA the cumulative impacts resulting from the decommissioning of
23 roads in combination with the restrictions placed on road construction and reconstruction
24 in inventoried roadless areas in the Roadless decision.

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65. The above actions by defendants were arbitrary and capricious, an abuse of discretion, and not in accordance with or in observance of law within the meaning of the APA, 5 U.S.C. § 706(2). As a result of the foregoing violations, the defendants are implementing unlawfully revised forest plans. Such actions have caused and will continue to cause immediate, direct, adverse and irreversible harm to the State of Alaska.

THIRD CLAIM
(ANILCA)

66. Plaintiff repeats and incorporates by reference the allegations of Paragraphs 1 through 65 of this complaint.

67. By passage of ANILCA and TTRA, Congress has demonstrated its intent that Congress, not the federal agencies, make land set aside decisions in Alaska. Defendants' decision to set aside 9.3 million acres of roadless areas in the Tongass National Forest and 5.4 million acres of roadless areas in the Chugach National Forest is thus arbitrary and capricious and an abuse of discretion.

68. By setting aside without congressional authorization 9.3 million acres of roadless areas in the Tongass National Forest and 5.4 million acres of roadless areas in the Chugach National Forest, defendants have violated the "no more" provisions of §§ 101, 708 and 1326 of ANILCA. This action is arbitrary and capricious, an abuse of discretion and not in accordance with or in observance of law within the meaning of the

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1 APA, 5 U.S.C. § 706(2), and has caused and will continue to cause immediate, direct
2 adverse and irreversible harm to the State of Alaska.
3

4 **FOURTH CLAIM**

5 (TTRA)

6
7 69. Plaintiff repeats and incorporates by reference the allegations of
8 Paragraphs 1 through 68 of this complaint.

9 70. In 1980, Congress directed in ANILCA § 705 that the Forest Service
10 take certain actions in order to maintain timber harvest levels and related employment
11 levels then existing at the time of passage of ANILCA. In 1990, Congress expressly
12 directed in TTRA § 101 that the Forest Service seek to provide a volume of timber
13 sufficient to meet the annual and planning cycle market demand for Tongass timber.
14 Congress also directed, in § 105(b) of TTRA, that the Forest Service seek to provide a
15 supply of timber from the Tongass National Forest to those purchasers qualifying as
16 "small business concerns" under the Small Business Act, as amended (15 U.S.C. § 631 *et*
17 *seq.*)
18

19
20 71. By setting aside so much commercial forest land pursuant to the
21 Roadless decision that the ASQ in the Tongass National Forest is reduced to 50 mmbf,
22 defendants have violated TTRA § 101 by eliminating the ability of the Forest Service to
23 exercise its discretion to seek to provide sufficient timber to meet annual and planning
24 cycle market demand.
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72. Defendants' failure to maintain their discretion to analyze, determine and seek to meet the market demand for timber from the Tongass is arbitrary and capricious, an abuse of discretion and not in accordance with or in observance of law within the meaning of the APA, 5 U.S.C. § 706(2), and has caused and will continue to cause immediate, direct, adverse and irreversible harm to the State of Alaska.

FIFTH CLAIM

(MUSYA and OAA)

73. Plaintiff repeats and incorporates by reference the allegations of Paragraphs 1 through 72 of this complaint.

74. The Organic Administration Act (OAA), Multiple-Use Sustained-Yield Act (MUSYA), and National Forest Management Act (NFMA) require the Forest Service to manage the national forests under the principles of multiple-use and sustained yield of renewable forest resources. The OAA provides that "[n]o national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." (16 U.S.C. § 475.)

75. MUSYA requires that national forests be "administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes" and that the Forest Service "develop and administer the renewable surface resources of the national forests

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1 for multiple use and sustained yield of the several products and services obtained ,
 2
 3 therefrom." (16 U.S.C. §§ 528 and 529.) The "multiple-use" standard requires the Forest
 4 Service to manage the various forest resources to maximize their combined utility,
 5 without impairment of the land's productivity. (16 U.S.C. § 531(a).) The "sustained-
 6 yield" standard requires the Forest Service to maintain at least a regular periodic output
 7 from the renewable forest resources, without impairment of the land's productivity. (16
 8 U.S.C. § 531(b).) These principles of multiple-use and sustained-yield are in turn
 9 incorporated into the NFMA and its regulations. (16 U.S.C. §§ 1600, 1602 and 1604; 36
 10 C.F.R. §§ 219.1 - 219.29 (1999).)

11
 12
 13 76. While the OAA, MUSYA and NFMA contemplate that the
 14 management of forest resources and the balance among uses and land status is within the
 15 discretion of the Forest Service, defendants' decision (a) to withdraw 9.3 million acres of
 16 roadless areas in addition to the 5.8 million acres of wilderness and thereby to set aside
 17 90% of the Tongass National Forest, and (b) 98.9% of the Chugach National Forest as a
 18 single use is arbitrary and capricious, an abuse of discretion and not in accordance with
 19 the provisions of these laws within the meaning of the APA, 5 U.S.C. § 706(2), and has
 20 caused and will continue to cause immediate, direct, adverse and irreversible harm to the
 21 State of Alaska.
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 26

DEPARTMENT OF LAW
 OFFICE OF THE ATTORNEY GENERAL
 ANCHORAGE BRANCH
 1001 W. FOURTH AVENUE, SUITE 200
 ANCHORAGE, ALASKA 99501
 PHONE: (907) 263-5100

SIXTH CLAIM

(Wilderness Act)

77. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1 through 76 of this complaint.

78. The Wilderness Act reserves exclusively to Congress the authority to designate wilderness areas. 16 U.S.C. § 1131(a). The Executive Branch makes recommendations to Congress, which become effective "only if so provided by an Act of Congress." 16 U.S.C. § 1132(b).

79. "Wilderness" is defined as an area, generally 5000 acres or more, "untrammelled by man," and as "undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation." 16 U.S.C. § 1131(c). Commercial enterprise, permanent or temporary roads, mechanical transports, and structures or installations generally are prohibited in wilderness areas. 16 U.S.C. § 1133(c).

80. The Roadless decision mandates management of inventoried roadless areas as *de facto* wilderness, without an act of Congress, in violation of the Wilderness Act. This action is arbitrary and capricious, an abuse of discretion and not in accordance with or in observance of law, within the meaning of the APA, 5 U.S.C. §706(2), and has caused and will continue to cause immediate, direct, adverse and irreversible harm to the State of Alaska.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 206
ANCHORAGE, ALASKA 99501
PHONE: (907) 263-5100

PRAYER FOR RELIEF

WHEREFORE, the State of Alaska prays for judgment as follows:

a. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate NFMA.

b. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate NEPA.

c. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate ANILCA.

d. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate TTRA.

e. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate MUSYA.

f. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate the Wilderness Act.

g. A declaration that the Roadless Area Conservation Final Rule and Record of Decision violate the APA.

h. Permanently enjoining the defendants from applying the Roadless Area Conservation Final Rule and Record of Decision to the Tongass National Forest or the Chugach National Forest.

DEPARTMENT OF LAW
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ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100


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i. An award of the costs incurred by the State and such other fees as may be allowed by applicable law.

j. Such other relief as the Court deems appropriate.

DATED this 31st day of January, 2001, at Anchorage, Alaska.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Elizabeth J. Barry
Sabrina E. L. Fernandez
Assistant Attorneys General

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1001 W. FOURTH AVENUE, SUITE 210
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PHONE: (907) 269-6100

TABLE OF ACRONYMS AND ABBREVIATIONS

Roadless decision	Roadless Area Conservation Final Rule and Record of Decision
TLMP	Tongass Land Management Plan
CLMP	Chugach Land Management Plan
APA	Administrative Procedure Act
NFMA	National Forest Management Act
NEPA	National Environmental Policy Act
ANILCA	Alaska National Interest Lands Conservation Act
TTRA	Tongass Timber Reform Act
OAA	Organic Administration Act
MUSYA	Multiple-Use Sustained-Yield Act
WSA	Wilderness Study Area
ASQ	allowable sale quantity
mmbf	million board feet
LUD II	Land use Designation II (Roadless areas)
ROD	- Record of Decision
FEIS	Final Environmental Impact Statement
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
FONSI	Finding of No Significant Impact

APPENDIX I TO COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

1 inside Alaska's boundaries.

2 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President-
3 elect of the United States; the Honorable Ann Veneman, United States Secretary of
4 Agriculture-designee; Mike Dombeck, Chief of the United States Forest Service, United
5 States Department of Agriculture; and to the Honorable Ted Stevens and the Honorable Frank
6 Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of
7 the Alaska delegation in Congress.

HOUSE JOINT RESOLUTION NO. 6

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY REPRESENTATIVES WILSON, Williams, Hudson, Scalzi, Dyson

Introduced: 1/10/01

Referred: Transportation, Resources

A RESOLUTION

1 **Relating to opposition to the inclusion of national forests in Alaska within President**
2 **Clinton's Roadless Area Conservation rule and supporting the overturning of this**
3 **inclusion by litigation, by congressional action, or by action of President-elect Bush.**

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

5 **WHEREAS** the forest products industry has been and continues to be an important
6 economic sector in Alaska that contributes significant employment income to the economy of
7 the state, and, through purchases of timber from National Forest System lands, contributes
8 significant revenue to local communities through the 25 percent revenue sharing provisions of
9 federal law; and

10 **WHEREAS** President Clinton's Roadless Area Conservation rule is contrary to the
11 land management planning process for individual forests established by the National Forest
12 Management Act of 1976 and its implementing regulations; and

13 **WHEREAS** application of President Clinton's roadless policy to the Tongass and
14 Chugach National Forests designates significant additional acreage as administrative, de facto
15 wilderness areas within Alaska; and

1 WHEREAS application of the President's roadless policy in Alaska is contrary to sec.
2 708(b)(4), Alaska National Interest Lands Conservation Act (ANILCA), which specifically
3 prohibits another roadless area review and evaluation (RARE) on national forest lands in
4 Alaska for the purpose of setting aside commercial forest land as wilderness; and

5 WHEREAS application of the President's roadless policy in Alaska is contrary to sec.
6 1326(a) of ANILCA, which prohibits the withdrawal of more than 5,000 acres, in the
7 aggregate, of public lands within Alaska without the consent of the Congress; and

8 WHEREAS application of the President's roadless policy in Alaska is contrary to sec.
9 1326(b) of ANILCA, which expressly prohibits studies of public lands for the purpose of
10 considering the establishment of new conservation system units, recreation areas, national
11 conservation areas, or for related or similar purposes; and

12 WHEREAS the Tongass Timber Reform Act of 1990 and other Congressional and
13 administrative actions have withdrawn more than 97 percent of the Tongass National Forest
14 from availability for timber harvest and other resource development opportunities; and

15 WHEREAS the 1997 and 1999 revisions of the Tongass Land Management Plan
16 (TLMP) further reduced the available commercial forest lands in the Tongass to 576,000
17 acres out of nearly 6,000,000 suitable acres across the forest; and

18 WHEREAS the available commercial forest lands remaining after the 1999 TLMP
19 amendments are insufficient to satisfy the raw material needs of Southeast Alaska's forest
20 products manufacturing industry, given the plan's maximum annual economic offering level
21 of 153,000,000 board feet; and

22 WHEREAS, by applying the roadless policy to the Tongass, the federal government
23 has further reduced the available commercial forest lands in the Tongass to less than half the
24 currently available acreage and will further reduce the maximum annual offering level to less
25 than 5,000,000 board feet; and

26 WHEREAS application of the President's roadless policy to the Tongass, together
27 with Under Secretary Lyons' 1999 unilateral TLMP amendment, nullifies the results of the
28 United States Forest Service's 1986-1997 planning process in the Tongass, which cost the
29 taxpayers more than \$13,000,000; and

30 WHEREAS application of the President's roadless policy to the Tongass, together
31 with Under Secretary Lyons' 1999 unilateral TLMP amendment, will further destabilize the

1 already unstable timber-based economy of Southeast Alaska by forcing the closure of most of
2 the remaining forest products manufacturing facilities, resulting in loss of employment and
3 associated negative socioeconomic impacts within timber-dependent communities and the
4 Southeast Alaska region; and

5 **WHEREAS** the Chugach National Forest has spent three years and several million
6 dollars conducting a revision to its land management plan and is within a few months of
7 issuing the Final Environmental Impact Statement for that plan; and

8 **WHEREAS** a wide range of interests from the Alaska public has been involved in the
9 Chugach land management planning process, working to develop a range of plan alternatives
10 that respond to the public's interests, needs, and concerns, and the President's roadless policy
11 will render that involvement and expense pointless and undermine public confidence in the
12 planning process; and

13 **WHEREAS** the public, through the Chugach Land Management Plan revision
14 scoping process, has expressed deep concern that the approximately 130,000 acres of the
15 Chugach National Forest suffering from spruce bark beetle damage must be managed for the
16 restoration of a green, healthy forest, and the President's roadless policy prevents access
17 required by land managers to accomplish that restoration work; and

18 **WHEREAS** application of the President's roadless policy will render it virtually
19 impossible for inholders and adjacent landowners, particularly families and small business
20 owners, to obtain the access to their property that was promised them in ANILCA;

21 **BE IT RESOLVED** that the Alaska State Legislature strongly opposes President
22 Clinton's Roadless Area Conservation rule, and particularly opposes the illegal inclusion of
23 the Tongass and Chugach National Forests in the Roadless Area Conservation rule; and be it

24 **FURTHER RESOLVED** that the Alaska State Legislature fully supports Governor
25 Knowles' decision to litigate against the application of the Roadless Area Conservation rule to
26 National Forest System lands in Alaska; and be it

27 **FURTHER RESOLVED** that the Alaska State Legislature urges members of the
28 Alaska delegation in Congress to use all available means to set aside the Roadless Area
29 Conservation rule through Congressional action; and be it

30 **FURTHER RESOLVED** that the Alaska State Legislature urges President-elect
31 George W. Bush to overturn the classification and inclusion of the national forests located

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801

Phone 907-586-6652 FAX 907-586-5648 E-mail: seaifa@gci.net



January 23, 2001

Representative Scalzi
Representative Masek
Co-Chair House Resources
State Capitol
Juneau, AK 99801-1182

RE: Support for HJR 6

The Southeast Alaska Fishermen's Alliance (SEAFA) supports HJR 6. We are opposed to Alaskan National Forests being included in President's Clinton's Roadless Area Conservation rule.

Including the forests in the roadless policy creates a *de facto* wilderness area. Our organization does not want the Tongass to be turned into a wilderness area after our experiences of being kicked out of Glacier Bay National Park's wilderness waters.

The Tongass Land Management Plan was a very long public process with the main stakeholders at the table. We should not make changes to the Tongass Land Management Plan until it is time to renew the plan and at that time do it under a public process. Many comments were submitted to the Forest Service in opposition to the inclusion of the Tongass in the roadless conservation plan.

The Southeast Alaska Fishermen's Alliance (SEAFA) is a group organized in the summer of 2000 to represent the interests of salmon, crab, shrimp and longline fishermen in Southeast Alaska. We presently have over 100 members.

Sincerely,

Kathy Hansen

**Richard K. Kohrt
P.O. Box 1812
Wrangell, AK 99929**

January 23, 2001

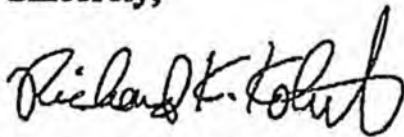
**Representative Peggy Wilson
State Capital
Juneau, AK 99802**

As an Alaskan citizen of 37 years with a career in Forest Management, I feel it is in the best interest Southeast Alaska's future economy to oppose former President Clinton's decision on including the Tongass National Forest in his Roadless Area Conservation rule. I therefore support your resolution HJR-6.

We desperately need to keep our economy diversified. This decision by the former president will remove an important link of this diversification. It will basically kill the timber industry in Southeast Alaska, surrounded by the largest National Forest in the United States. It will require us to survive on fishing, tourism and government with emphasis on the government.

This is not a bright picture for our economic future. The only somewhat steady industry is government, but somebody has to support the government. People with jobs support the government.

Sincerely,



Richard K. Kohrt



January 12, 2001

Representative Peggy Wilson
State Capitol, Room 409
Juneau, AK 99801-1182

JAN 12 2001

Via Fax (907) 465-3175, Original Via Mail

Re: HJR 6, Federal Roadless Rule

Dear Representative Wilson:

I am writing on behalf of Chugach Alaska Corporation (Chugach) to express our full support of HJR 6. As the largest non-federal landowner within the Chugach National Forest (Chugach owns or has selection rights to 625,000 acres of full fee, subsurface and oil and gas estate within the boundaries of the Chugach National Forest) Chugach has participated fully in the Chugach Forest Plan revision process, investing considerable resources over the past several years. The roadless rule makes a mockery of that process.

We also have a future need to perfect road access across National Forest lands, access that was promised to Chugach as an integral part of its land settlement. It is disingenuous for the Forest Service to characterize those lands within the Chugach Forest that are burdened by Chugach's statutory access rights as forever roadless. The Roadless rule will only make perfecting such promised access more difficult.

We applaud Governor Knowle's resolve to defend our Corporation and all Alaskans who will suffer from this executive fiat. HJR 6 articulates these issues well and will further support the Governor's effort, while providing the needed backing for our President-elect and Congressional delegation in Washington to overturn this rule.

Enclosed is additional correspondence regarding this matter, should you wish to explore Chugach's position on this issue in greater detail. Feel free to contact me if you would like to discuss this issue further. Thank-you for your support

Sincerely,

Rick Rogers, Vice President
Lands, Resources and Tourism

Enclosures: Letter to Governor Knowle

Letter to Secretary of Agriculture Glickman

560 East 34th Avenue Suite 200 Anchorage, Alaska 99503-4196 Phone 907-563-8866 Fax 907-563-R402



Dr. William D. Pfeifer • Dr. Mary L. Pfeifer

Rep. Peggy Wilson
Alaska State Capitol
Juneau, AK 999801-1182
Email Representative_Peggy_Wilson@legis.state.ak.us
Fax 907-465-3175

January 22, 2001

Representative Wilson,

I am writing to thank you for introducing HJR 6. I was born in Juneau and have resided in Ketchikan for the last 19 years. My Grandfather of German decent came up during the gold rush and married my grandmother a Tlingit from Hoonah. I strongly **OPPOSE INCLUSION OF ALASKAN FORESTS WITHIN PRESIDENT CLINTON'S ROADLESS AREA CONSERVATION RULE**. I support the overturning of this inclusion by litigation, by congressional action, or by action of President Bush.

I am sure you are in agreement with all of the people in Alaska that our environment is important, but this is a radical preservationist act with disregard for the people of the State of Alaska and the aboriginal rights of the Natives for access.

Sincerely,

Dr William Pfeifer (NaaK'ool dzaaz eesh)
2901 Baranof Ave
Ketchikan, AK 99901
907-225-9090
family@ptialaska.net

To Rep. Peggy Wilson

1/25/2001

Thank you for your support of your constituents. The Roadless issue was severely mis-handled on the Tongass. The DEIS indicated the Tongass wouldn't be included. The majority of the sensible citizens, weary of YEARS of public involvement in pursuit of a logical and scientific TLMP Revision, likely chose to sit this one out. Assistant Secretary Lyon's amended record of decision was already almost universally perceived as pushing the carefully crafted balance and prudent application of science in the 97 ROD too far toward the positions of extreme environmentalists. Assistant Secretary Lyon's and Chief of the Forest Service Dombeck also PUBLICLY PROMISED NOT TO INCLUDE THE TONGASS. Hence, most knowledgeable (and unfortunately naive) residents of Southeast, took these officials at their word.

I've lived in Petersburg and worked for the Forest Service here for 24 years. I'm a hydrologist by training. I've always considered myself a Conservationist, which at one time also would include me as an environmentalist. Environmentalists however, have now shifted to be radical preservationists.

The preservationist's agenda is patently "anti-people". They've also taken to replacing science with emotional posturing in the name of science. Future timber harvest is being condemned primarily by extending the worst-case assumptions of impacts from the most aggressive clearcutting which was done in the period from 1958 to 1976-81, (76 for the old Stikine, and 81 for the Chatham and Ketchikan Areas). There are well-meaning people who've been duped into supporting the radical agenda of these preservationist groups. Propagandizing by these groups, mainly supported as "crusades" by lower 48 special interests have mis-lead many to believe that the only responsible way to manage the forest is to not harvest any timber. The real truth is that a balance of management that includes some entry into "new" areas is vital to our better understanding of how to manage all the harvested lands in a scientifically sound and ecologically sustainable manner. Some harvest, carefully done (as would have been applied in either the 97 or 99 ROD) in new areas is also vital to maintain sufficient timber activity to make feasible the actions needed to restore full-functioning ecosystems values to the aggressively harvested lands. The "even flow" of timber activity is also what is needed to support our local communities.

Roadless may even make some sense in most lower 48 forests. The arguments in favor of it however, simply don't apply here. Unfortunately, that isn't the story that has been told to a great many, well meaning citizens in the lower 48. Many of them sent in cards and mass-mailings to support what they were mis-lead to believe was a vital defense of their children's birthrights.

Hopefully, this time we won't see an increased amplitude to the "pendulum swing", with another extreme counter to the last extreme action. The "science" fits between the preservationists and the full-scale developers. The Forest Service used to have clear role and proud tradition of finding that balance. Hopefully that will occur again some time in the future. Meanwhile, law suits may be the only way to prevent the Forest Service from "serving" as a radical preservationist group.

Please consider that many local forest employees are as ashamed of this as I, but we've all been told not to conduct any analyses (when we have the best tools to do so). We've also been told, with "talking points" what we are supposed to say, and admonished not to be caught saying otherwise. Hopefully THAT will be changing soon too.

Sincerely,

Jim Schramek
P.O. Box 745
Petersburg, Alaska 99833

Alaska Forest Association, Inc.



111 STEDMAN STREET, SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920
Web Site www.akforest.org

January 12, 2001

Representative Peggy Wilson
State Capitol, Room 409
Juneau, AK 99801-1182

JAN 12 2001

Via Fax (907) 465-3175, Original Via Mail

Re: House Joint Resolution 6, Opposing the Roadless Rule

Dear Representative Wilson:

Thank you for introducing HJR 6, a resolution opposing the inclusion of the Tongass and Chugach National Forests in the President's Roadless Rule. The Alaska Forest Association fully supports HJR 6 because Alaska is disproportionately harmed by the rule.

As HJR 6 clearly spells out, Alaska National Interest Lands Conservation Act (ANILCA) contains provisions which were intended to prohibit the very kinds of actions that are at issue here. Aside from the immediate harm that will accrue to the industry and communities of Alaska's coastal region, the Roadless Rule should be opposed by the State of Alaska because of the promises embodied in ANILCA. Whether the Clinton Administration chose to call these roadless withdrawals "wilderness" or not, it amounts to the same thing. As HJR 6 states, these new areas will be *de facto* wilderness, the designation of which, or even the study of which, is prohibited by ANILCA. Additionally, the Roadless Rule violates the National Forest Management Act of 1976 (NFMA) which established a planning process for land management plans in individual forests.

The Tongass Land Management Plan (TLMP) was revised in 1997 after the Forest Service spent 11 years and \$13 million on the revision. In 1999, Under Secretary of Agriculture, Jim Lyons unilaterally amended the plan under the guise of granting appeal points to some radical environmental groups. Whether his action was legal under federal laws and regulations is presently the subject of a complaint filed in federal district court by the AFA, the Metlakatla Indian Community, Coffman Cove, Wrangell, Ketchikan Gateway Borough, the City of Craig, Southeast Conference, Concerned Alaskans for Resources and Environment (C.A.R.E.) and some individuals. The result of Mr. Lyons' decision was a plan that is able to produce a maximum annual offering level of only 153 million board feet of timber, and is likely to produce much less, based on historic Forest Service performance. As a point of reference, existing sawmills in Southeast Alaska (including some that are currently closed) have a normal annual operating capacity of 355.5 million board feet.

Estimates given by the Forest Service, Alaska Region, state that application of the Roadless Rule to the Tongass and the Chugach will further reduce the land available for timber harvest from 576,000 to 311,000 acres in the Tongass, and to 53,000 in the Chugach. The Forest Service estimates it can offer approximately 50-55 million board feet of timber per year under the Roadless Rule and TLMP. If implementation of the Roadless Rule occurs there will certainly be more mill closures and loss of employment in the region. Given the dramatic decline in timber-related economic activity in Southeast Alaska over the past decade, it is time Alaska said "enough is enough" to these unnecessary and unacceptable federal preservation actions.

With respect to the Chugach National Forest, 98 percent of that forest is presently inventoried roadless. Application of the Roadless Rule would prohibit all new transportation infrastructure in that forest without the benefit of a public planning process specific to the Chugach. The Chugach Land and Resource Management Plan is presently undergoing revision under terms set forth in the National Forest Management Act of 1976. AFA and several other user groups have been very actively involved in the Chugach planning process. That is the proper venue for land use allocation decisions to be made in the Chugach, as it is with all the other national forests in this country. Such decisions should not be made through a national super-EIS initiated for the purposes of establishing an "environmental legacy" for the President and furthering his political aims.

Again, thank you for introducing this important resolution. It is our hope that the Alaska State Legislature will act swiftly in strong support of HJR 6. If you have any questions regarding the Roadless Rule, please call me.

Sincerely,

A handwritten signature in cursive script that reads "Jack Phelps" with "by Ram" written below it.

Jack E. Phelps
Executive Director

cc: The Honorable Tony Knowles, Governor of Alaska
Senator John Torgerson

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



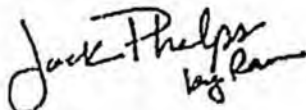
Central Microfilm Services
Department of Education & Early Development
State of Alaska

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Again, thank you for introducing this important resolution. It is our hope that the Alaska State Legislature will act swiftly in strong support of HJR 6. If you have any questions regarding the Roadless Rule, please call me.

Sincerely,

A handwritten signature in cursive script that reads "Jack Phelps" with a smaller signature below it that appears to be "by Ram".

Jack E. Phelps
Executive Director

cc: The Honorable Tony Knowles, Governor of Alaska
Senator John Torgerson

Subject: KPPLUG SUPPORTS HJR 6

Date: Sat, 20 Jan 2001 17:11:52 -0900

From: "DeVito's" <gooches4@alaska.net>

To: Representative_Peggy_Wilson@legis.state.ak.us

January 17, 2001

Kenai Peninsula Public Land Users Group

P.O. Box 1424

Soldotna, Alaska 99669

Alaska State Senate

State Capitol

Juneau, Alaska 99801-1182

Dear Senator,

On behalf of the Kenai Peninsula-Public Land Users Group (KPPLUG), it is with great concern that we support and urge the adoption of HJR 6 and SJR 2, which opposes the inclusion of National Forests in Alaska within President Clinton's Roadless Area Conservation rule. We strongly support overturning this inclusion by litigation, congressional action, or by the action of President Bush.

KPPLUG represents many members and incorporates all varieties of user groups. We are a grass roots organization interested in the responsible utilization of our public lands on the Kenai Peninsula in particular, and the other public lands of Alaska in general.

Clinton's rule disregards the land management process, which Congress intended under the National Forest Management Act of 1976. It further conflicts with several specific sections of the Alaska National Interest Lands Conservation Act (ANILCA). As a result, the economic, social, traditional, recreational and educational rights and opportunities of Alaskans have been ignored.

The National Forests in Alaska are unique and mostly absent of roads, access, and abusive resource development. There is no cause, evidence, or legitimate explanation for such a drastic roadless conservation rule.

Again, KPPLUG strongly supports the Alaska State Legislature in opposing Clinton's Roadless Area Conservation rule, and particularly opposes the illegal inclusion of the Tongass and Chugach National Forests in this rule. We urge you to adopt HJR 6 and SJR 2.

Thank you,

Dennis Merkes - President KPPLUG

Cc: Alaska House of Representatives
Alaska House Resource Committee
Alaska State Senate
Alaska State Senate Resource Committee

January 19, 2001

Representative Peggy Wilson
House of Representatives
Room 409
Juneau, AK 99801-1182

Re: Tongass Roadless Policy

Dear Representative Wilson;

I am delighted that you have taken the time and effort to pursue passage of a Resolution condemning the "Roadless" policy recently imposed upon us by the Clinton administration. I support this resolution and am adamantly opposed to this 'dictate', which is the death knell to our remaining chance of maintaining any type of a stable economy.

Any type of logging in the Tongass has been under attack by the extreme environmental organizations for years. However, the past 8 years have been particularly devastating to our economy in Southeast Alaska. We have witnessed the closure of our only two pulp mills in Sitka and in Ketchikan. We went through a 10 year Tongass Land Use Management Plan (TLMP) with literally hundreds of public hearings and studies that cost millions of dollars. The alternative that was finally agreed to (which further reduced timber harvest levels) and was 'signed-off' by the Forest Service was unilaterally altered by Under Secretary of Agriculture Jim Lyons. Without any public input or public hearings, he further reduced the harvest levels, set aside more lands as protected from any resource based activity, and increased the timber harvest rotation from 100 to 200 years.

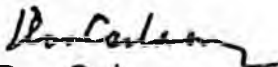
This, now, has been followed by two staggering and unprecedented assaults on the Tongass. First is the "Roadless" issue which prohibits any road building in the Tongass except under unusual circumstances. This effectively limits timber harvest to under 50 million board feet per year - hardly enough to keep one small sawmill operating. The second, and most blatant edict issued recently WITHOUT any public input or comment, is the recent ruling by Dan Glickman that no "old growth" trees can be harvested at all!

I've lived in Petersburg for over 20 years. Our school enrollment has been declining each year for the past 5 years. There are more homes for sale than ever before in Petersburg's history. Our sales tax revenues are declining. Property values are declining as well. Because of this, funding for schools, streets and roads, parks and recreation, and other services have been cut. People are leaving town; not because they want to but because there is no longer employment.

I will close here for the sake of brevity. But, what is presently happening in California with the energy crisis is the direct result of the environmental community fighting to keep any new power plants from being constructed within the State. These same extremists are now attempting to close the Tongass to any resource based activity including timber, fishing, and tourism (except the backpacker, of course). It is indeed sad when I, as a parent of two kids, have to admit that there is no chance of them coming back to live here because there are no jobs here. This is a sad day for Petersburg and a sad day for Alaska if this is allowed to happen.

I urge unanimous passage of your resolution.

Sincerely,



Dave Carlson
PO Box 669
Petersburg, AK 99833

Alaska State Legislature
House Resources Committee

Public Testimony On HJR 6
January 24, 2001

ROADLESS AREAS

Thank you for the opportunity to testify on Resolution HJR 6. For more than two decades, Alaskans have been held to a separate standard from the other 49 states regarding the way the Federal Government has approached the management of lands in Alaska. Each time Alaskans and the Federal agencies have reached an agreement on land management policies in our National Forests, we've been told, "This is it. There will be no more withdrawal of lands". Recently, I served with fourteen other Alaskans on Governor Knowles Timber Task Force. At that time, former Secretary of Agriculture Dan Glickman told the Governor and our task force that the 1997 record of decision should be viewed as a conclusive decision after spending \$13 million and taking eleven years to revise the Tongass Land Use Plan. But as we all know, months later Undersecretary Lyons made wide sweeping changes to the Record Of Decision with no input from the public. Reasonable Alaskans were irked because certain selfish federal bureaucrats had duped us again. At the same time, the Roadless proposal for our national forests was being evaluated across the nation. Alaskans were told both the Tongass and Chugach would be exempt from inclusion because land use plans had just been completed. We know the rest of the story. Not only are we included, but as late as this past December, the effective date was to be the year 2004, but in the end, we were included with the same effective date and the other national forests. This is not a roadless policy for the Tongass. This can only be described as a **dead end** road policy. It is a **dead end** road to the sustainability of a viable wood fiber industry in Alaska. This presidential order brings a **dead end** road to access routes for hydro sites and power line corridors. It is a **dead end** road for funding for local schools that would have come from future timber sales receipts. It is a **dead end** road for entrance into watersheds to access public drinking water systems. It is a **dead end** road for hard surface linkage of our cities and towns. It is a **dead end** road for employment opportunities and further strangles local economies by forcing families to move on to seek other jobs – usually in a completely different field. Sadly and most important, this latest effort is a **dead end**

road for integrity and commitment made to Alaskans by the federal government. When there is no longer any trust in what our federal officials do and say, we are fraying the cords that bind democracy together.

The Governor has every reason to be outraged at this eleventh hour decision. And so should every reasonable Alaskan. The former President's Roadless decision violates numerous federal laws and I trust the Attorney General and other groups will be successful in quickly overturning this action in the courts. It is time for Alaskans to put up a **Dead End** sign to the heavy handed, selfishly motivated and non-involvement in the decision making process by our Federal government bureaucrats. I support the adoption of HJR 6 and commend the legislature for taking a strong stand opposing the Road less policy in Alaska.

However, please allow me to take another minute of your time because the Alaska timber industry desperately needs more legislative help than just the adoption of HJR 6. We are short on resources for fighting the legal battles that are associated with the environmental challenges brought by the well-healed environmental community. In addition, one of the biggest requirements we have is a current and objective report on the supply and demand for Alaska's wood fiber. To be really meaningful, this report must be expanded beyond the typical federal report of industry capacity and annual production. Other independent reports have stated that there is unlimited demand for Alaska type wood products. The constraint is the supply of timber from National Forest Land. For the past decade, these federal reports always conclude that production of manufactured wood products is declining and thus the federal supply of timber from the Tongass and Chugach should be further reduced. When USFS management sets annual harvest volumes using these incomplete reports, the outcome can best be described as sending the industry into a death spiral. We need a fresh in depth look from the state's perspective at the impacts of a shrinking forest products industry upon Alaska's citizens and communities. We must focus on the diminishing opportunity for jobs and the eroding ability for these communities to sustain their local economies. It is a very serious matter and time is of the essence to put forth the real facts about Alaska's remaining wood fiber industry. Thank you for the opportunity to testify this afternoon. I would be happy to answer any questions you may have.

9033

Errol Champion
Silver Bay Logging, Inc.

State of Alaska
Office of the Governor

Tony Knowles
Governor
P.O. Box 110001
Juneau, Alaska 99811-0001
NEWS RELEASE



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FOR IMMEDIATE RELEASE: January 5, 2001

01-004

TONGASS ROADLESS ACTION VIOLATES PUBLIC PROCESS, TRUST

Knowles Seeks Legal, Congressional Action to Uphold "Doing It Right" Principles

Calling it another federal fiat that constitutes a double-cross of the public process and the public's trust, Gov. Tony Knowles today directed his Attorney General to file suit against the Clinton Administration's midnight-hour executive action on roadless policy in the Tongass and Chugach National Forests. Knowles also called on Congress and the incoming Administration to take actions to confirm his "doing it right" principles of resource management in federal law.

"Our forests must be managed by the principles of sound science, conservation-based management, and an open, public process," Knowles said. "The executive action announced in Washington today is based on little or no science, and makes a mockery of the public process that was involved in the creation of the Tongass Land Management Plan and shortcuts the process now underway for the Chugach.

"Alaskans are tired of being double-crossed by the federal government with false promises of public involvement that is subsequently overturned by executive policy actions from Washington," Knowles added. "I am directing my Attorney General to file suit against this illegal and ill-advised executive fiat to preserve the integrity of the planning process."

Knowles called on Sen. Frank Murkowski, chairman of the Senate Energy and Natural Resources Committee, and Congressman Don Young, chairman of the Alaska Task Force of the House Resources Committee, to take the necessary congressional actions that confirm the 'doing it right' principles of science, management, and public process that exist in federal law." Knowles will also seek review of the roadless policy by the incoming Bush Administration.

Outgoing President Bill Clinton announced the roadless initiative in Washington, D.C. today, ignoring a 10-year, \$12 million, science based, public planning process that took place for the Tongass. Knowles has steadfastly supported the public process over federal fiats in resource decision making and said that bypassing the process was not a victory for either side. Conservation measures that were gained in the Tongass Plan could as easily be overturned by future executive action if today's roadless policy were left unchallenged, Knowles noted.

"There are no winners in the forest if the management of our resources is based on executive fiats rather than sound science and a public process," Knowles said. "Those who claim victory today may find themselves the victims of an executive action tomorrow. When federal policy establishes an open, public process in decision making, they must abide by the public's decision. That's why this action is wrong and must be challenged."



CITY OF PETERSBURG
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January 19, 2001

Representative Peggy Wilson
Room 409
State Capital
Juneau, AK 99801

Dear Representative Wilson,

The City of Petersburg has been and remains strongly opposed to the Roadless Initiative, especially the inclusion of the Tongass National Forest in this initiative. Petersburg has gone so far as to send Representatives to Washington D.C., to voice our opposition to the Tongass inclusion. The City of Petersburg has also passed and distributed a resolution opposing this initiative, which we have attached to this letter for your utilization. Petersburg has additionally voiced its agreement with our Federal Congressional Delegation and the Governors intention to sue the Federal Government in opposition to this intrusion.

Petersburg thanks you for your co-sponsorship of HJR6 and whole heartedly supports your efforts in this matter. If we can be of any further service, besides our support, please feel free to contact our city offices.

Sincerely,

Theodore (Ted) Smith
Mayor of Petersburg

Enclosure (1)

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RESOLUTION NO. 1598-R

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PETERSBURG, ALASKA OPPOSING THE INCLUSION OF THE
TONGASS NATIONAL FOREST IN THE USDA FOREST SERVICE'S
NATIONAL ROADLESS AREA REVIEW**

Whereas, Section 708 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) resolved roadless issues in a compromise bill as well as established over five million acres in 14 areas as Wilderness on the Tongass National Forest; and

Whereas, the Tongass Timber Reform Act of 1990 added 350,000 acres on the Tongass National Forest in five new Wilderness areas and one addition to an existing wilderness; and

Whereas, the Tongass Timber Reform Act also designates almost 690,000 acres in 12 Congress mandated roadless areas to maintain their wildland characteristics; and

Whereas, the Record of Decision (ROD) signed by Undersecretary Lyons noted the Tongass National Forest would be exempt from roadless moratorium as the newly revised plan had the benefit of considerable science and public involvement in the 12 year revision process for the Forest Plan; and

Whereas, Mr. Lyons also noted that he considered the roadless issue in his decision and addressed it through changing land allocations to mostly natural Land Use Designations in 18 un-roaded areas totaling 500,000 acres; and

Whereas, Mr. Lyons stated in the ROD that 90 percent or more of all currently un-roaded lands on the Tongass will still be roadless at the time of the next forest plan revision; and

Whereas, only 3 percent of 17 million acres on the Tongass National Forest will be used to sustain the timber industry over the next 10 years; and

Whereas, approximately 1/2 of the current Tongass National Forest timber base is included in areas which would remain un-roaded under the initiative; and

Whereas, Mr. Lyons, on September 28, 1999 in Sitka, Alaska, stated at the Southeast Conference of Mayors, that his decision on the Tongass Plan was made to "finally provide some certainty with regard to future uses and management direction on the Tongass", and also assured the Mayors that "we have to move on"; and

Whereas, we agree with the Governor of the State of Alaska that the inclusion of the Tongass in the roadless review would be an outrage as assurances were provided that the resolution of the Tongass planning process would put an end to this issue; and