Written Testimony
of
Rebecca Knight
Before the Petersburg Borough Assembly

Regarding future version of S.4891

(previously introduced 116th US Congress)
March 10, 2021

"Recognition of the five 'landless' communities could reopen the entire settlement scheme of ANCSA and result in a never-ending, extremely costly, and unattainable effort to effect total equality of treatment among all Natives in all communities."[1]

Hello Mayor & Assembly Members,

My testimony regards Senate Bill 4891 introduced during the last session of Congress. It will reportedly be reintroduced under a different bill number during this session—possibly as early as May or June. This highly flawed bill is intended to corporatize 115,000 acres of precious Tongass public lands for private profit.

At the end of my testimony, I have included a short list of important questions for your body—and Congress to consider prior to authorization of this proposed bill.

First, while it is beneficial for locals to be proactive, it is Senators Murkowski and Dan Sullivan who should sponsor official Congressional field hearings in person, throughout SE Alaska, including small communities, for this flawed lands legislation. This bill requires a full public vetting. These hearings should be conducted post pandemic, NOT as Alaskans strive to recover, financially—and otherwise.

As I previously expressed to you on Nov.16 and Dec. 7, 2020, I greatly respect the deep cultural ties of Alaska native people to the lands of SE Alaska. For much of my adult life I have worked to protect those lands from industrialization, thereby trying to make certain that those ties endure.

However, the bill's legislative history demonstrates that these land transfers are not justified. Multiple documentation in my earlier communications to you support that rationale. In short, the premise for this bill is flawed because the five communities intended to benefit from the legislation were found ineligible for village status under the 1971 Alaska Native Claims Settlement Act (ANCSA). They failed to meet three eligibility criteria, specifically, (1) 25 or more natives

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[1] *See* Letter from Jim Lyons Undersecretary of Agriculture and Sylvia Baca, Assistant Secretary Dept. of Interior to Rep. Don Young Committee on Resources. July 24, 1996.

were village residents on the 1970 census, (2) the village was not modern or urban in character, and (3) the majority of the residents were native.

In lieu of that status, natives from these communities were enrolled as "At-Large" shareholders of Sealaska[2] and receive lucrative benefits that shareholders with "Village" status do not. For instance, as documented online, they receive regular ANCSA section 7(i) financial distributions beyond that of "Village" shareholders. The "Urban/At-large" shareholders for the Spring 2020 and Fall 2020 Sealaska Shareholder Distributions were just over $1,300 and $1,200 respectively, while village shareholders received far less at $332 and $398 respectively. If there does not exist such a disparity as described above amongst shareholders as native representatives allege, I request that a transparent accounting be provided which explains this perceived disparity.

Moreover, Aaron Schutt concluded in his scholarly research, $40 Million Per Word and Counting[3]:

"Ultimately, however, Section 7(i) has resulted in the sharing between the regional corporations of ***several billion dollars*** [emphasis added] *of revenue derived from resources from ANCSA lands. And it has quietly played an important role in economic equity and the success of Alaska Native corporations.*

'The resource revenue-sharing provision contained in Section 7(i) is an important and unique element of ANCSA.8Section 7(i) still has important consequences for Alaska Native corporations and their resource development partners more than forty years after the passage of ANCSA. As highlighted by the title of this article, have received fair and substantial equitable benefits."

That natives from these communities have been "waiting 50 years" is not due to an "oversight" or an "inadvertent" omission. Their exclusion from village status was an informed, considered, and an intentional determination under ANCSA. Quite simply, they did not qualify, as various high level agency officials have repeatedly written and testified before Congress regarding very similar versions of this bill—including in 1996 and 2015. According to these officials as well as the framers of ANSCA, natives from these communities received equitable treatment.

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[2] *See* attached various attached documentation, including but not limited to: **1.** Letter to KFSK, Amy Miller from Lee Gorsuch, Director Institute Social and Economic Research (ISER). Dec. 7, 1993; **2.** 2015-Landless_blacktestimonyfinal 36_16_15-1 5. **3.** Landless letter__Lyons to Young (OCR'd)__24Jul96 copy

[3] M. Schutt. Alaska Law Reveiw. ANCSA Section 7(I): $40 Million Per Word and Counting. Aaron Dec. 12, 2016. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1515&context=alr

The proposed bill will create new inequities where none exist. In the words of Jim Lyons, Undersecretary for the Department of Agriculture in 1996, "There are no "landless" Natives in southeast Alaska since all Natives have a beneficial interest in lands owned by Sealaska, including surface and subsurface estates." [4] Accordingly, the officials confirmed that natives from the five communities of Tenakee, Petersburg, Wrangell, Ketchikan and Haines were found ineligible for village status because they failed to meet the ANCSA criteria for eligibility.

I sent you those official's statements for your meetings on Nov. 16, 2020 and Dec. 7, 2020. They contain far more detail to support the determination than I can summarize in my five short minutes here. I ask that you read the content and that they be included in the record for tonight's work session. This information must be included and documented, on the record, for this proposed legislation, not ignored.

Additionally, as ISER's Director Lee Gorsuch wrote in his December 7, 1993 letter to KFSK reporter Amy Miller (to correct the record re. her inaccurate news story):

"We did not, as you report, make a finding that Congress has inadvertently omitted the study villages from land benefits, nor did we recommend that Congress should now award them land. We did not, as you implied, say that the study villages were entitled to the same economic benefits as Southeast Alaska communities with village or urban corporations have received."

But if the so-called Landless individuals truly believe that they have been treated unfairly, then the perfect solution would be for them to seek land from Sealaska, the Regional Corporation for Southeast Alaska. No additional lands would be removed from public ownership and any disputes could be settled amongst themselves. This would also avoid the division among local residents which inevitably occurs with such controversial legislation.

Amazingly, in a press release the day the Sealaska legislation passed, Murkowski declared, "***Some 43 years after passage of the Alaska Native Claims Settlement Act, the federal government will finally finish paying the debt we owe Natives for the settlement of their aboriginal land claims,***" yet very shortly after that press release, she introduced a similar version of this bill, and now this latest version which perpetuates additional

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native land claims. Murkowski has a muddled concept of the words "final" and "settlement".

Finally, while Senator Murkowski was in Petersburg during deliberations for the 2014 Sealaska Bill (a 70,000 acre carve out of Tongass public lands), a local resident remarked to her that, "...much of Southeast's residents cannot help but feel being played as hostages and political pawns in this legislation." Senator Murkowski, replied that she, "truly regretted the anxiety and tension that the Sealaska bill had created in our small towns," and recognized that, the legislation had "...pitted neighbor against neighbor," and that the "resentment is not good for communities." Clearly, that regret was short-lived and insincere.

I request that the Borough request Senators Murkowski and Sullivan to stand down on any legislation similar to Senate Bill 4891 or any form thereof. Such legislation should not be advanced because it is unnecessary. Indigenous land claims in Alaska were settled long ago. If the Borough does not take this position, I ask that the Borough request that the serious flaws in the legislation be corrected prior to advancement.

Thank you,

Rebecca Knight

Rebecca (Becky) Knight

Following are questions I request the Assembly to include in communications with Senators Murkowski and Sullivan, and the Senate Energy and Natural Resources (SENR) Committee, which normally considers similar legislation in order to advance.

1. Please provide specific rationale why individuals from these five communities somehow now qualify for 115,000 areas of Tongass public lands despite that they were previously found ineligible under ANSCA and received equitable compensation in lieu of eligibility, per the attached documentation.

2. If this legislation is enacted, will the newly formed corporations refund the "in lieu" benefits they have received since 1971?

3. Please provide a detailed list and monetary value of all public infrastructure and their locations which will be conveyed to each corporation and the value of that infrastructure, including a grand total.

This includes roads, bridges, cabins, marine access facilities, and the investments made for silvicultural treatments, for instance timber stand thinning.

4. Please address a possible dispute with the State of Alaska turning over part or all of their potential $40 million investment in the "Kake Access Project" to the new Petersburg native corporation if this legislation is enacted?

5. Although supporters of the legislation allege that current public access to these lands is guaranteed under the proposed legislation, the bill's language provides a caveat to the contrary: "subject to—(I) any **reasonable restrictions** [emphasis added] that may be imposed by the Urban Corporation on the public use." Please explain how that terminology cannot be subject to interpretation at the whim of current and *future* beneficiaries of the legislation. In this case, verbal assurances are not consistent with the language, which clearly could be interpreted, to prohibit access. Nor are verbal assurances sufficient to protect existing access to public lands.

6. The 1997 Forrest Service Tongass Conservation Strategy includes a series of mapped Small, Medium, and Large Old Growth Reserves (OGR's) intended for "sustaining habitat to help ensure the maintenance of well-distributed viable populations of all old-growth associated wildlife species across the Tongass." Please provided a map and detailed list of the proposed selections with an overlay that depicts the location of these reserves in relation to the selections. Will the new corporations respect these reserves and not infringe on them? If so, that should be codified in the legislation. If not, then the conservation strategy will be meaningless and will likely raise serious concerns about wildlife viability Tongass-wide.

7. Please provide a detailed list and map overlay of the locations and status (red, grey, etc.) of the impaired culverts on the road systems to be conveyed to the corporations. Will the corporations immediately start a comprehensive repair program to remedy impaired "aquatic organism passage" (mainly fish) through culverts and other crossings etc.?

8. If approved, bill supporters allege the lands granted to them would not be logged but are reluctant to specify that in the bill. In the absence of such legal assurance, the public can only assume that those lands will be logged, just as they have done since the enactment of ANCSA-clearcut from tidewater to alpine, with no acreage restrictions, no enforceable protections for wildlife, narrower stream buffers, and exported in the round. Could the reluctance to codify in the legislation whether logging will occur on the transferred lands be because lucrative carbon credits cannot be claimed for lands that are not intended for logging in the first place?