

**DRAFT MEETING MINUTES**

**1:08pm: Call to Order**

**Roll Call and Introductions**

Mead Treadwell; Ray Kreig; Craig Fleener; John Crowther; JP Tangen (ph); Bud Fate; Bill Satterberg

**1:10pm: Approval of Agenda**

Bud Fate – **Motion** to approve agenda

*No objections*

*Approved*

**1:11pm: Approval of January 27 and March 4 Meeting Minutes**

Ray Kreig – **Motion** to approve minutes

Bill Satterberg – **Amend** to note my departure from January 27 meeting at 12:10pm

*No objections*

*Approved as amended*

[Stan Leaphart joins the meeting]

**1:15pm: Member Opening Comments**

Mead Treadwell – thank Ed Fogels for joining us. We passed a resolution in favor of HB 115, it made it through the House and is in Senate Judiciary right now. I spoke with the committee chair and no one had talked to her about it. She said she'd be happy to pass it now if they could. Staff to the Speaker of the House was told Governor would veto HB 115 if passed.

Ed Fogels – I know of no one in DNR that has spoken with the Governor's office about that bill, so, if that is true, it is without my knowledge. That may be a miscommunication. We have been helping Speaker Chenault on that bill, I testified at committee hearings. I am not sure where that rumor started.

Craig Fleener – No one in the Governor's Office that I spoke to had any indication where this rumor came from.

Mead Treadwell – If there is a chance to maybe communicate with Tom Wright on where that came from. There may be problems with the bill, but we're on the side of doing no harm. I expressed some frustration at working on these issues, being asked to work on them, and hearing that. Would appreciate running that to ground.

Craig Fleener – More important note is how we get Senate Judiciary to bring it up. We will somehow have to make an effort to get this on the table.

Mead Treadwell – Strong interest around the country in what we are doing.

Bill Satterberg – Can we just talk to the Governor about this issue directly?

Craig Fleener – I may be able to talk to him tomorrow. Usually if the Governor plans on vetoing something, a lot of people in the office will know about it. My thought is it is not on his radar. He is supportive of anything giving the State more control over federal land, this is right up his alley. I imagine we are all simply waiting for a hearing at Senate Judiciary.

Ray Kreig – The Governor made some strong statements when campaigning about getting on a bulldozer to build the King Cove Road, and HB 115 is much less than that.

## 1:22pm: Agency Update – Ed Fogels, DNR Deputy Commissioner

Ed Fogels – Appreciate the opportunity to be here, thought I would spend the first hour here and will be at the CACFA meeting on Friday, to provide a departmental perspective. You already know we do not have a commissioner, Marty Rutherford is acting, not sure yet who will replace Commissioner Myers. Other than that, the legislative session has been consuming us, and it has been successful for the Department, all five of our bills got across the finish line. Timber sales bill, giving state forester more discretion, Parks merchandizing bill to help get Parks off general funds, allowing Materials Center to charge fees, land exchange bill (HB 77). Representative Munoz carried that for us, had to fix state statutes which will let us swap more lands. As Alaska's land ownership pattern crystallizes, there are number of situations where it is awkward, and this gives us tools to start working with others to trade lands, very important for Alaska. DNR's budget went through ups and downs. Conference committee reinstated CACFA budget. We have a large cut to the DNR Commissioner's Office, which we will have to figure out. We have significant cuts from last year, and this year, including over 90 positions over those two years (~10% of our work force). I am in the process of working with Jim Cantor, Deputy Attorney General, to put together a task force over the next couple months of those who work on federal issues, tightening up how we deal with these issues, be coordinated and smarter with fewer resources. Acting Commissioner Rutherford and I are also working on how we can help Mr. Sturgeon with his next steps. John's battle, lots of work to do, lots of money spent, we want the message to get out that it is not over yet. We want something people can pick up and read to know help is still needed. Big victory yesterday when the U.S. District Court awarded attorney fees to the State in the Mosquito Fork litigation, a scathing opinion towards the BLM.

Ray Kreig – How did the ANILCA units wind up being zeroed out, all this defense against federal overreach falling on Sara Taylor and your remaining employees that do not have that as a job function, feels like unilateral disarmament against something we will face for generations. How did that decision get made?

Ed Fogels – Sue Magee is still there working, they lost their funding and a position but it is not zeroed out. All I can say is, we lost 10% of our work force and everybody lost money. We made a commitment to keep the effort going but we have to work smarter with fewer people, look for alternate sources of funding.

Ray Kreig – Was it a decision made in DNR or was it part of the discussion in the legislature?

Ed Fogels – We are asked for which things we need to cut, we put it on the table along with what happens when you cut them, dollar amount, and it goes from there. It is a discussion at the Governor's office and the legislature.

Bill Satterberg – Craig Compeau made statement to Governor after Sturgeon decision to act quickly. My read on Sturgeon is that the Supreme Court took the easy way out. Sturgeon did not get us where we need to be. Kicking it back to the Ninth Circuit, which may mean kicking it down to Judge Holland. John is still down significant resources. If the State is going to assist him, put something in the budget.

Ed Fogels – We understand what he has personally done and has left to do. It is unfair for this important statewide issue to be championed by one person. We are looking for ways to help.

John Crowther – We are thinking about what we can give as in-kind transfers, additive value to Mr. Sturgeon. Looking for ideas.

Mead Treadwell – One of the big policy questions we have had, we have a set of theories on litigation, legislation, negotiation and confrontation, and a legislative fix that has been discussed – and on which we are divided – is bringing back the Alaska Land Use Council. We are looking at, if it does come back, there is a consensus we want it to have more hooks. I want to leave you with this, we are going into a report writing process, but in terms of your current work, as we work on joint issues, that is a forum that is missed. DNR's expertise would be helpful in guiding us through that thought process.

Ed Fogels – In the dialogue with federal agencies, there is a vacuum. In meeting with federal leadership in the state, the most valuable part can be the sidebars, getting everyone together on a regular basis in one room could be very powerful. We have good relationships, but our influence on federal plans is waning, and we are having a hard time moving the needle, particularly on BLM resource management plans.

Bud Fate – The more you get increased understanding and working relationships through the Alaska Land Use Council, the less likely ASLAG’s goal of getting a land transfer will happen. Just something to consider, not objecting to reestablishing the council.

Stan Leaphart – Other states have indicated they are not interested in taking parks and monuments, so there will still be 150M acres of conservation system units. BLM may be a problem now, but the USFWS and NPS on lands they manage, they are coopting state management. We would still be looking at significant federal holdings with restrictive management policies. We could have the benefit of some transfer of lands and the council.

Craig Fleener – Can you explain, Mr. Fate, how the Alaska Land Use Council would slow the transfer process down? I feel like it would give us more control as we work through the process of getting more federal land.

Bud Fate – No doubt it would increase understanding, but wherever there is fire, there is a hurry to put it out.

Mead Treadwell – This is one of our more practical ideas.

### **1:45pm: Pre-Proposal Conference**

Jim Sonnier (DNR Procurement Officer) – We are here for an informal request for proposals to allow prospective offerors to ask questions and obtain more information. A copy of answers to questions will be publicly available.

#### On the phone

Lisa Ross and John DeVore – Birch Horton Bittner and Cherot

#### In the room

Ty Shook

**Action Item: Sara Taylor to send thumb drive of research materials to Birch Horton Bittner and Cherot; post draft outline on ASLAG website after work session**

### **2:18pm: Action Item Review**

Stan Leaphart – Nothing drafted yet on the Presidential candidate letter, less to draft today than yesterday.

Mead Treadwell – **Let’s take that one as part of our joint work session tomorrow.** Regarding the memo on the “no more” clause, substantial work done at the end of the Clinton administration on that.

Stan Leaphart – I developed a memo on the no more clause for Senate Resources, which was circulated at one time, looking at the legislative history and is fairly comprehensive, outlining intent and sections of the law. Beyond that initial paper, I have not added anything to it since.

Mead Treadwell – Circulating the Cato Institute report [done] and Sally Fairfax testimony [to be done]. Other items have resolution directly in the meeting minutes. Regarding the army of retired Alaskans we need to write this up, Ric Davidge is willing to help, as are others.

### **2:23pm: New Business**

Bill Satterberg – Should we take a position on the administration support of Sturgeon? Might fall under litigation or confrontation.

Mead Treadwell – The mandate of our work is the land turnover or to resolve related issues. This one is about land we already have and they won't let us access it. Maybe something we could raise at the work session. No one has laid out the likely path we will get. Is there a path here, and understanding that to see where the State wants to move in and help. The NPS extended its jurisdiction over land owned by the State of Alaska, no title company would approve of what we have as clear title – do we have clear title over any of our land? I am happy to **bring forward a recommendation to help Sturgeon** as part of this committee.

Stan Leaphart – The corporations will probably continue to have a role. The NPS says it will be business as usual regarding the waters, but they also made clear in their oil and gas regulations that the Ninth Circuit decision vitiates what we have enjoyed with respect to title to uplands since ANILCA. Implications for the corporations are significant. It is unlikely to stop at oil and gas regulations.

Craig Fleener – I think we should support Sturgeon but we also need to scour the books for every single issue where an Alaskan has been thumped by the federal government which has made usurpation of state authorities land on individuals. We need to stand up and push back, and not on the shoulders of someone who is fighting the battle we should be fighting. We should do as much as we can, **look for every example across the state for individuals fighting state authority issues.** We are not doing it enough. I am proud of Sturgeon and ashamed of us. We need to do more. We are not necessarily going to be able to afford financially the things we want to do, but we may have to put other things aside, this is too important. ASLAG and CACFA need to present to the Governor that we need to stand with these people.

JP Tangen – Incredibly on point. I am mindful of the fact that, when we started talking about giving money to Mr. Sturgeon, the first thing that came up was this has to be subject to appropriation by the legislature. What I would be curious to hear about is whether there is a path for people to request that appropriation to support litigation against the federal government or defending against the federal government. Should we be contemplating the creation of such a path if there is not one in place already?

Bud Fate – It would take legislation to do that. As far as I know, there is no overt path to achieve what you suggest. If we could make a broad piece of legislation, it could be very positive and might pass handily.

JP Tangen – Could we make a recommendation for legislation of that sort?

Bill Satterberg – I can think of several names right now of people having problems with the feds. We might seriously want to incorporate that. I remember Dick Randolph saying we need to add confrontation, and I still think that is a good idea. Joan of Arc was uppity but she got things done.

Craig Fleener – Concept of putting together a war chest specifically for fighting the federal government. When I worked at ADF&G, back when we were rich, the idea of putting a dollar for every acre we own into a war chest and using that, and the proceeds of it, to basically fight court cases just like the NGOs. They get respect because the federal government is tired of being sued. It is not just a matter of slowing things down and having a chat, it is about winning these cases. We are putting this money aside and are very serious, present this to our western friends and somehow pool that concept as a show of force and unity in taking these issues on. It is not one state doing this every once in a while, it is a financial step forward.

Bud Fate – Motion to recommend to CACFA finding ways to support John Sturgeon in his continuing litigation and to help other similarly situated defendants.

Bill Satterberg – Second

### Discussion

Stan Leaphart – I remember hearing \$37,500 of John's attorney fees were reviewing the State's briefs. We welcome state support, but it came with an additional financial burden.

Craig Fleener – And there was the loss of time arguing in front of the courts, as well.

*All ayes  
Motion passes*

Bud Fate – Special funds. I am for those kinds of things but you run into legislative legality.

Craig Fleener – Yes, the lack of funds, the will of the legislature and how we actually legally do it and protect it as an asset.

Ray Kreig – This is even more important to do when oil is priced so low. As we get to post-oil considerations and diversification, this becomes even more important. All the things we deal with on this committee and at CACFA. We need to get that across.

Stan Leapart – If the DOI and NPS prevail in this case, other federal agencies will follow suit in regulation. They may not have the same authorities the NPS claims to use, but the USFWS would follow suit, and BLM on wild and scenic rivers. The Fortymile is a good example. You have claims on the riverbed in the wild portion of the river, they would stop that if they could. It is one thing, looking down the road, if the State, corporations and John do not prevail, we can expect everyone else to follow. The State already lost jurisdiction on pre-statehood withdrawals, and the agencies have monopolized on that.

Craig Fleener – Can take a look at the ANILCA §1002 area where they will not even entertain discussion on oil and gas development, irrespective of statute. They will take the most conservative reading.

Mead Treadwell – I am glad to hear the Deputy Commissioner say they have good relationships. The Governor scaled back the D.C. office. The “Green Book” approach to express our concerns to the next administration is an idea with attention. We need to draw more attention to these issues. The feds believe what’s theirs is theirs and what’s ours is negotiable. I didn’t like ANILCA when it passed, and now we cling to the few things we got.

Craig Fleener – I would like to hear more from this group on creating a war chest, for CACFA to consider taking up. Has been on my mind a lot of years without an idea on how to proceed. Erosion of state authorities, and we keep letting it happen. Stand on the line in the stand and taking steps back every time. We do not challenge them enough and we need to challenge them more. I would like to have a discussion on that.

Ray Kreig – I think it should be a motion and we should not be dissuaded by the constitutional aspect of dedicated funds. What we do not have is the authorization, and the legislature can appropriate money, but we do not have the pathway and money that could be there every year under someone’s control, it could go away every year, but the authorization needs to be in place. I would recommend a motion for CACFA to look at it.

Mead Treadwell – It would be good for us to have a little research, and into the names Bill Satterberg has on dispossessed Alaskans, and others. There is comfort in receiving the support of the Attorney General. I support the process but I think we have homework that needs to be done. **Add to work list.** Look at other states that have done it and the mechanisms for that. Precedent in equal rights issues.

Bud Fate – Make that resolution and have them deal with it. The legislature often passes a resolution where a bill comes out of it. That is the beauty of doing something like this, to pave the way for where it can be done.

John Crowther – The Mosquito Fork is illustrative. We prepared for litigation to win on the merits and they pulled the rug out by disclaiming an interest in the river. State pushed forward one more time and we did win incredible precedent and get our money back. It is a good reminder that it can work.

Mead Treadwell – \$750K in legal fees back on Mosquito Fork, turn around and use that money to start litigation on more cases, like RS 2477 cases. Or creating a special court, administrative mechanism, to look at those disputes cheaply and quickly, like we did for ANCSA. I am happy with our victory. Spent a lot of time in Jack

Coghill's office when he put together the list of what we were interested in getting. We need to see more of these and we need to change the process. Can do that as an appropriation, does not change ANILCA or FLMPA or the RS 2477 statute. **Motion to urge CACFA to press on to challenge RS 2477, or use those awarded funds, can come up in our work session.**

Stan Leaphart – The RDI process was supposed to streamline and now it takes as much time as a court case. If we prepare a process, find what Mosquito Fork cost, some recent RDI decisions, including appeals to the IBLA, alternative routes have not shown to be shorter or more cost-effective.

Mead Treadwell – This becomes a larger argument for the transfer of public lands.

Stan Leaphart – Interesting decision that came out on the Kantishna River on the State's RDI application.

### **Action Item: Sara to circulate Kantishna and Chisana decisions**

Craig Fleener – Motion for CACFA to evaluate merits of fund of \$1/acre of land owned to engage in litigation of state sovereign issues.

Ray Kreig – Second

*No objections*

*Motion passes*

John Crowther – Want to acknowledge Scott Ogan as critical to the success on the Mosquito Fork.

### **2:58pm: Work Session Planning**

Mead Treadwell – We are in a good position to **tell CACFA we are going to contract out the report.** We have resolutions and more homework that needs to be done. Developing legislation and having a better understanding of where we are. One thing this report is not doing, that other states are doing, is looking at the economics. I think we should **have a discussion on what we can include on economics.**

Ray Kreig – On economics, when we were in Salt Lake City, it was pointed out that early in the process each state should be thinking about an economic study. It is the first thing people will raise in opposition, that states cannot afford it. I have not heard on when we might do that in Alaska. We could piggyback on the findings in other states, but we have a very different situation, with firefighting, scattered lands, ownership mosaic. We have to do our own study separately, maybe should consider that at the work session.

Craig Fleener – How much this would cost, it may be less because there is so little going on. It may be an easier analysis to do, but it is definitely needed. If it cannot be done right away, should be done as soon as possible. There is information out there to start.

Stan Leaphart – Montana has an economic study underway regarding revenue generated on federal lands. The legislature asked for an economic study on the transfer of public lands and it was vetoed. Arizona has a subcommittee looking at it. Maybe we could get an early peak at **the Montana study, will try to find out how much it cost.** They had an RFP last fall. What I have learned is it is difficult for them to get a handle on it, particularly management cost.

Ray Kreig – We need to think of the study from the standpoint of the State, lost revenue and its private economy. We have corporations with remote areas that understand the costs of private ownership of these areas. If we can get cooperation from them, it could be leverage to get our study off the ground with real information. Add in information on firefighting cost, there are some things that could get us going.

Mead Treadwell – Maybe we do sidebar studies in the report, including on NPR-A, we could probably manage it with less output, and we are due most of the revenue anyway. There is a different federal-state standard on

fighting fires. Find the joint budget on firefighting and put that out. The USFS aspect on the Tongass goes back-and-forth, scratch your head at how they price themselves out of allowing development, while Native Corporations could do it for so much less, and with the same forest standards.

Stan Leaphart – Cost-effective for Sealaska to manage their lands, would be good to understand the rate of return they get on the management of their lands.

Craig Fleener – Analysis of private adjacent land being actively managed, compare the survivability of wildlife. All the deer don't die when you cut a tree.

Bud Fate – The entire state has a management plan on every inch of federal land, influenced by environmental concerns. There will be a huge fight by one of the best financed organizations in the world, long, arduous battle. Something to figure into this.

Craig Fleener – We kept giving inches, they are in it for the long haul and do not mind suing every day of the week, whereas we have given up ground. We cannot go to war without the assets to help us win that war.

Stan Leaphart – **Which federal lands will we focus on, which do we stay away from?** Utah made that decision. Do we put all federal lands on the table? We would increase the opposition. Going after BLM lands, we still get opposition, but would not be as heated as also, say, going after Gates of the Arctic.

Mead Treadwell – Ask for it all.

Craig Fleener – I think it would be a good idea to look at lands originally intended to be used for something. It was not for wilderness, that is a new model, it was to be managed widely with revenue generated. I think we have to go for those. Some things we may not want to manage, like marine resources, where we gain something we are not allowed to use anyway. Under the point Ray made, there is value in looking at more of the dollar amounts that can be generated by agencies or federal lands. Value in expanding to work to identify to the federal government that we can do a better, cheaper job with more production, making it more accessible, to meet the purposes those units were created and should be managed for. Identify how we can do a better management job.

Mead Treadwell – Look at our very simple outline. Where do we start to include these ideas?

Bill Satterberg – Looking at confrontation, it is not on the list for tomorrow. What we have been discussing for the last hour is along those lines. We are talking about having the money to do those things, and things we propose.

Sara Taylor – It is not on the list for tomorrow because we do not have a leadership volunteer following Dick Randolph's resignation.

Bill Satterberg – I will take that post, and fall off the volunteer list for "litigation" as there are already two lawyers on that team.

Mead Treadwell – Let's consider **in the basic outline under Number 9(d) to add considering case studies.** NPRA, firefighting, forestry, RS 2477, Native lands, 90/10 revenue sharing. In terms of Stan's question, let's talk about that now and tee it up for tomorrow. The confrontation we are up against, I have no idea if I want to have an airboat on the Nation River, but we ought to have it, and it galls me to have the federal agencies telling us we cannot have it. This is our right as landowners, and our interest as a state, to not deny access. The question of what we ask for, we have to be pure in our thinking. If we are constitutionally saying the feds should have given it all, we have to ask for it all, but maybe point out we are happy to manage the park lands through a compact allowing for federal management. I think the answer has to be, if we have a legal theory that it is ours, we do not want to water that down. We support a national park system and certain refuges, we can establish them ourselves, have a discussion with the federal government on how they are managed. There are a few ANILCA boundaries

that are quite arbitrary, in a perfect world, we would change them. We can transmit any answer we want but I do not think we should compromise our position. A good discussion item for tomorrow.

JP Tangen – One of the things I hear you saying, and I want to be sure on that point, is that the NPS for instance has an awful lot of parks in Alaska, and Secretary Jewell brags a lot about how much money tourists bring into the state to visit the parks, but if you dig into the weeds even a little bit, the tourists are going to few of the parks. All parks are not created equal. I infer from what you are saying that maybe that is your thinking. It seems to me there is an awful lot of park land in various locations that have no business being units of the national park system, and at least one of the things we might want to do is challenge the NPS on why those are parks. If that cannot be defended, they need to raise money to support budgetary shortfalls, releasing those lands to the State would be a good place to start.

Mead Treadwell – We have discussion points. We have to figure out where to get help to do case studies, if not from the contractor. **Somewhat missing from our outline is better protection of the environment.** We need to assure this. This report is a talking document that will be used in Congressional hearings and may end up being part of a court case. We need to show our environmental ethic and concern. Responsible behavior is the best way to do it, not creating layer after layer after layer making a decision difficult. Absurd processes are not a better way to protect the environment. **May have a discussion about that.**

### **3:34pm: Public Participation**

*No one on the phone*

### **3:35pm: Work Session Planning (cont.)**

Ray Kreig – Final note on the economics report, I am the only one on this committee. Section 9 of the report being prepared, I am assuming this can take the place of the report that needs to be done similar to what Nevada and Utah have done.

Mead Treadwell – I think the reason it is being done in some places is a delay strategy. We are going to vote for, have CACFA vote for, have the legislature vote for, we are for land transfer. At the same time, if we get that far, then we have the right to say what we will and will not take. We do not need to push for a major study right now but can do case studies.

Ray Kreig – We don't do the other separate study? Those that voted for it as a delay strategy in Utah, the answer they got was it was good for the states. This will generate information we need to know to lobby and make decisions on an informed basis. If you go out with a big RFP, agencies look at it to justify their budget, contractors make money, it is suddenly a \$250K study. If we start gathering information on this subject, there is a lot that already exists, people in the agencies with knowledge and, if prioritized in our own government, we could gather information on a low-cost basis, making the ultimately study easier to accomplish and less costly.

Mead Treadwell – **Bring Utah study to economics portion of the meeting tomorrow and explore those ideas.**

Stan Leaphart – Been reading a book by Steven Haycox, misinterpreting the relationship between the federal government and the state. An interesting book. It deals with CACFA in the book, and passage of ANILCA. Incorrectly confuses CACFA with the Land Use Advisors Committee and the entire function of the commission. Also, in discussing the King Cove Road, makes reference to the RS 2477 provision of ANILCA. When I got my degree in history, I learned all else follows when you get your facts right. The book is full of inaccuracies. Dick Bishop was very surprised to learn he was the state senator from Fairbanks.

Ray Kreig – Judy Kleinfeld was at an ANILCA anniversary debate between her and Professor Haycox. Students were so depressed about what a mess Alaska was, and all the horrible things that happened without the benefit of planning, Judy turned it around on its head with optimism. She was a breath of light in that room, I was so glad the students were there to hear a different perspective.

Stan Leaphart – Concern people are going to read this book and believe it is accurate.

Mead Treadwell – Steve is a friend, and I did everything I could to support him on other issues. After hearing this, I think the standard should be higher. I would encourage you to do a review of the historical inaccuracies.

Stan Leaphart – I appreciate that, I have been toying with an op-ed. It is presented as interpretation and analysis, and makes reference to good works in the bibliography, which I noted excludes ANILCA. And, other than John Havelock and Will Hensley, there was no interview with current or former state or federal officials. Lots of interviews with people from NGOs. I appreciate the encouragement and review of the issues.

**3:48pm: Set Next Meeting Date**

*Proposed date of August 12*

**Action Item: Sara to send around a Doodle poll to the membership for early August**

**3:50pm: Adjourn**