

**Citizens' Advisory Commission on Federal Areas
FEDERAL OVERREACH SUMMIT
August 12 & 13, 2013 in Anchorage, Alaska**

Note: This is a verbatim transcription prepared from archived video of the Summit and was approved as written at the October 3, 4 & 5, 2013 meeting of the Commission in Anchorage.

Tuesday, August 13, 2013 (Day 2) begins on page. 89

Monday, August 12, 2013

8 a.m. Welcome and Introductions

Representative Keller - Welcome to the CACFA, the Federal Overreach Summit. There's a lot of things you could be doing today. You picked one I think that is just incredibly significant to who we are as Alaskans and it should have a long-lasting value. What the basic idea is, we're here to document the problem, to look at federal overreach, but more importantly to document the concerns of the Governor, the Lt. Governor, the Congressional Delegation, and then different people in different agencies and individuals. I'm not going to go through the whole list, but people that actually have hands-on and are dealing with Federal Overreach. And we're also here to document solutions. And tomorrow afternoon we're going to have a roundtable of all the presenters and those presenters have been asked to make proposals to help us get a comprehensive list of the things that we can do.

When I say document, what CACFA is doing, is we're taking this information - this is what we normally do. We deal with federal impact and federal management and we have initiated something called Stand with Alaska. Go online, check it out, and you'll see that what we're going to do is take this information from this Summit and put it there and add to it so that we have a clearing house kind of digital bucket to put these things in.

My name is Wes Keller. I'm a Representative from the Mat-Su Valley. I represent the constituents along the Susitna River Drainage. I'm really passionate on this issue. I'm chair of CACFA and I'm also part of the House Majority. And I just want to point out that the House Majority, the Alaska House Majority; we hired a facilitator, a professional facilitator who sat down with us to identify issues that are a common concern to us. Right at the top, or right near the top, among the top, was federal overreach, that's where the concern was, right up there with budget review concerns, oil tax review, affordable energy, sustainable health care systems, sustainable education system; right up there was federal overreach and for good reason. I mean obvious reasons. I mean, they're inseparable.

So as a public servant I'm required to raise my right hand and swear to support and uphold the Constitution of the United States of America and the State of Alaska. That makes me have a vested interest in what those two constitutions have established and what they're doing, but I'm not alone in that. Everybody here, we're part of a dual sovereignty, you're sovereigns in two different constitutions, and if those two begin to overlap and to fight each other, we have problems.

We're on a really tight schedule today and tomorrow. We want to get as much as we can on the record. So I'm not even going to try to go around the room and honor those that probably should be honored in this long, it seems like eternal battle, or interaction anyway with the federal

government. But what I am going to do is I want to acknowledge the Commissioners of CACFA that have all been here. I'm going to read their names alphabetically, and if you would stand up, because I want a round of applause for them.

Commissioner Rod Arno, would you stand? Thanks for the applause, but in light of the time, September 30, 2013 let's hold it until the, stay standing, Rod. I wasn't clear, stand back up, because I'm going to give you the names. Wait until they're done and then we'll give one round of applause. Senator Coghill, Commissioner Mark Fish, Commissioner, well, myself, Representative Keller, Commissioner Teresa Hanson, and Commissioner Charlie Lean, Commissioner Kathleen Liska, Commissioner Mike Meekin, Commissioner Warren Olson, Commissioner Ron Somerville, Commissioner Susan Smith, Commissioner Frank Woods, and then staff, staff and our director. Stan Leaphart, would you stand up, our Director of CACFA, and Karrie Improte, she's probably, there she is, okay. I was going to say, she's probably out there working, because believe me she's got hours in this. Rynniva Moss, the Senator Coghill staff who worked hard on this, and Ernest Prax, my staff. Now if you would, give them all a hand.

I assure you they're committed. They hear concerns all the time and we're always looking in CACFA for solutions, so that's why we initially the intent was a subcommittee that put together this Summit, and nobody wanted off, everybody wanted in on it, so the whole commission has been working on this and we appreciate it.

The agenda before you, again, is a tight one. We intend to stick with it. With a little bit of luck I'm going to be able to hand it to the MC, Senator Coghill, here not too far in deficit for a hard start, so I'm hurrying right through it. But I'm just asking again on the presenters to pay attention to the moderator, John, and be concise. And two reasons for being concise; I guess the main one is we want this information in a format that we can use and document to identify where we're at, our history, where Alaskans come from, how we got here, where we're standing legally, and whether or not and how there's a problem, we want to get that documented. So be concise, please, and you're going to have to do that in limited time. We want to document in short as many grievances as possible in the first couple of days here so that they're on the record and they're on the record clearly. And we also have asked again, we want to document possible solutions. So we just ask for your cooperation on that and help keep us on schedule.

Just one quick statement; we're nearly 200, anyway, right around 200 registered online to be here today. I would assume there would be a lot of people coming in. This is not a format designed to let everybody have input. What we have done in CACFA, because we listen to the concern, we've invited those that we know will document where we're at and do so accurately and whatever. So what we've done is we have a little green card out there, you'll see it when you come in, and that will be for questions and we'll address some of those in the roundtable tomorrow afternoon, but this is ongoing. This is what CACFA does. We listen to concerns of citizens, so the October meeting we've got a three-day session planned and part of that will be to listen and to interact as we always do with the federal agencies and the people that are maybe responding to the things that get said here today, and also to hear more from people that don't get a chance to speak today. That's what we do in CACFA and we invite you to continue.

It's my pleasure at this time to introduce Senator John Coghill, already is, but he's a CACFA Commissioner. He's a very good Senator, in my opinion. He's a friend and a mentor and he's volunteered to be MC of this. And that's important, the MC job, but I would ask you, he's the agenda enforcer, so when he stands up, you'd better pay attention. And I really appreciate the fact that he has volunteered to do this. Thank you, John. And I also should add,

probably, if some things go really wrong, we'll blame John.

Senator John Coghill - Thank you. In a few minutes we're going to have the Governor come on. Hang on a second. I will have the agenda items, so from 8:15 to 9:15 we're going to hear from the Governor, the Attorney General, Special Counsel to the Governor and the Deputy Commissioner Ed Fogels. And when the Governor is speaking, if I could have the Attorney General and Randy Ruaro and Deputy Commissioner Ed Fogels come on up to the table as he's speaking, that would be nice.

For those of you who have joined this particular conference, thank you. You know, I was sitting down reading last night a Statehood Commission that several people had written some years ago. It would do well, if you have an opportunity to dust that off, those of you who have participated in it, thank you. Many of those recommendations are ongoing. In fact, this Citizens' Advisory Commission is a part of that recommendation. So I was glad when Representative Kelly, back some years ago, put this back on as a way to take federal and state issues and put them up to action items. Is the Governor's videoconference ready to go? All right.

During the course of my moderating, for what it's worth, I'm going to try to make sure that everybody gets a chance to bring their historical perspective. Probably I'm not going to allow a lot of time for questions. I was looking at the agenda last night. It's pretty tight as far as time lines, if we want to get some of those up. Tomorrow we will take a roundtable discussion where we will take questions and try to put them to some of those folks. I think everyone has some paper available to them; if not, make sure that you get some from us. Get those questions in writing as clear as you can and we'll make sure that we discuss those. I'm heading for things that are action ongoing today and action items that we can do as we move forward. So I'm going to head towards action items. It might be just in principle, it might be for the administration specifically, it might be for the legislature specifically, and it might be things that we need to appeal to our Congressional Delegation Board. Tomorrow morning we will have our Congressional Delegation speaking to us, so that'll probably give you some of their framework. And from that time we will be heading towards a summary that will then end up in some action items. So that's my hope, to kind of keep steering that. So Commission members, if you see me missing it, and Mr. Chairman, you're sure welcome to get on my case.

In about a minute-and-a-half we're going to have the Governor come up. And the Governor probably needs no introduction, but he does need our gratitude. I'm going to specifically thank him for the way he has stood up for the state, and it's not always just in litigation. It has been in talking to the heads of the various different departments, the secretariats, to try to stand up for Alaska. Sometimes it is joining them in lawsuits to implement their law. Sometimes it is challenging them at the law that they're supposed to be upholding. Sometimes it's a misinterpretation of the law, and my gratitude to the Governor for that.

I'm hoping out of this session we will be able to give him some good counsel, so from those of us, look at that, I got a call from my wife. By the way, turn off your cell phone. Sorry about that, Lee. A good reminder, right, to turn off your cell phone. I put it here for my timer. Is the Governor's office on? Why don't you go ahead and click that on and we'll get ready for the Governor. I don't know if they've knocked on the door, but I want to make sure that we're there when they do. All right, let's go. The Governor of the State of Alaska, Governor Sean Parnell, ladies and gentlemen, please pay attention. Thank you.

8:15 a.m. Perspectives from Juneau

Governor Sean Parnell (by videoconference) - Well, good morning, CACFA. Thank you for

giving me this opportunity to be here and thank you for your service, as well. You know, on a topic like this, as one of the lead-off speakers, I felt it appropriate just to paint first the big picture for the significance of your work. As Governor, I'm in a unique position to observe the federal government and when disasters occur we rely on them. The federal government provides national defense, the post office, many essential services, but there are many areas of life that are rightfully not delegated to the federal government by the Constitution. Our system of government gives expression to the principle that government closest to the people is the most accountable. We believe that states are more often than not best suited to make decisions, not the federal government. The federal government should do a few core things and do them well and let the states and American citizens do the rest. That's not what we're seeing, and unfortunately Alaska has become kind of the national illustration for federal overreach.

The tension between the federal government and its citizens, and you know like I do, that this existed from the beginning, and for that reason our democratic republic was founded upon the consent of the government, protected by a constitution and governed by three co-equal branches of government. The power was constitutionally divided between the federal government and the states, and with proper functioning and adherence to the rule of the law, our individual liberty would be maintained while our collective defense and safety were ensured.

You know, the 10th Amendment, which was ratified in 1791, further limited the reach of the federal government by reserving to the states or the people all powers not granted to the federal government, nor prohibited to the states in the U.S. Constitution. And ever since, it's been our task to keep the republic, if we can, as Ben Franklin put it. And you're engaged in that great effort to keep this republic. But keeping our republic requires three functioning co-equal branches of federal government. One could suggest and support the proposition that federal agency overreach is a greater problem today, because we no longer have three functioning co-equal branches of government. Most Americans agree that Congress is broken. Congress barely functions as appropriators and even less often as legislators. As congressional dysfunction multiplies, executive branch agency power increases unchecked, as does the potential for agency abuse of discretion.

Alaskans can remember back a few years when, in 2010, an out-of-control federal agency, the U.S. Fish and Wildlife Service, proposed designating an area of more than 187,000 square miles as critical habitat for polar bears, including areas that account for almost half of Alaska's oil production. They proposed this designation even after the Fish and Wildlife Service acknowledged that the proposed designation would not provide substantial protection for the animals. What did we do? The State of Alaska litigated and we prevailed. Now, folks, that's the sort of overreach we're here today trying to prevent and it's exactly the type of overreach I will continue to stand up against as long as I'm your Governor.

You know, one answer to federal overreach is to restore Congress to its constitutional place and function. Without Congress fully functioning as a co-equal branch of government, the executive branch agencies consolidate and they gobble up more control over air, land and sea. And the federal executive branch exercises more unbridled and sometimes unlawful authority and more of our individual freedoms get left in the dust by an ever weakening legislative branch.

The current administration in Washington has essentially abandoned the legislative process, instead choosing to enact laws unilaterally through executive order and agency rule-making. President Obama said this, and I quote: We can't wait for Congress to do its job, so where they won't act, I will. We're going to look every single day to figure out what we can do without Congress, close quote.

Well, ladies and gentlemen, that's not what our founders had in mind when they wrote the constitution. Laws were to be considered and scrutinized by the people's representatives, the U.S. Congress. So how do we breathe more life into one branch of government, the people's branch? How do we get them to exercise the power of the purse over out-of-control federal agencies, when they can't pass a budget? How do we get the Congress to hold agencies accountable when they violate our most basic civil and God-given rights time and again? These are discussions worth having, because they go to the heart of our nation and to its very existence.

Federal overreach is simply the federal government moving into areas never intended under the color of law or outside the rule of law. Federal overreach is federal encroachment, whether express or implied, whether by commission, omission, or delay. Federal overreach occurs as the federal government over-spends, over-taxes, over-regulates, over-snoops, and over-decides those things that ought to be left to individuals, or their local or state representatives.

Now, in Alaska federal overreach looks like, one, harassment of Alaska Natives harvesting sea otter, blocking King Cove residents from access to health and safety personnel, failure to hold timely lease sales and delay permitting decisions, attempting to add new and more onerous designations on land our citizens, that were already blocked from accessing and utilizing for our benefit. Federal overreach in Alaska is about federal agencies misusing the federal law, misusing the Endangered Species Act as a land-use planning tool, rather than using the ESA to protect species based on science. Federal overreach is about ignoring state permitting processes on state lands and extending federal influence over our lands and waters. It's about federal agencies adding new layers of bureaucracy and diminishing Alaskans' chance at a livelihood without statutory authority. The whole Marine Spatial Planning effort comes to mind, and we call that ocean zoning here, and heaven help the small Alaska business that wants to put a driveway on its property and finds itself on wetlands.

Ultimately, your Summit on Federal Overreach is really a summit to heal a disease that afflicts our nation, and although it impacts us greatly, federal overreach is not unique to Alaska. Its symptoms erode our constitutional framework and install one branch of government, the Federal Executive Branch, over the others, all to the detriment of Americans.

When the Congress is unable to function as the people's watchdog, more individual freedom gets taken away, more economic opportunity gets lost and more money gets confiscated from us in taxes. America can no longer afford to sleep while our constitutional foundation gets eaten away. And you're here, like me, because you care deeply for our country, and because you believe that we can make a difference.

Now, I know you've taken some criticism for even daring to have this Summit. One newspaper opinion writer said she took offense that on the one hand we would complain about parts of the federal government overreaching, while with the other we accept federal dollars under federal law. Well, with that faulty logic, it's like saying a person in a household with a controlling and manipulative person should be quiet, because she's accepting part of the manipulator's paycheck and food. That's just plain wrong. We will not sit down and shut up when things are not right at home, when the health of our constitutional foundation is at stake.

I want to say thank you; thank you for courageously standing against that kind of chatter to restore our state and nation's constitutional institutions to their rightful place. This same discussion has to take place to a greater degree throughout our country. That's why the people of our nation must band together and use all lawful means to turn back the tide of federal agency

overreach. As an administration we have turned back federal overreach in a number of ways. We start by participating in the public process. We submit comments on proposed federal regulation. We make phone calls to agency personnel, to management; we enlist the aid of our congressional delegation. Failing persuasion, though, we file litigation. It's a lengthy, costly process, but availing ourselves of the courts to protect Alaska's interests is something we have not been shy about.

I also want to say something that has not been reported by the Alaska media. When a federal government agency gets it right, when they reach the right conclusion under the law and it's in Alaska's interest, we stand shoulder to shoulder with them in a court of law to defeat the special interests suing the federal government over its decision. We've defended or supported NMFS decisions in three different court cases; one related to Alaska salmon management, one related to the ribbon seal, one related to Cook Inlet seismic work. We've supported the Department of Interior's 2008 Mining Claim Rule and we've litigated in support of the Corps of Engineers decision at CD-5. We stand up to protect Alaska's interests when the federal government gets it wrong, and when they get it right. The State of Alaska is going to continue to stand up on behalf of Alaskans using every available tool to ensure our rights and freedoms are upheld.

So in closing, overreach has become the federal government's way of doing business, diminishing Alaskans' freedoms and sabotaging our economic opportunity. The state-federal relationship will not be on a sure footing until the federal agencies respect the constitutional role of the states and the rights of Alaskans and my administration will continue to work to those ends. And today you will also hear from Randy Ruaro, our Policy Director, who will outline the state's efforts to push back on federal encroachment, and you'll hear from Attorney General Michael Geraghty, who will join you to talk about the Statehood Act as it relates to state's rights and federal overreach.

I appreciate so many of you taking the time to discuss this important issue. Have a great Summit and I look forward to hearing more and working with you all as the dialog continues. Thanks so much.

Senator Coghill - And on the schedule you see where Randy Ruaro is going to speak for the Governor, and we're going to have the Attorney General step up first and speak. I greatly appreciate the Governor's speech. I'll make sure that we get a transcribed copy of that because of the way the Skype, it's just a part of technology, we'll kind of plug along through that, so I will make sure, and Rynnieva make a note, that we get that as part of the record. The Attorney General of the State of Alaska, Michael Geraghty, please.

Attorney General Geraghty - Thank you. Good morning. I can't help but, I've thought about the remarks of the pundits as well, how we should be thankful for the, how we can be adverse to the federal government and all the dollars that they spend in Alaska and we're not thankful for that. And I was thinking back, I bet the Soviet Union used to spend a lot of money in Czechoslovakia and Hungary and Poland and places like that during the Cold War, but I don't think the people there were very thankful for that, either. And I'm not drawing parallels between the federal government and the Soviet Union, but I am making the point that I think looking at how much money the federal government may be spending in Alaska is a silly way to counter the argument that there are serious constitutional issues that this body is concerned about and that we're here to talk about today.

So I did want to start with a bit of historical perspective, because talking about the

statehood compact case, I think it's interesting to, it would be helpful to start with how we got here as a state a little bit in our relationship with the federal government, and many of the themes that were in the compact case still resonate today, in my view, and I think it's helpful to keep those in mind.

In 1993 the State of Alaska sued the U.S. in the Court of Federal Claims for damages, asserting that the U.S. was in breach of contract of the Alaska Statehood Act, or in the alternative for taking the state's property without just compensation. Counts I through IV of the State's Complaint alleged that there is an implied promise within the Statehood Act that the federal government would administer its lands within Alaska in such a way that they would be productive of revenues for the state. Count V of the complaint was narrowly focused on a formula for distribution of revenues in place at the time of statehood, namely, 90% of gross receipts from mineral leases, royalties and the like would accrue to the benefit of the state. The Statehood Act specifically allocated 90% of gross proceeds to the state, and in the state's view that constituted a binding contractual obligation by the federal government. Accordingly, it changed by Congress to pay the state 90% of net proceeds, instead of gross proceeds, constituted a violation of that contract. The state and the federal government moved for summary judgment on their respective positions, and after very extensive briefing the court issued a 20-page opinion in May 1996.

One of the main tenets of the state's claim was the notion that when we were made a state, the intent was to provide some means of financial support for the state, because our financial future was the overriding concern in granting statehood. The court discussed much of the legislative history in the arguments back and forth for statehood. For example, he quoted Senator Scoop Jackson from Washington, who was one of the main proponents of statehood in the Senate, who did not believe financial stability was a major concern for our state. And I quote Senator Jackson: Alaska is a going concern. As a matter of fact, Alaska is currently financing, by means of its own revenues, all functions and services it is permitted to carry on. The territorial government has no debt and actually has a cash surplus. The additional activities Alaska would engage in after statehood is granted can normally be expected to be financed through the additional revenues, which would also become available to Alaska as a state.

It sounds almost idyllic looking back on it today. But the arguments against statehood were many and varied. They ranged from concerns at having land under state control so close to the Soviet Union was a security risk, the allegations that the labor unions in Alaska and Hawaii were a Communist menace, to the belief that having a foreign country, Canada, between Alaska and the mainland would prevent us from ever really assimilating with the rest of the United States. But according to the judge, the most persistent complaint that he discerned in the Congressional record is that there were not enough people to form a state, particularly in an area as large as Alaska. By 1958 our population had grown to around 212,000 people, 50,000 of whom were in the military. Although the argument was that there was not sufficient population to build an economy, the judge noted that the real concerns were less altruistic. The debate over statehood was, in his words, replete with transparent jealousy over the fact that so few people in Alaska would be able to elect two Senators. The court quoted one Senator during the debate stating, quote, Deep down in our minds it is the prevailing objection. Very simply put, it is this. Should 212,000 people have two representatives in the United States Senate, when a state such as New York, with 16 million people, has the same number?

After reviewing all the various arguments back and forth, the court concluded: From the vantage point of 1996, it is easy to discount these objections. In retrospect, many seem at best wrong-headed, trivial, or based on self interest. Nevertheless, the court has carefully read the

entire legislative history and it is impossible to come away from that project with a sense that the provision for finances was in the end the key to achieving statehood for Alaska. Of all the problems identified, real or imaginary, financial stability was the most susceptible to a legislative fix. The population issue was somewhat diffused as the territory grew in population. The other problems, however, were more political in nature and hence, less tractable.

Instead, the court observed that, quote: It is clear from the entire record that the Land Grant was seen as the main vehicle for making Alaska free from dependence on the central government. He noted that the Land Grant proposals had increased over time in each successive statehood bill. And some of you may remember that statehood bills were introduced in each Congress between 1946 and 1958. For example, the 1948 statehood legislation proposed that Alaska would get certain limited direct grants in four sections per township for school use, the same as offered to other western states when they joined the Union. However, virtually none of Alaska had been surveyed and the traditional grant was simply impractical.

By 1950 the proposal was to allow Alaska to choose 21 million acres without a survey over a period of 25 years. By 1953 the amount had been raised to 100 million acres and in 1954 the amount was 103,350,000 acres. In 1957 the amount was increased to almost 183 million acres and that same amount was proposed for the 1958 bill. However, opponents to statehood objected on the ground that it was a, quote, unprecedented giveaway, end quote, and so the sponsor's legislation agreed to a reduction in the grant to the state to 103,350,000 acres, and that was what was in the bill that was passed.

Even with this unprecedented amount of land and the fact that the conveyances included the minerals as well as the surface estates, it was feared that the land grants would not be sufficient. This is because the state would be limited in its selection to lands that had not been specifically withdrawn from public use by the federal government. This was a significant limitation, because the federal government had already withdrawn huge areas of land. Statehood proponents were concerned that many of these withdrawals potentially involved the most productive land in the territory. Concern about the extent of federal withdrawals not only prompted increases in the proposed land grant to the state, but also led to other attempts to bolster revenue sources. For example, Alaska would be entitled to receive a small percentage of the net proceeds from the sale of federal lands. There were also specific allocations for proceeds from the Pribilof Island seal fisheries, Fish and Wildlife licenses and so on.

The most critical provision relative to the state's lawsuit was added to the statehood package in 1957. The Mineral Leasing Act, or MLA, was amended to increase Alaska's share of leasing revenues and royalties generated under the MLA to 90%, which was similar to the treatment of other states in the union. Because Alaska was a territory, it was only entitled to receive 37.5%. Several proponents of statehood suggested that it was an act of fundamental fairness to put us on an equal footing and it would also provide the state some additional revenues. So in 1957, before we even became a state, the Territory of Alaska started receiving 90% of MLA generated revenues. When the Statehood Bill passed the following year, the MLA was amended again to remove all references to the Territory of Alaska, in favor of the State of Alaska. The Statehood Act provided that Alaska would only become a state if a majority of the people voted affirmatively for three propositions, which I can summarize as, one, whether Alaska should be admitted as a state; two, whether the boundaries should be as depicted in the Act, including relinquishing title to any land outside those boundaries; and three, did we consent to all other provisions of the Statehood Act, reserving rights or powers to the United States. The citizens of the territory overwhelmingly voted in favor to statehood, answering all three of these propositions in the affirmative. So that was the history that was recounted by the court at some

length in the opinion.

The immediate backdrop for the state's claim was diminishing oil revenues. Between 1950 and 1966 the federal government had offered approximately 19 million acres of federal land in Alaska for oil and gas leasing and Alaska received 90% of the revenues from those leases. However, beginning in 1966 the number of leases issued had been drastically reduced. One of the most promising potential areas, then and today, was the ANWR coastal plain, which was temporarily withdrawn from mineral leasing in 1981 by ANILCA. In April 1987 the Secretary of the Interior submitted his report to Congress and recommended that the entire ANWR coastal plain be made available for oil and gas leasing. Congress conducted a number of hearings on the issue, but when it did take congressional action in 1991 it was vetoed by President Clinton.

For purposes of deciding the state's motion in the statehood compact case, in our Motion for Summary Judgment the court accepted the proposition that, quote, logic and the national interest dictate that TAPS, the Trans-Alaska Pipeline System, should be more fully utilized by opening up portions of ANWR to oil exploration, end quote. So the court accepted that as a given and as a premise in doing his legal analysis. Beginning in 1991, through the Department of Interior Appropriations, Congress began to deduct the Interior's cost for administering the Mineral Leasing Act, prior to calculation of amounts to be distributed to the states. In other words, instead of receiving 90% of gross revenues, which was in the Statehood Act, states began receiving 90% of net revenues. And the MLA was amended by Congress in 1993 to formalize this change, caught up by this change. Between 1990 and 1994 approximately \$2.3 million have been deducted from Alaska's receipts for the Department of Interior's administrative costs.

For its part, the state argued that the section of the Statehood Act giving Alaska 90% of the revenues was a necessary component to achieving ratification. Concerns regarding the state's financial stability were so acute that allowing Congress to change it arbitrarily, in the state's view, would constitute a breach of faith with the people of Alaska. Ultimately, the court refused to go down this path. Quote: The subject matter of the Statehood Act, entering into a union of states, is *Sui generis*, in other words, one of a kind, and cannot be strictly compressed into a contractual or legislative mold. It is neither a garden variety contract nor routine legislation. The statehood debate cannot be analogized to the normal negotiation between parties to commercial contracts. The plebiscite on statehood and the debate on the pros and cons of statehood concern what was fundamentally a political issue. The court went on to observe that Congress has the power to amend the Mineral Leasing Act, to change the distribution formula, and whatever changes Congress makes affects all states, including Alaska.

As far as the state's claim that the federal government was under an obligation to manage its lands for the benefit of the state, the court declined to accept that argument saying, quote: Deciding the wisdom of leasing any particular parcel within those 240 million acres, which was the ground owned by the federal government in 1991, would inherently involve the court in weighing amorphous and circumstantial factors. The federal government's obligations would fluctuate from time to time, depending on a confluence of politics, commerce, science and serendipity. There are simply no judicially manageable standards to apply to such a decision-making process. And I believe the same is true today.

The court went on to point out that the Statehood Act provision dealing with the state's entitlement to mineral royalties must be read against the background of 200 years of law, recognizing in the federal government, quote: Unfettered discretion as to the management of its own lands. It would fly in the face of that body of law to imply an affirmative duty to develop

the federal mineral lands in Alaska, particularly when, as discussed above, there would be no judicially manageable standards for determining whether the obligation was breached.

And so all of the state's claims were dismissed. The state appealed and the Court of Appeals for the Federal Circuit affirmed in an unpublished opinion that consisted of two sentences: The order is affirmed on the basis of the reasoning set forth in the lengthy, detailed, precise, and correct opinion of Judge Bruggink. Judge Bruggink's scholarly opinion is thoroughly supported with cited and quoted authority in record evidence. Nothing more need be said. And nothing more was said, or has been said on the subject since then.

One other point is worth mentioning about the compact case, even though it was not mentioned in the court or an issue in the case. Section 4 of the Statehood Act, the State not only disclaimed all right and title to federal lands not granted to the state, but also to land or fishing rights held by any Indians, Eskimos, or Aleuts, or by the U.S. in trust for the Natives. Likewise, Article 12, section 12 of our Constitution, which was adopted before the Statehood Act was passed, makes the same disclaimers. I mention this only because I've heard the argument on occasion that Congress's passage of ANSCA violated the compact, because it took more federal lands off the table for our selection, but I don't think that claim can be supported because the Statehood Act and our Constitution reserved those claims and recognized those claims, and our selection was subordinate to that.

In closing, so that's the historical perspective. I think it still has some, some of the court's holdings still resonate today. But let me make a couple of other points and reinforce some of what the Governor said. Alaska is not the only state that believes the federal government is stretching bounds of cooperative federalism, which is one of the linchpins of our republic. Every time the Attorney General meets and I go to several meetings a year, this is a common complaint that I hear. I attended a summit back in January of this year that was convened by the Attorney General of Oklahoma on the subject of federalism in oil and gas development. It was well attended by a number of AG's from different states that had the same interest we do. We have working groups established at the AG level with other states who monitor, for example, the rule making efforts by EPA, which is one agency that seems to be bound and determined to extend its jurisdiction and reach. This is something that we monitor and groups of states follow closely and we act together on.

Not a week goes by that I don't get an invitation to join a state amicus effort, or some other collective effort to support a brief, or support a position and they're not all what you think they might be. Just this last Friday we got support from the, a request from the National Association of Attorney Generals, or NAAG, to possibly lead a state amicus effort in a case out of Michigan. There was a murder committed in Michigan that happened 200 feet within sight of a national forest. There's something called the Weeks Act that was passed back in 1911 that said for a crime to take place in a national forest, unless they are offenses against the United States, they would be within the jurisdiction of the affected state. And for decades that dichotomy, if you will, was respected and honored, but in the last 25, 30 years the federal government has been being more aggressive about taking jurisdiction over some of these crimes. In this particular case, the gentleman was convicted and received a death sentence, which is permissible under federal law. The rub is, in Michigan they abolished the death penalty shortly after they became a state. They're one of the very few states that has never executed anyone. And the defendant appealed this to the Sixth Circuit Court of Appeals and in a two-to-one decision they lost. But there was a dissent on the basis that the federal government doesn't have this authority under the Weeks Act to take responsibility, take jurisdiction over these crimes, so we're taking a look at that. Those are the kinds of cases, I mean, it's not always lands issues or environmental issues.

This encroachment, if you will, is occurring in multiple levels and in multiple jurisdictions. So we don't always get the cases that you want or you pick out the facts that you want, but nonetheless these same principles that we're here to talk about today are present in this case that I just referred to from Michigan.

The National Association of Attorney Generals, which is a bipartisan group, has just formed a Federalism Preemption Committee, and I've been appointed to it along with five other attorney generals, and we're going to be meeting later this month to talk about where we want to go with it and creating an agenda for our group. So it is something, we are not alone. This is an issue that has got I think some bipartisan impact and I think the Governor spoke very passionately about it. I share his passion for it and his leadership.

So what do we do? What are the positives to take away? What can we, in terms of practical things we can do? What we are doing, we're looking for good cases, good facts. The best example I can think of in recent memory is the Sackett case versus EPA, the couple in Idaho that wanted to build a home and they couldn't get the wetlands permit, then when they filled in their property they got a Notice of Violation and fines, some incredible amount per day. Now, if that were Chevron looking to expand a refinery, or just somebody suing the federal government saying, we disagree with how the EPA does this, we think they should give the people a hearing before you issue fines or Notice of Violation, I don't know if that case would have had nearly the appeal. But when you put individuals, small businesses and so on in the firing line and can show facts, and those are the kind of vehicles that we're constantly looking for, the kind of cases that we're looking for, because they, that's the way to I think most effectively challenge a lot of what we've been talking about.

So we try to network with other states, other groups. This is Alaska led, the amicus effort of the Sackett case against EPA, and I think about ten other states joined us on that. So as I said, just disagreeing with them on the opinion, that we think you ought to interpret the law this way, we think you should interpret the law that way, I question the utility of that sometimes. I mean, we will take those cases on occasion, depending on the circumstances, but what we're really looking for are facts, good facts. It's easier to speculate about how a potential interpretation of the EPA, or another agency, could impact somebody, but if you can wait, and the circumstances come up where someone has been impacted, and they're a small business person, a landowner, whatever, then you've got something, in my view, and those are the kind of challenges that we're looking for. But I've probably over-spoken my time, Mr. Chairman, I'm sorry. I want to thank CACFA for inviting me and for drawing attention to this important subject. Thank you.

Senator Coghill - Thank you, General, I appreciate that. And as we go, are you going to be here through the morning break?

Attorney General Geraghty - Yes.

Senator Coghill - All right, thank you. And so that way if a flash of inspiration hits you, that's the man, especially if you know of a specific case. We do deal with both the law and the policy. Those of us in the policy world will continue our push, but I appreciate the work that you do with the National Attorney Generals, NAAG, and so we'll look forward to some further discussion on that. Now we're going to have Special Legal Assistant to the Governor, Randy Ruaro, who has been very helpful to me personally and to Alaska generally, and he will give you, from the Governor's perspective, some of the legal issues. So Randy, please come and thank you very much.

Randall Ruaro, Special Counsel to Governor Parnell - Thank you. Good morning, everyone. It's a pleasure to be here today. For the record, my name is Randy Ruaro. I am a Policy Director for the Governor, but also a third generation Alaskan, born and raised in Ketchikan. And made my way through college by working at the local pulp mill until it was closed after the federal government breached the Timber Supply Contract. So I have both, I guess, professional and personal experience with the effects of federal actions that involve lands policy. I think as most know in the room, the topic of federal-state relations is critical for Alaska to a greater degree than in many states, simply because of the ownership of a large amount of federal lands, and then the fact that many federal laws reach beyond those boundaries to private and state-owned lands, such as the presence of wetlands, or an endangered species, or simply developing your land in a manner that creates a federal tie, and that development can become subject to a federal NEPA process.

Mr. Chairman, I think the Governor focused on the key issue, and that's I think summed up in one word, and that's opportunity, the opportunity to work, the opportunity to develop, the opportunity to recreate, the opportunity to access, the opportunity to travel, and the opportunity to provide for your family and for a better future for your children. And all those things are tied up often in federal policy.

The directions for today were to share some perspectives on decisions by federal agencies that impact Alaskans. And before I get into specific examples, I want to walk through and reinforce some of the comments of the Governor on how we approach these issues. And the first common theme in our review or actions is, at the direction of the Governor we remain vigilant for federal actions that affect the opportunity of Alaskans to work and take other steps. And that may sound easy, but there's a tremendous number of federal regulations that have been flowing through the process from the federal government. Those regulations slowed and almost stopped at some point before the election for the Presidency, and after the election the regulations have started pushing forward again at an even greater pace.

So we watch and we read the Federal Register a lot, which isn't a real exciting read, but we have to follow

it. That's where agencies are required to provide notice of actions that they're taking. We also coordinate and work with mainly western states on issue spotting. Often an issue will arise first in a state like Utah or Wyoming. We have contacts in those states and we share a lot of common ground with those states, so spotting the issue first is key.

Second, after we identify an issue we involve our agency expertise and our Department of Law in reviewing the proposed federal action. We want to check it to make sure that it's within the scope of the authority that Congress granted to the agency, and then we want to check the substance of the action to see what the impacts are on Alaska, and that can also take some work to figure out.

The next step we'll do is prepare, if it's an action that creates a process for comment, such as a regulation package, or an EIS, a Land Management action, we'll work with our agencies, several of them usually, to prepare comments and submit those into the record. Sometimes we will actually even participate as a cooperating agency in the process, which in theory allows us to be closer to the decision making and the review. And often we submit comments multiple times; four to five times is not uncommon.

And then, finally, it's a last resort, if our comments and our efforts to meet with the federal agencies prove unsuccessful and we think we have a solid basis to litigate, we will

litigate. But I think it's important to reinforce the Governor's comments that it's a last resort and it usually almost always occurs after we've made a very strong good-faith effort to try to work with the federal government to get them to understand Alaska is different. We see views from the federal agencies that want to impose a policy on a national basis, and often we spend a lot of time just educating them that Alaska is not like the Lower 48 in many ways.

There is one fact pattern, though, where we don't get that opportunity to try to work with the federal government, and that's when major policy initiatives are issued from Washington, D.C. with no outside notice to states or the public, there's no public hearings held, and I have just a couple examples of those and they're really important topics. RS 2477s, that's the ability of a state to claim a trail or an easement for public access. February 20, 2009, the Obama administration Acting Director of BLM Ron Wenker issued a memo that simply said there would be no further recognition of RS 2477s. With such a policy, the state, and other states, Utah, Wyoming, is left with no other option but to litigate those RS 2477 claims. There simply wasn't an opportunity given by the federal agencies for the state to participate, discuss and try to come up with a policy or mechanism for resolving these claims.

Another example is the Secretary of the Interior's Wildlands Policy. This was a policy, a Secretarial order that was issued again without notice to the states, or an opportunity to comment, and it would have, it did direct federal agencies to manage federal lands, primarily for their wilderness character. And the State of Alaska, at the Governor's direction, joined with the States of Utah and Wyoming and pushed back. We filed a lawsuit. We engaged our Congressional delegations and Congress passed a budget rider that prohibited spending any funds for the implementation of that policy. And I think the Secretarial order was finally withdrawn.

So in most instances we're able to do some homework, we're able to try to educate the federal government on Alaska, we're able to try to work with the federal government. In some instances we're not given that chance and I think it's those instances that cause the most friction with states. I mean, just the unilateral handing down of a decree from Washington, D.C. that has major impacts on a state, without consulting the state or holding any public meetings, I think that's a sure-fire route for getting governors angry and people upset and to get sued, frankly.

There are also, as an example I guess of an opportunity where we, a process where we did have a chance to comment, although just as frustrating or worse, was the NPRA decision. In that instance there was a land management process that involved an EIS and we were a cooperating agency. We submitted comments; I believe five rounds of comments that voiced our concerns about access to state leases and access to existing federal leases. Those comments were ignored. Secretary Salazar, after the public comment period had ended, flew to Alaska, the North Slope, announced a new alternative and flew back out of Alaska, and that alternative became the basis for the decision, with some very minor, well, I shouldn't say all minor, but amendments at the very end. So that's probably the next type of process where the states can get very frustrated and end up being forced or pushed to litigate, and I just wanted to note that, although we continue at the Governor's direction to do our research.

The Governor is included in requests for funding for proactive science and research in his budgets and the Legislature has supported those. It's good to have your own science when you're debating issues with the federal government. And so we will continue to follow that outline of a process, to try to educate and try to work with the federal government. And it's not always a failure, as the Attorney General mentioned, and the Governor. We have joined with the federal government on occasions to push back on other forces that are trying to stop opportunity and

development in Alaska. The Logjam Timber Sale I think is a good example. That's a sale where the state and the Forest Service worked together to lay out the sale and plan it. It was litigated. I think there were eight injunction requests to try to stop the sale by environmental groups. Stopping the sale would have meant the closure of the Viking Mill, the last remaining mid sized sawmill in Southeast Alaska, and the loss of all the jobs that go along with it. It's located in Craig, Alaska, which is a fairly high unemployment area, a rural area, and so those job losses would have really been felt there. We joined with the federal government and the Corps of Engineers on the Arctic Port Study. Their expertise in building ports is essential to getting that study done right. So there are opportunities, and we do take those when they're presented, to work with the federal government.

I'll just mention one other quick example of probably a very frustrating process that involved the Izembek Road. This was actually a segment of a road that connects existing roads out of Cold Bay and from King Cove, so this is just connecting existing roads. I think it's about 12 or 13 miles long. That road connection is a 13-foot wide gravel road. It would only be used for noncommercial use, a so emergency medical evacuation is the main purpose of the road. Again, we participated as a cooperating agency in that process, submitted round after round of comments on how important it was, that there were Alaskan lives at stake for this road. And ultimately the Fish and Wildlife Service rendered a decision that the road should not be built, because of impacts to wildlife. And fortunately Secretary Salazar, before he left, was concerned enough about that decision to request that it be reviewed in his office. And I believe since he has resigned, I think Secretary Jewell is actually coming to Alaska soon to visit the site and that's a good thing. That's a positive development that the Secretary would actually visit the site and talk to the locals on the ground. That's the type of effort by the federal government that we like to see and we appreciate it.

Chief Tidwell from the Forest Service was just in Ketchikan with Senator Murkowski, visited several communities, logging communities, heard from the sawmill operators, got an earful, I would imagine, and we do appreciate, I imagine he knew he would, but he still came and he listened, and again that's that type of federal interaction at the local level and with the state that we like to see. I commend Chief Tidwell for coming.

We're working with federal agencies on Arctic mapping. That mapping is important to future development. They're contributing a significant amount of funds.

And I wanted to close with just some thoughts on how to mitigate. Another question for speaking is thoughts on how to mitigate impacts. And I think to mitigate the impacts you have to do what the, you have to continue to do what the Governor has asked his agencies to do, which is participate, find the issues, spot the issues, review the facts, review the law, comment, try to educate the federal government on Alaska. Alaska is definitely not Long Beach, California, which came up in an issue about unleaded aviation fuel. The feds were hoping to ban unleaded avgas, or leaded avgas, excuse me. And so if we keep making those efforts, and we have seen some recent examples of the feds coming to Alaska to speak with Alaskans on the ground, I think that's a key to preventing those kind of unilateral decrees from Washington, D.C., like Wildlands, or RS 2477. And we'll keep doing that, we'll keep trying to educate. We met with Nancy Sutley, a key advisor for President Obama, not long ago. We had all our agencies present that work on resource decisions and they described for her the work that they do and she took that back to Washington, D.C. Hopefully, that will result in mitigating those types of decisions where the states are just not given an opportunity to comment.

Probably avoiding future impacts, I think it's key. One dynamic that we see over and

over is that decisions on the ground in Alaska are controlled from Washington, D.C., and that was the approach taken on the Roadless Rule. Even the slightest permit that affected any part of a roadless area was required to go all the way back to Washington, D.C. to be signed off by the Secretary, and that quickly resulted in large delays and projects couldn't go ahead. I had one fellow complaining to me that he was required by the federal government to study the vegetation on a site that could become a dam site, but when he went to get a permit for the botanist to go on the land, he had to wait six to eight months while it went back to D.C. to get signed off. And so that's another I think key area, is to try to get Washington, D.C. to release more control and authority back to the federal supervisors in the region in Alaska. They are often lifetime Alaskans themselves and I think they just have, frequently have a lot better grip on reality in Alaska, so that's another effort that would be good. And with that I close.

Senator Coghill - Thank you very much. Thank you, Randy. You could see me getting antsy. We're going to go ahead at this point and have Ed Fogels come up. Ed Fogels is the Deputy Commissioner for Department of Natural Resources. And he's probably read many comments on issues that come forward to him, and I will probably ask him for hints on ways that we can comment, because I think every conservation unit in the federal area right now is up for comment, and those are some of the things I think we need to be bold on, is making sure that we get those comments. So I'm giving you a hint on some of the things I'm looking for, Ed. But Ed Fogels, Deputy Commissioner, DNR, please. Thank you very much.

Deputy Commissioner Fogels, Department of Natural Resources - Good morning, everyone, and thank you for the opportunity to talk today. I'm actually pitch-hitting today for my boss, Commissioner Dan Sullivan, who has been called to duty. He's currently in Afghanistan. We did talk to him last week. He is doing well. He wishes you all well, wishes the Commissioners of CACFA and the staff well, too.

So I guess this morning you've heard from the Governor, from Randy, from the Attorney General on law and policy issues. I guess I'll sort of be talking a little bit about the grunt work that we are doing in the Department of Natural Resources. I put together a list of all the federal-state issues that we're working on right now within the Department, and if I presented all those to you today, then we'd be here till midnight, probably, listening to my presentation. (Next slide please.)

I'm going to start off by talking a little bit about permitting, because as you all know Alaska's economy is driven by natural resource development, which is driven by permitting. And the Governor has made it really clear that state agencies are to look for ways to improve our permitting system to make it more timely, predictable and efficient. And over the last two-and-a-half years we've been working pretty hard on that and we've developed a strategy. The five parts are listed here. We're supposed to look at our internal permitting mechanisms, we're supposed to enhance our coordination, we're looking for input from the public, and we're anticipating permitting burdens from new activities, such as shale oil. But the point that I want to talk to you about today is the strategy of improving our collaboration with the federal agencies, because as you all probably know, we can improve the state permitting system all we want, but in the end if there aren't corresponding improvements on the federal side, we really haven't accomplished much. The permitting process is very driven by the federal process. (Next slide.)

So I'm going to start by talking a little bit about a very important development, one of the more important developments I think that could impact Alaska in the long term, and that is the passage of Senate Bill 27, which is a bill that was introduced by the Governor and successfully

passed, that puts us on a trajectory to evaluate the possibility of going for wetlands permitting primacy. This is really significant. You can't do anything in Alaska anywhere without getting a wetlands permit. This is entirely driven by the Federal Army Corps of Engineers right now and the U.S. Environmental Protection Agency. The Clean Water Act allows states to take primacy for that. We've already taken primacy for the 402 program, which is the Clean Water Discharge program. That's been a real success. We're looking to do the same for wetlands permitting.

The bill gives DNR and DEC the authority and the resources to start building a program and doing a cost benefit analysis. If this is to be successful, it will take the growth of government, it will take more staff, so we want to make sure that we're going to get the benefits, that they're worth those costs. We are currently hiring positions to undertake this endeavor. I would like to mention that the Senate Bill 27 isn't just about primacy. Primacy is one tool that states can use to get more control over wetlands permitting. And there are a number of other tools, such as regional general permits, and so this initiative will look at all those different tools. So even if someday we decide not to go for primacy in wetlands, we still hopefully will put together other tools. The end game, though, is to get more control over a permitting process that is probably one of the most important processes in Alaska right now that drives our economy and is totally controlled by the federal government right now. I will say that we've been working very hard with the federal agencies on this. They've been very cooperative and enthusiastic about our quest and I really, I hope that this will work out for the better for Alaska.

I won't talk very long about the Bristol Bay Watershed Assessment, because I think there might be a presentation later in the Summit about this, but this is just very quickly an initiative by the Environmental Protection Agency, has been petitioned to consider preemptively banning all wetlands permits in the Bristol Bay Watershed. And this affects eight million acres of state land, our land, a comparable amount of private Native corporation land. And the bottom line is that this initiative right here could very well result in additional federal regulation of our land, plain and simple. I see it coming. There will be a push for that. It may not be a total ban, but there will be some extra federal burden of regulation on our lands out of this, so we need to watch this one very carefully. It's still in the mill and has a ways to go.

A real positive development, last session we also passed a bill to allow Alaska to become a full member of the Interstate Mining Compact Commission. My thanks to all the legislators here that all fought successfully for this, and in particular Senator Giessel, who introduced this legislation. And as the Attorney General said, Alaska is not really the only state in the nation that's experiencing federal overreach and issues with the federal government. The Interstate Mining Compact Commission is a compact of all the mining states in the nation and we go to their meetings. They're all experiencing the same, an escalation of federal overreach, federal push-back, and so it is happening everywhere. I will speed up here. I know we're behind schedule here.

Senator Coghill - Crack the whip.

Deputy Commissioner Fogels - Yeah, cracking the whip. A couple of issues that IMCC is helping us with, this CERCLA 108(b) issue, the EPA is looking at potentially taking over financial assurance or bonding for hard rock mining in the nation. We're pushing back hard on this; all the states are. Mining is only the first sector that the EPA is looking at. It's also looking at oil and gas development, the energy sector, chemical manufacturing, all the industrial sectors. So this is one to watch that we're very engaged in.

The Federal Office of Surface Mining is starting to do some things that are starting to get

our attention in a not so positive manner. They are challenging a permit that we issued 20 years ago to Usibelli for its Wishbone Hill Mine. They're saying that 15 years ago we forgot to check a little technical box in the permitting process and because of that their permit was invalid 15 years ago, and we don't believe that's reasonable at all. We can't be giving companies permits for 15 years and telling them that they have a valid permit and letting them make investment decisions based on a valid permit. The issue here is actually greater in other states. There are other mines in the nation that have a similar situation. These mines now have hundreds of workers working, so there's a big push to solve this one and the IMCC is helping on that.

ANILCA issues; I think you'll be hearing a lot about the broader ANILCA issues a little bit later, and some of which I think Randy and the Attorney General already mentioned. I'd just like to highlight that a big issue for us is how we are viewed as cooperating agencies in these Environmental Impact Statements. We've always tried to be aggressive cooperators, and the key to a successful permitting process with the federal agencies is the state being a successful aggressive cooperating agency and that has worked really well. I've been involved in many projects where it's worked really well and we've had a profound impact on the time line and the outcome of the EIS. Lately, we're starting to get shuffled off into a corner where we're not getting the same amount of interaction with these federal EISs.

In general, ANILCA issues, we have an ANILCA shop at DNR that's working hard to bird dog all the activities of the federal government to make sure that appropriate respect is paid for the special provisions of ANILCA, and we're seeing some push back on that. And I don't need to tell a lot of you about some of the details about the no-more clause abuses and all the other issues that we've been seeing. But a key thing here that we're wishing for in the federal government is more training for ANILCA for the new federal employees coming into Alaska, to educate them that a national park in Alaska is not exactly managed the same as a national park somewhere in the Lower 48.

Here's just a list of all the major federal land plans that have either been executed or are in the process of being done right now, as has been talked about before, so a lot of work for DNR and other state agencies to monitor those. A lot of other issues that the federal agencies are pushing right now, the Rapid Eco Regional Assessments and the Landscape Conservation Cooperatives. A lot of those are merely data gathering research coordination initiatives, but they all kind of talk about eco system base management, which some of us tend to think of as code for, we want you to manage your land the way we manage our lands, so definitely watching this.

And I think I'll close by pointing out that this is the week of the Arctic here right now, and the Institute of the North has a big list of sessions all week about the Arctic. The Arctic is the next thing that the federal government is attempting to build something for. President Obama just released his National Arctic Strategy. The Department of Interior just released their integrated Arctic Management Report to the President. They want to build what they call Integrated Arctic Management for the Arctic, which is Alaska, so they're building it right now. We're having discussions with them. We're trying to find out what it's going to actually look like. We're pleading with them not to pop more regulations on us. We don't need that. We need to take the existing structures. We need to use Alaska's expertise, because we have Arctic expertise. They don't in D.C., we do, and we're trying to tell them that. So watch out for this. Wednesday at the Consortium Library the Institute of the North is holding an all-day session on Integrated Arctic Management and federal agencies will be there to explain what they think Integrated Arctic Management will be, including Representatives from the White House, so that will be a key session to attend. So I guess with that I will turn it back over to the moderator. Thank you very much.

Senator Coghill - Thank you very much. Thank you. Gentlemen, thank you very much. From the state's perspective, thank you very much. I'm going to ask that we give these all a big hand, please. Thank you very much. Dick Mylius, if you would come on up. Probably the thing I would hope to talk to the state about on all three of the last panelists was, come on up, Dick, the ability to comment on these various different plans. The fact that Alaska has an interest, doesn't mean it's counter to the national interest. And just because somebody has an interest that they call national, it could be a specialized interest, so I think it's important for us to make those comments and that's why I was kind of setting that up.

And thank you very much for taking the time to come be with us. You have got a long history in Alaska. He's going to give us a little bit of the historical perspective of land ownership in Alaska. Certainly, the feds bought it from Russia. The state was able to secure a Statehood Act. You're going to get to hear a little bit of that. The Natives have got their own title issues. We're a national, we're an international, and we're a local state, and we've got all of those things to deal with. Dick, thank you very much for taking the time to be with us.

9:15 a.m. History and Background – Alaska Statehood Act, ANCSA and ANILCA

Dick Mylius, History of Land Ownership in Alaska - Thank you, Senator. Is there a way I can control the PowerPoint, or you have to do it? Okay. First of all, I want to thank you and thank Representative Keller and Senator Coghill for the invitation to be here and thank you to the Commission. I worked at the Department of Natural Resources for 29 years and I started out as a land use planner and worked into land selections, worked on land exchanges. I led a National Forest Lands selection project; I worked with Governor Hickel's office on finalizing the state's land selections in the early '90s. I then moved on to being the Deputy Director and eventually Director of the Division of Mining, Land and Water, and I retired in 2010. My academic background is in both land planning and geography, so I'm going to be showing a lot of maps and acreage figures and all those kind of things that geographers really like.

My PowerPoint has a lot of kind of detailed information and I'm not going to go point by point through it, but basically what I'm trying to cover is kind of the history of how all this evolved, focusing on some of the federal laws that you're going to be hearing a lot about over the next two days. So my presentation is kind of a background to a lot of what the rest of the two-day session is going to be about. You can move on here. And my purpose is to provide background regarding state and Native lands, to provide information on land entitlements and land status, and I've actually got a few recommendations to throw in at the end.

Basically, I was trying to sum up why Alaska is kind of unique and why this whole land stuff is important. And I think there's kind of three reasons why Alaska is very unique, in terms of its land relationship with the federal government. The first one is just the amount of federal land in Alaska. Alaska has more federal land, in terms of acres, than any other state in the country. We have one of the highest percentages; 60% of Alaska is owned by the federal government. Only Nevada, Utah and Idaho have a higher percentage. A large percentage of Alaska's federal land is in Conservation System Units. And the Alaska National Interest Lands Act, which set aside a lot of those conservation units, has some really unique provisions that you're going to hear more about this morning.

Also, the state has a unique relationship with the federal government partly because of the Native Claims Settlement Act, which resolved Native land claims. And ANCSA is very different, dealt with the Native land claims very different than land claims were dealt with in the Lower 48, or in many cases weren't even dealt with, and that's partly because Alaska has a

vibrant Native culture, vibrant communities, and also because ANSCA created lands that were not reservation or trust lands, so the relationship between Native lands and the federal government is very different in Alaska than Native lands in the other states.

And finally, moving on here, the state's relationship is unique because there's a huge acreage of state land. Alaska actually has more land than all other 49 states combined. It had by far the largest land grant from the federal government; it is very unique in that sense. And the point here that other western states only receive trust lands, Alaska did receive some trust lands, but most of the land grants are not trust lands, which means that they're not for a specific revenue generating purpose. It's up to the state to figure out how to use those lands, so Alaska's lands are very unique.

Alaska got to pick its lands, as the Attorney General mentioned. Alaska did not get in-place grants, it did not get specific sections, it got to pick and choose what land it wanted. It had 25 plus 10 years, the reason why I said 25 plus 10 was the Statehood Act was 25 years, but ANILCA actually gave the state 10 more years. And at the bottom of the screen, an important point that kind of fell off the screen, is that Alaska deals with federal agencies not just as, well, one of the unique roles Alaska has in relationships with federal agencies is that because Alaska owns so much land, Alaska has to deal as an owner state with the federal agencies as a regulator of state lands, which is a unique provision or a unique feature of Alaska land that really doesn't apply to other states. Like other states don't have large potential mining projects, they don't have huge amounts of, with the exception of Texas, really, the states don't own large oil and gas resources. So Alaska is very unique because it's dealing with the federal government as a regulator of its state lands, which most other states don't have to deal with, and that creates some of the problems.

I'm going to talk about state land history, from Native use all the way up to the Alaska Lands Act. (Moving on.) The current land ownership in Alaska, you'll see figures different, because there are still land transfers occurring in Alaska, so at any given time the state receives land from the federal government, the state gives land to municipalities, the state sells land. So the current land ownership of the state is about 100 million acres, ANCSA, the Native Corporation is about 46 million acres. And you'll see figures that originally when ANCSA passed they said 44 million acres, but there's been adjustments through land exchanges and stuff, so under ANCSA it's going to be closer to 46-plus million acres. And then the federal land ownership there.

The bottom line, the 5 million acres of municipal and private, a lot of people, especially when I worked at DNR, would always say, well, the state needs more private land. Well, if you figure that Native land is private land, as well as the land that already is in private ownership, there's actually a fairly high percentage on a per capita basis, in terms of land ownership. One of the deceptive things about Alaska is because it's so big and has so few people, that when you start looking at some of these figures, like how much land is in private ownership, it looks really small in terms of percentage, but in terms of when you adjust it as a per acre figure, Alaska actually comes out as one of the highest private ownership per capita. (Moving on here.)

What I'm going to do is kind of explain how these maps evolved. You'll see there's a map in the back there, and you'll often see these maps with land ownership. But the federal lands generally on this map and other maps are kind of the green areas, where there are various parks and wildlife refuges and national forest. The blue areas are state lands. You can see they're scattered throughout the map. (Moving on again here.)

Municipal lands don't show up very well, because they're a lot of small little chunks of land at this scale. Native Corporation lands on this map show up as pink, they're scattered around, and I'll explain how that came to be. (Moving on here.)

Some examples of some of these lands, the state, for example, has set aside some of its land as state parks. Chugach State Park is state land, Mount Alyeska. A lot of people don't know that when they go skiing, they're actually skiing on state lands on a lease that was actually land transferred from the Forest Service to the state. Obviously, Prudhoe Bay is state land. A municipal land, Municipality of Anchorage, most of it is park land that actually came from the federal government to the state to the Municipality of Anchorage, and that's true of Fairbanks. And all municipalities when they form get an entitlement from the state, which is for their, to control community development, so I think the largest municipal entitlement to a borough was the Ma-Su Borough got, I think it was 200-and-some-odd thousand acres of land from the state. (Moving on.)

Before 1867, before the United States purchased Alaska from Russia, basically all of Alaska was Native owned lands, or Native claimed lands, but the Native people of Alaska didn't have the western concept of private land ownership, or even land ownership in general. They had kind of territorial areas, the land was kind of commonly owned. And when the Russians came here, the Russians didn't really try to settle Alaska. The Russians' purpose in Alaska was largely to extract natural resources. So settlement by Russians was largely limited to places like Sitka and Kodiak and places like that. You'll actually still find land deeds in those communities from the Russian era, but for the most part the Russians were not trying to colonize or settle Alaska. So there wasn't a lot of land essentially transferred to private ownership under the Russian era.

So in 1867 when the Treaty of Cession was signed, basically the United States purchased Alaska from Russia. It was negotiated by Secretary of State Seward, which I always have to put a pitch in, because he's from, I'm originally from upstate New York, as is Secretary Seward who's from Auburn, New York. And anybody who has seen the movie, Lincoln, knows that Seward was famous for his involvement with the whole Lincoln administration and the Civil War and stuff. But he was actually part of an assassination plot when Lincoln was killed, but fortunately Seward survived that plot. He was actually stabbed, but he went on to negotiate the purchase of Alaska from Russia.

So in 1867 the federal government said, it's all ours, it's all federal land. And Governor Hickel made sure that we actually had a copy of the check to prove it. I think when the Soviet Union dissolved, there were some questions about whether or not the U.S. Government had actually paid Russia for Alaska, so Governor Hickel made sure that we had a copy of the cancelled check to prove that in fact the federal government had purchased Alaska.

So anyhow, there was a lot of stuff going on, or actually initially there wasn't much going on at all. Alaska was referred to as Seward's Icebox, Seward's Folly, I think people have heard that. But there was a lot of interest, fairly early after Alaska was acquired by the United States, in the minerals in Alaska. And if you look on this chart here, most of these events are related to mining, because it was kind of mining that first brought settlers from the Lower 48 up to Alaska. Perhaps the biggest one was actually the Klondike Gold Rush, which actually wasn't in Alaska or in the United States, but it was just over the border of Alaska. The gateway to the Klondike was through Alaska through Skagway, and most of the people that went up to Skagway for the Skagway Gold Rush got there and all the areas were claimed. So they kind of scattered out

down the Yukon River and found gold in places like Fairbanks and Nome and various other places. In 1900 Kennecott, the copper deposit there was discovered. Alaska was open to homesteading in 1903, and the Native Allotment Act was passed in 1906. (Moving on.)

The federal government did some significant land actions, the Attorney General referred to these, but these are some of the pre-statehood withdrawals that the federal government established prior to statehood, and these have implications for some of the things you're going to be hearing about later on today, including navigable waters, they affected what lands the state got. But some of the oldest withdrawals were Chugach and Tongass National Forests, two of the first national forests back in 1907. In 1917 Mt. McKinley was established as a national park. Looking a little further down the list you'll see 1923 the Naval Petroleum Reserve was set aside in 1923 for oil and gas, or to protect potential oil and gas resources. And there were a few Indian reservations established in Alaska, similar to the Indian reservations in the Lower 48, and these come into play under ANCSA, because the terms of ANCSA allowed those Indian reservations to choose whether or not to go with the normal provisions of ANCSA, or some unique provisions that applied only to reservations. (Moving on.)

So the significance of these pre-statehood withdrawals are that those lands were largely off limits to the state filing land selections at statehood. The one exception I put in there was that with the Chugach and Tongass, the State was allowed to select 400,000 acres. And I'll talk a little bit more about that, because that's real significant in terms of the timber industry today, or the lack thereof a timber industry in Southeast. And the pre-statehood withdrawals often affected what ANCSA corporations could select, but generally closed those lands to public land laws, like staking mining claims, with the exception of the National Forest.

These two bottom ones are really important and you'll hear a lot more about these when Scott Ogan talks this afternoon. But the pre-statehood withdrawals may have defeated the state's title to navigable waters and those areas were withdrawn at that time for many new RS 2477 claims. So like in the Chugach and Tongass, on that last point, back in 1907 essentially the Chugach and Tongass were no longer open to claims under, I mean, you could file a claim that predated the withdrawal, but any sort of new roads or anything established after 1907 in the Chugach or Tongass, you couldn't file under RS 2477. (Moving on here.)

This whole idea of giving lands to the state is nothing new. It actually comes from Thomas Jefferson and it comes from the Land Survey System. Ohio was the very first state to get a land grant from the federal government. It received one section out of the 36 sections in a township, and its purpose was for generating revenues for schools. That was a trust grant, so that was the only purpose they could use it for, although there's a lot of questions about how some of those earlier states actually dealt with those land grants. But some states would use those lands for schools, sometimes they'd sell them to generate revenues for schools, sometimes they'd say to a teacher, we'll give you 160 acres for your family to farm if you come out here and teach in our school. So Ohio was the first state to get a land grant in 1806. When California became a state in 1853, they said, we're drier, we've got a lot of mountains and stuff, so unlike Ohio, which is flat and fertile, so we should get more land, so California argued that they should get two out of every 36. The southwest states, Arizona, Nevada, Utah, when they came in they successfully argued for 4 sections, but all those grants were given for a specific purpose and they were all trust lands. (So moving on here.)

Alaska actually got some of those trust lands. These were grants that were granted to the territory prior to statehood. School Trust, you see 104,000 acres, University 111,000 acres, and Mental Health a million acres. These are all trust lands, but they were granted to the state.

Those were confirmed in the Statehood Act. (Moving on.)

So as the Attorney General mentioned, some of the big issues at statehood debate were, there was a lot of federal spending in Alaska, Alaska was very dependent on the military, most of the public services were provided by the federal government. So Congress was really concerned about how is Alaska going to support itself, what's its economy going to be. And the advocates to statehood said, give us a large amount of land so we can develop the resources, we can encourage the settlement and growth of our state.

And so in 1959 when the Alaska Statehood Act passed, move on here, Alaska was granted a very large entitlement of 103,350,000 acres, and it came in two parts. Section 6(a) was the Community Grant from both the National Forests and BLM. The significance of the National Forests one was that at the time of statehood, the Tongass was, the long-term timber contracts had been entered into, there was concern that a large amount of state selections taken out of the Tongass would affect the timber industry, so the state was limited in the Chugach and Tongass to only selecting lands for community development and community recreation and it was limited to 400,000 acres. So that's why if you look on those maps of Alaska, you don't see a lot of blue dots around Southeast Alaska, because the state was limited as to what it could select. And its purpose could not be specifically for like timber harvest or mineral development, it had to be suitable for community development and recreation. And that whole issue was litigated, the state more or less lost in that lawsuit, and so that's kind of how the state got what it has out of Chugach and Tongass. The large land grant was from all the BLM lands. Section 6(m) of the Statehood Act confirmed that the Submerged Lands Act applied to Alaska, and section 4 of the Statehood Act acknowledges that there were unresolved Native land rights in Alaska. Moving on.

So all total, the amount of state land, you'll see a lot of different figures about how much land the state actually owns, because as I said at the beginning, there's land still coming from the federal government, the state has land going out, there is territorial land grants, there's statehood land grants, there's been adjustments to those, like the Cook Inlet Land Exchange resulted in the state actually getting an increase to its entitlement of I think almost half a million acres. So the total amount of land the state will have received at statehood is about 105 million acres of land, statehood and territorial. Of that, 100 million acres is transferred to date, 64 million acres of that is patented, and 36 million acres is tentatively approved, which means the state owns it but it isn't surveyed. That's actually one of the issues and one of my recommendations at the end as something to still be concerned about. Most of it is not trust land, and revenue from that state land has supported state government since 1979 and we've paid no income tax, no sales tax, no property taxes to state government. It's largely because of those land grants and how they've been managed. And the Permit Fund was created through that as well.

As I mentioned, 105 million acres, 100 million acres transferred. The University, School and Mental Health have largely been fulfilled. The Mental Health has a close-out agreement with the BLM as to what their final lands will be. The School Trust was closed out by the state about ten years ago, and the University still has a few hundred acres of selections that it actually can file, but it has no time frame as to when it can file those. It can file them 50 years from now, but it actually is constrained because it has to file lands that are surveyed already.

The remaining 5 million acres, sometimes people are saying, well, the state needs to get the rest of its land. Well, when I worked at DNR, and I confirmed this is still the policies that will echo, is that the state actually doesn't want to rush to complete its land entitlement at this point, because there's about 2 million acres of lands that the state can't get now that are

withdrawn administratively, but someday the state could get the most significant one, is the pipeline corridor up to the North Slope. That alone is almost 2 million acres. The state also can hold onto acreage to eventually get things like Fort Richardson, if it's ever surplused, you know, 50 years from now. In fact, the state, when the municipality got its landfill out of Fort Richardson, it was actually under the provisions of getting a withdrawal revoked for that small chunk of land, so the state wants to hold onto acreage for that. A million acres is set aside for inholdings. There's a lot of federal mining claims that were excluded from transfers to the state. Slowly, some of those or a lot of those are actually kind of coming over to state ownership, because of the difficulties of mining under federal law, but there's close to a million acres of inholdings, largely mining claims. And then there's about 2 million acres of good ANCSA lands, ANCSA selected lands that the ANCSA corporations probably aren't going to get, because they haven't, they don't get their final acreage until everything is surveyed, which again gets to my survey issue later on.

As I mentioned, section 6(m) of the Submerged Lands Act was applied to the state, but the state actually got a large other chunk of real estate at statehood, 60 to 65 million acres, and that's land in three categories. Its lands that the state refers to under state law as shore lands, land under inland navigable waters, and these were acquired under what's called the equal footing doctrine. The equal footing doctrine is that every state that enters the Union comes in under the same terms and conditions as the original 13 Colonies when they formed the Union. And one of their agreements was that the states would own the lands under navigable waters that weren't previously conveyed, or somehow withdrawn at the time that they became states, and that includes lands within federal Conservation System Units established after statehood. And that's an important distinction, because any like national park, like Yukon Charlie, which was established after statehood, the state clearly owns the navigable waters within that, and there's been an issue related to that, which you'll hear more about from, I think John Sturgeon is talking this afternoon on that very issue.

The tidelands, which are the lands under tidal influence, were acquired by the state at statehood. These are the lands basically, they're the lands between high tide and low tide. And then finally, going on to the third one, submerged lands are the lands out to the three mile territorial limit, which in Alaska is huge, because Alaska has more coastline than any other state. The coastline goes all the way from Southeast through the Gulf of Alaska, Bering Sea, Arctic Ocean and stuff, so the state owns out to the three mile territorial limit on those areas. The exception noted there at the bottom is lands withdrawn at statehood may have defeated the state's title to those navigable waters or submerged lands. There's three significant court cases that I'm only going to really briefly cover; Utah Lake, the Arctic Refuge or Dinkum Sands, and then Glacier Bay. (Moving on here.)

So what are the states owned navigable waters? There's no list of what they were. They were acquired at statehood, there's no doubt about that, although the federal government often, some of the federal agencies try to sometimes say, well, you don't own them until you prove you own them, but the fact is that the state actually owns them at statehood, but there are disagreements. The state has always asserted that if we think it's navigable, we're going to assert our management of it, but that does sometimes come into conflict with the federal agencies. And the way you determine it, the federal courts are kind of the final arbiter of the navigable waters issues. Like I said, the state asserts and manages waterways that it thinks it owns. You may have to go to federal court to prove that, but there's also a process called Recordable Disclaimers of Interest, which the state has used for navigable waters. Again, Scott is going to talk a little bit more about that this afternoon.

In terms of the pre-statehood withdrawals, basically the first point there is what the Utah Lake decision was all about. It's a fairly recent decision, 1987. Utah Lake, which is the lake that Provo, Utah is on, the second largest lake in the State of Utah. Utah argued successfully that it was a navigable water body, but Congress or the federal government said, well, you don't own it because it was withdrawn at statehood. And the Supreme Court established a two-prong test, basically, that said that those pre-statehood withdrawals must show an intent to defeat a future state's title and that it must specifically include the navigable waters. There's been two, to resolve these things, in some unique instances, and the Attorney General could describe these far more articulately than I could, but under certain circumstances the state can go directly to the U.S. Supreme Court to ask them to decide these decisions. And State of Alaska has gone to the U.S. Supreme Court twice to address these pre-statehood withdrawals.

The first one we referred to is Dinkum Sands. Dinkum Sands is this tiny little, well, the state argued it was an island, but unfortunately Dinkum Sands was only an island like for a few hours out of the year, like at the very lowest of low tides. And so the state argued that Dinkum Sands was state owned, and it's more than three miles off shore, so if the state owned it, it would own a three-mile donut ring. Well, Dinkum Sands happens to be right offshore of Prudhoe Bay and there were literally billions of dollars worth of oil and gas under that three-mile donut ring. And so the state went to the Supreme Court, but they said, well, if we're going to go all the way to the Supreme Court, we're not going to just talk about Dinkum Sands, we're also going to talk about some of these other pre-statehood withdrawals on the North Slope. And that was expanded to address the offshore waters in the National Petroleum Reserve and the Arctic National Wildlife Refuge. And actually the Supreme Court ruled against the state on all three of those and said those pre-statehood withdrawals in NPRA and ANWR defeated the state's title and Dinkum Sands was not state land.

And then the state again went to the Supreme Court on the issue of Glacier Bay. Glacier Bay was a pre-statehood withdrawal, as I mentioned. Again, the Supreme Court ruled against the state on ownership of Glacier Bay. However, that case was expanded to include all the marine waters of the Tongass National Forest, and in that case, before it actually got decided by the Supreme Court, the state and the federal government agreed that the state did in fact own the marine waters of the Tongass National Forest, so that was a big win really for the state, although it didn't actually have to go to the Supreme Court. The Supreme Court confirmed that.

There's also been cases involving the Chugach National Forest rivers. Those were administrative decisions and the state is currently in a dispute over the Stikine River with BLM and the Forest Service, and that's through that Recordable Disclaimer process. (Moving along here.)

So all totaled, what the state owns is 165 million acres of land. That's a huge amount of land. It's equal to the entire States of California, Oregon and Washington combined. It makes Alaska the second largest land owner in the country. And so that's why you can see that the state as a landowner, it's going to have a lot of dealings with the federal government, because the state owns so much land. (Moving along here.)

I know this is throwing a lot of stuff out here kind of quickly. I won't actually read through the State Constitution, because everybody in this room should have read the State Constitution. But if you haven't, read Article 8 of the State Constitution. I'm told Alaska is the only state that has a full article of its constitution dedicated to natural resources, and that's recognizing how important the natural resources are to Alaska and to Alaska's economy. Some of the provisions of the Statehood Act are the things that have set up conflicts with the federal

government, because there are things in the Statehood Act particularly that conflict with ANILCA, when it comes to particularly Fish and Game rights, and you'll hear more about that later on. But there's also conflicts in terms of some of the issues about public access on navigable waters, some from issues related to the State Constitution and conflicts with federal laws and federal management. (Moving on here.) So I kind of highlighted some of the key provisions of Article 8 in these two slides here, but we'll move on.

So I'm going to go into a little bit of the history of the state. We became a state in 1959, and I'm going to talk a little bit about the state land selection process and how that kind of interacted with the federal government and other various land interests. And so in the 1960s the state decided it had 25 years to file its selections, we're going to be kind of conservative, we don't know how we're going to staff up to manage all these lands. So the state kind of limited its selections to largely survey areas and populated areas. So the state, for example, there was a big chunk of land that was surveyed out by McCarthy, so that was one of the first kind of remote selections, and now it's a big inholding in the National Park. The State selected a lot of land on the Kenai, Mat-Su, and Tanana Valley. And some smart geologist at the State Division of Geological Survey said, there's a bunch of really potentially good looking oil seeps between what's now the NPRA and the Arctic Refuge, and we should select some land there at Prudhoe Bay. And it's a good thing they did that, because it's possible that land could have been eventually withdrawn if the state had waited on that selection. (Moving on here.)

But towards the mid sixties, the state started to file more remote lands. Kind of the more controversial one was lands in the Minto area. And the Native people said, hey, wait a minute, the State of Alaska has been around for five years, we've been here for thousands of years, we have some rights to this land, we're going to, we don't agree that the state has the right to select the land near our village. And so a Native group started to file a whole bunch of land selections, or land claims. They didn't have any rights to file land selections, but they filed land claims. In 1966 the Secretary of Interior said, I'm going to freeze conveyances to the state until we settle this. In 1968 oil was discovered at Prudhoe Bay. The only way to get the oil from Prudhoe Bay to tide water was through a pipeline to Valdez. That entire corridor was claimed under these various Native land claims, so you can't build a pipeline if you don't know who owns the land. And so basically it was kind of the discovery of oil at Prudhoe Bay that kind of triggered Congress to eventually act on the Native claim settlements. And then in 1969 the land freeze that was put in place in 1966 was actually institutionalized through a land withdrawal, which essentially terminated the ability to file, or not to file, but to establish new RS 2477 claims in Alaska. So kind of RS 2477 was later repealed, but 1969 is really when it kind of stopped being, you couldn't establish any new claims under the law after that.

In 1971, the Native Claims Settlement Act passed, established 224 village corporations, the 12 regional corporations and one corporation for out of Alaska Natives. Unique provisions of ANCSA provided land near villages, the lands that people traditionally used for hunting and fishing, unlike in the Lower 48 where Native people were largely pushed to kind of the lands that were off and far away, maybe in entirely different states from where they had lived and they were the lands nobody else wanted. It provided economic opportunities, it provided that the land would be wholly owned by Natives, another unique provision in the Lower 48. Reservations are trust lands, they're owned by the federal government in trust for Natives. In Alaska there's no trust relationship on the Native corporation lands, they're essentially private lands, although it's somewhat restricted in terms of who can own those; well, it's restricted to Native shareholders. And then there was additional monetary compensation for lands that the Natives didn't get under the Native Claims Settlement Act. And again, about 46 million acres went to ANCSA. (Move along here.)

So there are two provisions of ANCSA that you'll hear more about today. They are sections 17(d)(1) and section 17(d)(2) of ANCSA. Section 17(d)(1) has actually become more of a current issue today, because it allowed the Secretary to withdraw land for Native selections and for further study and classification. Most of these withdrawals are still in place, and what they affect primarily are application of public land laws, particularly mining claims. So lands that were withdrawn under section 17(d)(1) of ANCSA back in the '70s are still withdrawn and you can't file federal mining claims on those lands. They affect millions of acres of land.

In 2004, as part of the Alaska Accelerated Lands Act, there was a provision that said that the Secretary will study and make a recommendation to Congress as to how to deal with these withdrawals. The report in 2006 said that they should be dealt with through BLM's land use plans. BLM has adopted four land use plans which recommend revoking a lot of those (d)(1) withdrawals. They were signed by the head of BLM, but the Secretary of the Interior has not followed through on those recommendations to revoke those withdrawals, so that's kind of a contemporary issue. Section 17(d)(2) of ANCSA is what created the Alaska National Interest Lands Conservation Act. Basically, it allowed the Secretary to withdraw lands for study for future National Interest Lands. It passed in 1971. It was essentially settled in 1980 and during that time there was a huge amount of discussions about what lands would become parks and refuges. (Moving on here.)

So the (d)(2) lands, some examples of the kind of disputes that were fought about in the '70s, the Wrangell Mountains, a very highly mineralized area. That's where the Kennecott copper deposit was. The issue there was, should it be a national park and wilderness, or should it be open to mining. Timber production in Southeast was a big issue, what area should be wilderness, what area should be available for timber harvest. The one issue that got not resolved in ANILCA, oil and gas development in the Arctic Refuge. There were arguments about which lands the state should own, was a big part of it. One of the examples of where the state won out on that provision was in the Iliamna Lake area. There were proposals to create a National Wildlife Range, which is something nobody quite knew what it was, but it was kind of like a refuge that would have been managed by Fish and Wildlife Service. It would have included, for example, the Pebble area, and that did not pass in the (d)(2) legislation and that land went to the state. (Moving on here, next slide.)

And I just threw this one in; in 1976 the Federal Land Policy Management Act passed, FLPMA. The most significant things about that was that the current planning process that BLM uses was established by that Act, and it repealed RS 2477, although like I said, in Alaska that really had essentially been terminated by the 1969 withdrawals.

So in 1980 Congress finally resolved the (d)(2) lands issue by passing the Alaska National Interest Lands Conservation Act, ANILCA. You'll hear a lot more about it. It created and expanded the parks and refuges, created about 104 million acres of new Conservation System Units in Alaska. So after the Act passed, close to 37% of Alaska was in some sort of federally restricted conservation status. It established a lot of new wilderness areas and established procedures for public access. You'll hear more about that later on here. (Moving on.)

Title IX of ANILCA had specific provisions that were important to the State of Alaska that I kind of highlighted in red. It doesn't show up really well, but the first one in red there is that there was a whole list of millions of acres of land, I think there was about 7 million acres of land that were referred to in appendices, but that ANILCA, where Congress said we're going to

prove these 7 million acres of land selections, that included, for example, the Iliamna Lake area. And then there was about 5 million acres that Congress said you're not going to get, and that included most of those lands that they said you're not going to get that were mineralized. I see Steve Borell there and I'm sure he's going to talk about that; because I think probably the one industry that was most impacted negatively by what the state didn't get was the mining industry.

And then the next red thing was another issue that's actually become kind of contemporary. The state was allowed to file 'topfile' selections and, actually, it's the bottom red one there, is the one that's a current issue. There's a provision that allows for state concurrence on actions on state selected land. And for years the BLM has basically said that if somebody wants to do something on state selected land, we'll approve it if the state says it's okay. Well, recently one of the, somebody that wanted to do some mining exploration on state selected land, BLM said, no, you can't do that, so BLM is like suddenly somebody in Washington kind of changed the policy and said, we're not even going to ask the state. The state actually said, yeah, its okay, but the BLM said, no, you can't do that. And so that's an example of kind of a provision of ANILCA that's kind of being ignored by the BLM, or they're threatening to ignore it, anyhow. (Moving on.)

In the 1990s a couple other things happened, in terms of land stuff. The Tongass Timber Reform Act affected ANILCA. I think you'll hear more about that later today. But it basically repealed the provision that required the Forest Service to offer a certain amount of timber out of the Tongass. 1993 was the deadline, 35 years after statehood, the deadline for filing state land selections, so the state can no longer file land selections. That clock has run out. There's a lot of overlap between the remaining state and Native selections and BLM has to go through to adjudicate and survey those. The rules are very clear, but it really won't be resolved till the final surveys are in place. There was a goal to complete the land transfers by 2009. (Moving on.) And BLM largely did that. They met 95% of their goals, I think it wasn't till about 2010, but they did for awhile get increased funding, but the recent federal budget proposals have been to reduce that funding for surveys. And I'll talk about that a little bit more here in a second. (Moving on.)

So the outstanding land obligations, as of 2013, 5 million acres to the state, about 21 million acres of state selections from which to take that from. There's a lot of conflicts. There's still about 42 million acres that need survey and patent. There's about 2 million acres more to go. The Native corporations and about 13 million acres that need to be patented to Native corporations; that needs to have surveys. There's also about 370 Native allotment parcels that are unresolved, which is way down from a few years ago the number was in the thousands. So BLM has actually done a real good job of kind of bringing entitlements a lot closer to closure.

So a couple things to keep in mind. Alaska is the owner state, as Governor Hickel always would say. We own 28% of Alaska, includes state parks, state refuges, land for settlement, development at Prudhoe Bay, Usibelli Coal Mine is on state land, Pebble Mine, or Pebble deposits on state land. We haven't had to pay any state taxes because of our land grants, and we've got \$46.2 billion in the Permanent Fund, which is basically revenues off of state land wisely invested.

So the three key acts to keep in mind in our discussions are the Statehood Act, Native Claims Settlement Act and ANILCA. (And then moving on here.) My three recommendations, since we're supposed to have some recommendations, are to advocate for continued funding for land surveys and patents. Like I said, the recent federal budget cuts have really targeted this particular aspect of the BLM budget, and my understanding is that BLM people in Washington,

or at least Interior people in Washington, have not been particularly supportive of funding of that effort. So I'm sure the BLM people in Alaska are, because they know how important that is to Alaskans, but when it gets back to the people in Washington there's a lot less concern about that.

And then the next thing that I put up there is to request the Secretary of Interior to implement those BLM plans to get rid of those (d)(1) withdrawals. I know this is real important to the mining industry. And it's also kind of, BLM went through these multi-year planning projects and issued final decisions on those and they just haven't followed through on their recommendations on those.

And finally, there's a need to educate state and federal agencies about promises of statehood and ANCSA and ANILCA. Some of this is kind of unabashed lobbying for one of the projects I've been working with for years. When I worked at DNR I used to give this kind of presentation to a training course that the Institute for the North does, working with the Department of Interior, that's targeted towards, well, there's actually two parts of it. One is targeted towards federal agencies and the other part is to the general public. But there's a need to kind of reinvigorate that effort. We just did actually a training class under Institutes of the North for Denali National Park staff. We had like 50 staff people from the park there and it was just really helpful to them, because one of the problems that federal agencies have up here is that they're all trained, like in the case of the National Park, in Yosemite or Yellowstone or Washington. And the rules for those parks are very different than the rules under ANILCA for Alaska parks, and that's true of the refuges and so on. And one of the key things is when, and federal agency people move around a lot, and one of the key things is for them to understand that there's different laws that apply in Alaska. The Institute for the North training is actually done in conjunction with what's called the Department of Interior University, I think it is. And so they recognize the need for that, but there's kind of a need for kind of improving the curriculum for that and kind of making sure that that continues, especially with federal budget cuts and such. So those are my three recommendations. And with that I'll thank you for the opportunity to speak here today, and I guess during the break you can catch me for questions.

Senator Coghill - Thank you. Thank you, Dick. It's a shame, from the Governor through to Dick Mylius, the need to push for time is very, very difficult for us. But as you can see, this could expand out to a very lengthy discussion, and it will be a lengthy discussion. This is actually a generational discussion, and so taken to heart those three recommendations. Thank you. We're going to take a break for ten minutes, and I mean ten minutes.

10:00 a.m. Break

10:10 a.m.

Senator Coghill - In the back there are some of these green cards. They're comment cards for the Federal Overreach Summit. They're actually lined so you can actually write on the lined paper. So at the very back at the table there's these Federal Overreach comments. Also on the table are the 2013 ANILCA Seminar schedules, so I think, as previously noted by Dick Mylius, that the ANILCA Seminar, for those who are going to want to study further, that's a good course. At the risk of being rude and being a task master, I'd ask if you could leave the coffee pot and come forward, please. I guess a politician always is risky being rude, but as a moderator I'd appreciate your attention. Also, there is on the information table a Citizens' Advisory Commission fact sheet that has the Commissioners listed on the back and some issues that this Commission has dealt with, and those will be there as we dismiss for lunch, as well. My apologies for having to be tough on the time schedule, but there is, this is one of those things where time is not our best friend.

The issues are highly important. We're going to have Don Mitchell, Sally Gibert and Ron Somerville speak to us. You are going to get a very intense education for the next little bit, and I wanted to give them as much opportunity as possible to give their perspectives. Don Mitchell has been a historical figure here in Alaska, dealing with Alaska Native Claims Settlement Act, has a deep and rich history, has written a couple of books, and so trying to give him just a short time I think is interesting and it's going to be tough.

Ron Somerville, I've worked shoulder to shoulder with, and he will give you some of the perspective on the compromises and agreements and some of those issues that were talked about with the late Ted Stevens, Senator Stevens, and all the various different players, and he can be excused for being passionate. I can assure you that he will bring some of that passion.

Sally is the only one that I have not had the chance and the privilege of spending time with. Sally Gibert is going to talk about some of the key provisions in ANILCA. And part of our purpose here is to educate, remind ourselves, educate the next generation, look for ways that we can make it better. So at the risk of taking anymore of their time, I'm going to bring Don Mitchell forward so that he can give you his perspective. Don, thank you for coming forward. If you want to fill out any of the important information that I'm leaving out on introduction, please feel free to do that. That's true with all three of you, please. Thank you. Don.

Don Mitchell, Alaska Native Claims Settlement Act - Can everybody hear me okay? Okay, great. For the past several years I have been representing an ANCSA corporation in an ANCSA land dispute with the Bureau of Land Management, and my client has spent a fair amount of money assembling the facts associated with that dispute and paying me to figure out what the legal basis for the dispute is. And regardless of that effort to assemble the facts, or to explain to the agency our point of view, at the end of every single meeting basically what I and the people with me are told is that you people aren't listening to us, it's our way, or the highway. So I am not unsympathetic to the theme of your conference this morning.

However, having said that, I have been mistreated over the years that have morphed into decades just as badly with the same amount of arrogance by the Alaska Department of Fish and Game, by DNR, and certainly by the Alaska Department of Commerce when they had their hand around the throat of the CDQ Fishing Program. So I don't think there is anything about the federal bureaucracy and the people, many of whom are friends of mine and I'm sure are friends of many of you, I don't think there's anything about them that in and of themselves is the problem. And there is something in the nature of all bureaucracies to overreach and that just goes with the turf.

Now the problem, in my view, is much more serious, and that is that as any first-year law student who has taken a class in administrative law will tell you, because it's right there in his or her book, one of the first things you learn is that an executive branch agency has only that authority that has been delegated to that agency by Congress in the text of the statute, and there I would suggest to you is the rub. There is a federal judge down in California whose name is Robert Kelleher, and he just died last year at age 99, and he wrote a decision back in 1978 and I keep it pasted over my computer screen at home to remind me about this situation that I'm going to describe to you. And let me very briefly read the portion that's over my computer screen. Judge Kelleher said, quote: The message is as clear as it is repugnant. Under our so-called federal system, the Congress is constitutionally empowered to launch programs, the scope, impact, consequences and workability of which are largely unknown, at least to the Congress, at the time of enactment. That's the problem.

Now, for the, thinking about it, I will divide some of Alaska's entanglements with the Congress into three categories, and then the third one is the most serious and the one I want to actually spend some time on. But the first category is the inevitability of the law of unintended consequences. Now, for those of you that know your Alaska history, you'll know that Alaska's first Senators were Bob Bartlett and Ernest Gruening, who were hardly tree-hugging, center, left, natural resource Sierra Clubbers. Senator Gruening, some of you will recall, had this great idea he was going to dam the entire Yukon River. He thought that would have been a great Alaska natural resource development project. And Senator Bartlett screwed up the deal, there's been talk about ANWR here this morning, but as near as I can figure out there was a deal on ANWR prior to statehood that was similar to (d)(2) in the Alaska Native Claims Settlement Act, and after statehood there was a bill to statutorily create ANWR that went through the U.S. House of Representatives without any controversy. And it got to the United States Senate and Senator Bartlett was the Chairman of the subcommittee that was in charge of it, and he did everything he possibly could for a year-and-a-half to kill it. And it was only after that happened that after the 1960 election that Fred Seaton, the Secretary of the Interior, by unilateral administrative order, created the Arctic National Wildlife Range, because a deal was a deal and Bob Bartlett welched on it.

Well, why do I mention that? Because in 1964 Congress passed the Wilderness Act. If you go to the Congressional record and you look at the vote on the Wilderness Act, guess who voted for it? Bob Bartlett and Ernest Gruening. Now, by 1977, when the 95th Congress started, Bob Bartlett and Ernest Gruening were in their graves, but if they had known in 1964 that in 1977 that the Interior Department and the environmental community were going to use the Wilderness Act to shellac Alaska with wilderness designations, Bob Bartlett and Ernest Gruening would roll in their grave. But they voted for this thing in 1964 without any thinking of the fact that if you're going to start down the wilderness road, what is the area of the United States that is obviously going to be most appropriate, depending upon your policy views, for wilderness classifications? You'll see nothing about that in the legislative history of the Wilderness Act.

Now, then there's also, so that's the law of unintended consequences. Then there's the, what on earth could they have been thinking, category. You've heard about the Alaska Statehood Act. You can read the thing. The text says, the State of Alaska hereby is created and we give the state, we the Congress give the State of Alaska 103.5, or 105.3 million acres, and then in the very next section it says, however, the state cannot select any of this land from any land that is being occupied by Indians, Eskimos and Aleuts. Well, since you know that all of the land in Alaska is being occupied by Indians, Eskimos and Aleuts, how on earth can the State of Alaska exercise its land selection rights? Complete idiocy. And that's, luckily for the Alaska Native community, my former clients, that that stupidity was codified in the Statehood Act, because contrary to what you heard from the previous speaker, the real drive for finally settling Native land claims was not the pipeline, it was the fact that every time the State of Alaska filed a land selection application, by that point there were people helping the Alaska Native community to get politically organized and they were stopping the Interior Department from processing those selections. That was the problem, not, the pipeline came along later.

Then we have my last, what could they have been thinking, which was the National Environmental Policy Act, NEPA. Now, all of you know how that works. Congress has said that before a federal agency can make a decision about something, it has to do an environmental assessment, and after it conducts that assessment, if it determines that the action may significantly adversely affect the environment, it's got to do a full-blown environmental impact

statement. All you've got to do is read the thing. President Nixon signed NEPA into law early in January of 1970. That was a bill that Scoop Jackson, who's already been referred to today, and his attorney Bill Van Ness, who some of you in this room know, cooked up to begin with. Do you know who the other co-sponsor on the NEPA bill was, other than Scoop Jackson? Any guess? Anybody know? Bill Horn might know. Do you know? No. The only other co-sponsor of Scoop Jackson's NEPA Bill was Theodore Fulton Stevens.

Now, Congress, and President Nixon signs NEPA in January, early January of '70. A month later Wally Hickel, who has been sent to the Interior Department by Robert O. Anderson from Atlantic Richfield specifically to get the pipeline built, makes the decision to issue the pipeline right-of-way. And do you know how long his environmental impact statement was? Eight pages, eight pages. So what a surprise that a month later the Wilderness Society and Friends of the Earth should file a lawsuit saying that that decision of Secretary Hickel is invalid, because he has not complied with NEPA. That goes in front of a very, very conservative Republican judge named George Hart in the District of Columbia. And George Hart, while he might be a very conservative, politically conservative fellow, he looks at NEPA and he goes, they didn't follow the statute. Can't they read? He issues an injunction against the pipeline. The Trans Alaska Pipeline was hung up until 1973 when Mike Gravel, who had succeeded Ernest Gruening, had the courage, over Ted Stevens' protestation, to bring up the Pipeline Authorization Act onto the floor of the Senate, and Ted was adamantly opposed to it. And Mike says, I've done the vote count, we have the votes, and Mike counted it right. It was a tie vote and Spiro Agnew came in and broke the tie by one vote. The Trans Alaska Pipeline went forward. But that entire mess was totally avoidable if they had spent any time thinking about NEPA at the time that the statute was passed.

Now, that gets me to the third category, which is the one that's most relevant today, and that is that there is a game in which I and many other people in this room have been a part for many years, that, and the system just has to work this way. The judiciary depends, the judiciary has to assume that the United States Congress, whatever that is, 535 voting members, intend every single word in every single law to mean what it says. And then the courts have come up with another rule, which they invented in a famous U.S. Supreme Court decision called *Chevron USA v. Natural Resources Defense Council*, I think back in the early '80s, in which they pretend that if when you read Congress's statute, when you read the words, that if those words are ambiguous with respect to what you're trying to figure out, that Congress must have intended to delegate to the executive branch agency that is charged with implementing that statute, the authority to figure out what on earth Congress meant. And anything the agency thinks up, so long as it passes the red face test, is what Congress must have intended. That is your problem with federal overreach, and here is the problem.

First of all, as everybody in this room who has spent time east of the Potomac knows, the people with election certificates, from Ernest Gruening and Bob Bartlett in 1964 with the Wilderness Act, to Mark Begich and Lisa Murkowski today, the guys and the women with the election certificates, they do not write the text of bills, they do not read the text of bills. Who writes the text of bills? Staff people and lobbyists like me, that's who writes the bills. But the minute those bills become law, all of a sudden the system says, oh, that's what Congress intended. Congress doesn't know which side of the earth the sun rose in the morning, much less what is in this 85-page bill, but suddenly that is what the agency has to work with.

Now, I'll give you two war stories that you may find of interest, in terms of how this works, but that are both Native Claim Settlement Act related, and the first is easements. Out of the blue, in the middle of ANCSA, on the Senate bill that became the Native Claims Settlement

Act, that was then blended in a secret meeting into the final text of the act, there was this thing called 17(b), which delegated to the Land Use Planning Commission and the Secretary of the Interior, the authority to identify and reserve public easements across ANCSA land in order to guarantee international treaty obligations, a full right of public access for transportation, utilities and docks, and this is where we get to the heart of the matter, and such other public uses as the Planning Commission determines to be important. In other words, Congress says to the Land Use Planning Commission, come up with any kind of easements you want. Does Congress say anything about how wide these easements should be, what kind, can you use ATVs, or snowmachines on these easements, or are they only for foot trails? There's none of that.

So the Bureau of Land Management hated ANCSA. They got rolled by John Ehrlichman, President Nixon's domestic policy advisor, in a famous meeting where he had the Secretary of the Interior, who had succeeded Wally Hickel, Rogers Morton, and he basically lied to Morton and said that Nixon had personally decided that he wanted a 40 million acre settlement for Alaska Natives. I later interviewed John Ehrlichman before his death and he told me that was a flat out lie; he was just sick of dealing with Morton, so he told him that he'd already spoken with the President. Well, as soon as the laws passed the BLM, who hated the law, is implementing what I just told you. So what do they do? They immediately come up with an agency interpretation that they could shellac all ANCSA land selections in Alaska with a continuous shoreline easement letting the public go anywhere they want on ANCSA land. Well, if the public has the rights to run around on your house lot in Anchorage, is it really your house lot, just because you have the legal title, if the public can use it? Well, ANCSA corporations probably spent half a million dollars in the late 1970s litigating that and they finally got that one turned around.

Now, the second one that I'll give you, which is another good example, is that out of the House ANCSA bill, the House ANCSA bill was written by a guy named Lou Ziegler, who was no great, he was the chief Indian guy on the House Interior Committee and he was no great friend of Indians. And he was an old Interior Department guy who had lots of friends in the bureaucracy down there, in the BLM bureaucracy. So in the middle of section 13 of the House bill, which became section 13 of ANCSA, everybody knew that these ANCSA land selections had not been surveyed, so there's a section, section 13 that deals with the survey. Well, like magic what appears is a sentence that says, after telling the BLM to go survey these selections, it says, quote: No ground survey or monumentations shall be required along meanderable water bodies, close quote. Now, unless you're an aficionado of BLM survey, you wouldn't know what I just told you. But in all surveys what the rules are is that if you're surveying a section of land, if there is a lake that is 50 acres or larger, you run a survey line around it, and if there is a river or stream you run a survey line down the border of that river stream, if it's three chains or more wide, which I believe is a little less than 200 feet.

Why is that the rule? Because the presumption is that those water bodies are large enough that they don't belong to the federal government, but as we heard earlier from the last speaker, that those water bodies would be navigable, which meant that in Alaska's case, when Alaska entered the union, they got legal title to those water bodies. Well, if they had legal title to the water body at statehood, then the Interior Department doesn't own that land in order to give it to ANCSA corporation X. Nevertheless, by not running meander lines, the BLM could convey all that land to ANCSA corporation X and deduct from the amount of land that it was entitled to all the land under those rivers and lakes, even though the BLM knew that they didn't own it. That cost ANCSA corporations tens, or not tens of millions, I'm overstating it, millions of acres of land.

I started when I was General Counsel of AFN working with people to try and fix that. We tried to fix it in ANILCA. My, and I don't want to claim total credit for all this, but the patch we collectively put together didn't work. We finally got it fixed in the late '80s. We had to legislate over the top of the sentence. Again, this took whatever it was, 15 years, untold thousands of dollars. I probably went to Washington, D.C. probably ten times in five years just on that issue. And these are just two issues that I just happened to be thinking of as I was walking down here today. There are hundreds of these things and this has been going on forever.

And has anybody seen House of Cards, the TV series that was on Netflix? You can now get it on DVD, with Kevin Spacey. Nobody? Wow, one person. Well, you can, it's on DVD now at Blockbuster. I very much encourage you. Kevin Spacey is great. He plays the Majority Leader of the U.S. House of Representatives and in a melodramatic way it's a pretty authentic representation of what I know about Capitol Hill culture. And the reason I mention it is that there's a part of the movie where Kevin Spacey goes into the Oval Office and he and the President agree that they're going to have a big education bill, sort of like Obama health care. It's going to be the big signature of the President's agenda. And so how does that come about? Kevin Spacey walks into a room and there are like eight 30-year-olds. And he says, the President just decided he wanted to have an education bill, and I've asked around and you eight 30-year-olds, I've been told, are the smartest kids on the hill that know about education. So your job is to sit here, you're not leaving this room, I'll call in as many pizza pies as you need, and you don't walk out of this room until you have the President's education bill. That goes on in House of Cards. And a week later he comes back to see how they're doing and there's all these, you know, stale pizza and beer and all this stuff, and all these kids are just completely dilapidated, but they've got a 500-page education bill, which suddenly becomes what the United States Congress intended every single one of its words.

Now, I will leave you with one of my favorite new developments in this area, and that is of the many things that I have become an agnostic about, an increasingly long list, one of them is the fate of the Pebble Mine. John Shively is an old and good friend of mine, and Senator Halford who's sitting somewhere in the back, is an old and dear friend of mine, and they can both go with God, I don't care what happens to either one of them. But it's interesting to watch all that play out.

Now, you heard one of the previous speakers talk about that the Pebble Mine, whatever should happen to it, is all out there on state land and there is only one hook the federal government has to stick its nose into the fate of the Pebble Mine, and that is section 404(c) of the Clean Water Act. Now, Senator Halford doesn't count and Bill Horne doesn't count. Has anybody other than Rick and Bill actually read section 404(c), anybody in the room? Okay, well, one, two, so we got five people, right, and Deputy Commissioner Fogels would have read, sorry. Well, here's what it says, that the administrator of EPA can basically shut it down and here's the legal test; if he or she finds an unacceptable adverse effect on water supply, shellfish, fishery areas, wildlife or recreational areas.

So let me do that again. The legal standard that Congress has given to the administrator of EPA to decide whether a multi-billion dollar economic development project is or is not going to go forward on totally state land is, quote: An unacceptable adverse effect, close quote. Unacceptable to whom, to Don Mitchell, to the staff of the administrator of EPA, to Rick Halford? Unacceptability is, if you're a lawyer, in the eye of the beholder. What does adverse mean? Unacceptably adverse. So it can be adverse on something. I mean, to be adverse it's got to be adverse to something, to a duck or a fish or something, but even though it can be adverse, it just can't be unacceptably adverse. A multi-billion dollar economic development decision is

hanging on that legal standard. Where did this legal standard come from? Out of the sky in the 1972 or '76 amendments to the Clean Water Act. Some staff person, I didn't investigate it, but it wouldn't have surprised me if Ted Stevens and Mike Gravel had both voted for those amendments, for all I know.

So what can be done about all this? Frankly, nothing, but that doesn't mean that you shouldn't try. And one of the things that you need to do is to impress upon your congressional delegation that this stuff is not a joke, these things have consequences, and that they and their staffs need to do a much more attentive job, even in the imperfect system that I have described to you, in terms of understanding that these words have consequences. And just like the Wilderness Act, I know Ron Somerville is going to come up here and rant about all the evil things that I and my friends did with Title VIII of ANILCA here in a second. And back to my observation that the members have no idea what's going on, not all of it, but the actual words in Title VIII of ANILCA, most of that was written by me and a guy named Stan Sloss, who was Mo Udall's attorney.

And I never took in law school, I passed up a chance to take a class in legislative drafting, because I thought, A., it was boring, and B., I'd never be doing anything like that so why waste my time. And I think it is a fascinating intellectual exercise to attempt to correctly do what I have described to you at the staff and lobbying level. And without going, I'm over my time here so I'll get off the podium, but we tried as hard as we could to think through how to describe the regulatory reality we wanted those words to encompass. And setting aside the Alaska Supreme Court running off the rails, we screwed up in at least three areas. And if I could do it over, which I can't, that statute could be vastly improved based upon what we now know 30 years after the fact. We did the best we could at the time, and the best we could at the time in two or three basic areas is inadequate, in my professional view.

And then the last one, and then I really will get out of here, is that you may have been following that the Interior Department just turned down Governor Parnell in his efforts to try and get new high tech seismic data on the coastal plain of ANWR. And that was done based on the Interior Department's somewhat strained, but not totally irrational, reading of the text of what's called section 1002 of ANILCA, which is the section that laid out this Rube Goldberg, if there's anybody who remembers who Rube Goldberg is around here, scheme that was going to lead to opening ANWR.

The only problem with this scheme, it was actually quite ingenious, was the principle conniver who invented this was Scoop Jackson again. And the one thing he didn't figure out, and maybe Bill Horn can talk about this tomorrow, because it was on his watch, that Scoop didn't have it cross his mind that he was going to drop dead in the middle of it. If Scoop Jackson had lived another 24, 36 months, I think ANWR would have opened under the 1002 process. That's impossible to prove, but I believe that is what would have happened. But the Interior Department legal analysis that turned down Governor Parnell says, well, we don't have any authority in section 1002, again, in the statute that was typed up, not by Scoop Jackson. Typed up by whom, by a guy named Mike Harvey, principally, who was Scoop Jackson's lawyer at the time, was a great guy, now deceased. And I was around at the time, Bill was around at the time, and the Interior Department is right.

I followed that on the margin. I don't think, everybody assumed that there was going to be this period of data collection and then Congress was going to make this decision, and Scoop knew what the decision was, because he was the guy that set all this in motion, and that was going to be that. Mike Harvey never drafted, never typed up that statute for the potentiality that

30 years later we would be in the fact pattern we now are and there would be all these new technological abilities to get better information. That was never considered in the drafting. So with that, as I said, about the only thing I can think of is to try and impress upon the people that represent you in the Congress of the need to pay much closer attention to these matters, than at least in my professional experience I've watched them do over the past 30 years. So thanks a lot.

Senator Coghill - For those of us coming up in the next generation, first of all, as a policymaker I will watch those words and certainly encourage that. I'm going to bring up Sally Gibert at this point. Sally, it says you're retired, but you're still here. Thank you. And some of the key provisions of ANILCA are the things that Sally, Sally, if you could just give us a little brief, some of the things that you did. She had a long time interest in this, and so if you could at least share that a little bit, without me having to spend your time. Thank you, you just weave it in. Thank you.

Sally Gibert, Key ANILCA Provisions - Thank you. So I've got my watch here.

Senator Coghill - I'll keep track of you.

Sally Gibert - Okay. Yeah, but I've got to keep track of myself, too, because I can easily go, okay. My name is Sally Gibert. I first came to Alaska in '73, moved here in '74, worked for the Joint Federal-State Land Use Planning Commission, which was set up by ANCSA to work on pre-ANILCA issues. Right off the bat I was immersed in this stuff before the Act was passed. Somewhere in there I got captivated with McCarthy, Alaska out in the Wrangells and went out there and bought some property, was living out there full time year-round from 1980 to '83, something like that, a couple, two, three years. And so I got a glimpse of some of the academic interests, too. I got the real world stuff going on, like with the snowmachines and with the new park, and like what's all this new stuff. And came back and I worked for the Department of Natural Resources for awhile in planning. Then in '84, I got the job that I retired from after 27 years as the State's ANILCA Implementation Program Coordinator, essentially. So I coordinated the state's involvement, was kind of a liaison between the state and the feds on ANILCA. I did that, that's all I did, that's it, all federal all the time from the state.

I am retired and so it is kind of cool to have the opportunity to just talk as myself, which I don't like to do very often. And so I share a lot of the perspectives of the state. I have a lot of empathy and I share a lot of the conservation objectives by the federal agencies. I have a lot of empathy for problems in rural Alaska, the people that are sort of suffering the consequences of all this bureaucratic war. And so that's kind of where I'm coming from today, I guess. And I'm going to give you a little bit of context about ANILCA. I'm just going to touch on just the tip of the iceberg on just a couple of ANILCA provisions, if nothing more to illustrate the complexity of this law. And while I really appreciate Don's comments about how, the meaning of the law, where it came from and how that can kind of be kind of dicey, and especially when you're trying to implement it afterwards, and especially years afterwards, not easy.

So as you know, ANILCA was spawned out of ANCSA, the Native Claims Settlement Act, because the Statehood Act was, the state was out there selecting land, and the Natives are out there selecting land, and so the feds realized that, okay, well, if we want to have anything that's meaningful, we need section 17(d)(2), so they sort of put a claim on their own sort of selection with 17(d)(2). The original intent of that was to be up to 80 million acres. As you know, it ended up being more than that. And there was a lot at stake. It was highly controversial. The bumper stickers during that time of the day were pretty colorful. One of my sort of repeatable ones was, we don't give a damn how they do it outside, which was kind of like,

we don't care about how you manage in the Lower 48, but things are different up here. And so that was kind of a mantra for many people.

The environmental constituency in the Lower 48 was very strong. There was an unprecedented formation of this thing called the Alaska Coalition, which was just this machine of networked small and medium and big environmental organizations all over the world, from like garden clubs on up, I mean, it was just, it was an amazing lobbying machine. And there were some very dedicated conservationists here in Alaska that met regularly to feed, propose boundaries and ideas and language and policy ideas back to D.C. where all the action was. So there was a small but very dedicated environmental constituency that was very plugged in at that point, but the lion's share of the wow factor was coming from the national environmental factor.

There were some very involved statewide economic interests, everything from industry to nonprofits, lobbying efforts to try and moderate this conservation tidal wave, which could be seen coming. They worked hard and spent a lot of time in D.C. trying to keep important especially mining areas, as Dick was saying, out of some of the key units. And then there were local residents and inholders and these people were, for the most part, off the grid, out of the loop, had no clue, were afraid, could see stuff was happening, didn't know what it was, and were very disempowered and very concerned about their future economic, cultural, you name it. The rural Alaska Natives, the subset of that, they had their own concerns, concerns about cultural practices and continuation of subsistence, but many of them also had some sympathy with the conservation perspective to assist them with preservation of sort of long-term subsistence opportunities, so there was kind of some mixed bags there.

The Native corporations were kind of another interest altogether, more in line with some of the development perspectives, given their mandate to make money for their shareholders. The State of Alaska was a big player, invested a lot of effort and time and staff resources into being in D.C. and lobbying and setting up an office in Washington. I mentioned the Joint Federal-State Land Use Planning Commission back here in Alaska, which I worked for, which was kind of like a little think tank, sort of trying to spit back analysis. The deliberations were pretty intense. Most of the bills, there were many, many bills introduced over the years throughout the mid to late '70s. Most of the bills were 50 to 80 million acres in scale, sort of like that, up to 80 million acres kind of intent.

HR 39 was introduced in 1977, which was the, as Don referred to as the shellacking bill, they would have shellacked, and that was a true game changer. That bill, had it passed, would have instantly designated 145 million acres of wilderness in Alaska and it would have been unbelievable. But because it was such a game changer, all of a sudden the whole acreage debate about up to 80 million acres, and so now the debate was over, the momentum was toward larger acreage.

In the meantime, Governor Hammond was advocating for co-mans, or cooperative management areas, kind of a unique completely reinvented system of true dual federal-state management, and that did not gain traction for a variety of reasons. And so with the acreage, going for large acreage is what was going to be happening, so from sort of the negative side of the ANILCA debate was sort of like, okay, well, if we're going to have huge acreage, we've got to have some accommodations for the uses that are going on in and around and next to these areas. So that's where all of the Alaska so-called exceptions came from, that if you're going to have huge acreage, you've got to have huge exceptions, because you're basically absorbing entire communities in these areas. I mean, like the Yukon Delta, while the National Wildlife Refuge has like some 30 or 40 communities completely within the boundaries of the unit, so you can't

run that as a traditional postage stamp refuge, like you would in the Lower 48.

Part of the, this slide here, which I'm just going to talk about briefly, even though it's going to hang out here the whole time, before ANILCA passed Governor Hammond and the Legislature worked on what were called consensus points. They were largely consensus points. The environmental community didn't necessarily subscribe to them, but most everybody else did. And these were, it was sort of the, and the delegation was attempting to vote for a bill that would try and accomplish these things. And some of these things are like you can check the box, yeah, but the rest of them are a work in progress and kind of by definition probably always will be.

The revocation of 1978 Monuments and Executive Wthat was basically the Antiquities Act. Those were in fact revoked; they went away and were replaced by the new legislation. Full land entitlements to the State and Natives, pretty much checked off. I mean, those conveyances are still happening, but the intent was solid. Access across federal lands to state and private lands, definitely a work in progress and I'll get to that. State management of fish and game on all lands, another work in progress that's getting to be more work and we'll get back to that. Conservation boundaries exclude economically important natural areas, that was, once the bill was passed, okay, that was a done deal. Winners, losers, there's definitely some areas that were involved that were inside units that, opportunities now lost, and there were some areas that did survive and were left out. Continue traditional land uses on all lands, another big work in progress, always will be. Preclude administrative expansion of conservation system units, the no-more clauses, and I will talk about that also.

With this legislation, which is sometimes referred to as the great compromise, was essentially, it was unprecedented size, unprecedented, and with similar unprecedented provisions for uses that you wouldn't normally have in the Lower 48. So with that, there was a lot of agency discretion. Again, I really appreciated Don Mitchell's comment about that, that you've got this intent, but wow, there are so many tensions and ambiguities and tugs of war within ANILCA itself that it makes it very difficult to implement, even if you are trying not to create winners and losers; very unclear. It's a little like the Bible, everybody can find their piece that will prove that they're right.

So talking about the, so I'm going to start with the no-more clauses. And I'm not going to hit on all the ANILCA provisions; I'm not going to do that. You can take the Institute of the North ANILCA training if you want the full deal, October 29th and 30th. The first sort of part of the no-more clause is section 101(d) of ANILCA, which is basically just their intent, Congress's intent statement. And it basically says, in so many words, but it's very obtusely worded, but it basically says, hey, we've looked at this, we've balanced all this stuff, we think we've got it right, and we don't think that any more conservation system units or other conservation withdrawals are going to be necessary in Alaska. We've done it, we've done it all, this is huge, and we're done here. Okay. So there's no like reg that implements it. It's not like you can go back and arrest somebody if they don't follow that, it's just intent language, but it is intent language and it's pretty strong.

Section 1326(a), which is probably the first provision that you think of as the actual no-more clause, (a) is the one that basically prevents future Antiquities Act actions by an administration. It's fairly clearly worded and it would be pretty hard to get around it, I think. Section 1326(b) prohibits administrative studies for new CSUs, or wilderness areas, things like that, studies for the single purchase of such studies, and that for the single purpose is such a huge loophole that is driven through weekly by the federal agencies. It is sort of like not very meaningful, unfortunately. And then there are other provisions of ANILCA which are not,

they're not no-more clauses, or they're not prohibitions, but they were designed as one-time studies or one-shot deals that, like the most prominent example I like to think of is 1317 of ANILCA, which basically requires wilderness reviews on the undesignated National Parks and Wildlife Refuges in Alaska. So, I mean, there's a requirement to do more studies, and obviously there was recognition that there could be some fine tuning of additional recommendations within already existing units.

So even though there's a no-more clause, there's also a recognition that you could legitimately add new wilderness. But that was a one-time thing, it had deadlines, and it wasn't meant to be repeated every ten years, or whatever, so there's nobody, there's no law, there no language that says you can't ever do it again, it just shows it as a one-time deal. And so it's awkward when these things are still kind of cycling around, and there's particular awkwardness with 1317 because those deadlines were never fully completed, so that's messy.

So the no-more clause thing, it's more of a concept and a philosophy and an intent that I would hope that managers would understand that back when Congress did the whole Act, that it was really intended to be comprehensive and that there didn't need to be anymore big new areas that weren't affected by it.

So, let's see, I'm going to move on to some access stuff, which is up here. For access I'm just going to talk about three little provisions. 1110(a) is the, that's the access for traditional activities. It is not traditional access. That term is oftentimes thrown around. It doesn't say traditional access, it says access for traditional activities, completely different concept. There is very little implementation of this provision right now, interestingly enough. In terms of a definition of what that means, there's only two working definitions in the state, one is for the old part of Denali, the old Mt. McKinley National Park, which prior to ANILCA there was no motorized access allowed, so in the Park Service's view there was no reason for them to say it was traditional, because it was illegal. And not that it wasn't happening, but that's beside the point. But anyway, so there's a regulation that says for the old part of Denali, snowmachines in particular are not traditional and therefore not allowed, and it's a fairly restrictive definition of traditional.

On the other end of the spectrum, the Forest Service, not just in Southeast, in Alaska, the Forest Service has a broad policy that includes recreational activities in their understanding of what are traditional activities on the Chugach and Tongass. So they have a very open-ended broad, kind of embracing definition of what's traditional, and then the old part of Denali has a very narrow definition. No other CSUs have any definitions, nor are they even really necessary. There are times when they're going to be needed, but there isn't a mandate to have a definition and there isn't one. So you can imagine that over the years that's going to, I know that's going to be controversial and I've been kind of watching this piece of the statute for a long time and kind of wondering when that was going to become more active. And I don't know when it's going to happen, but it's going to happen.

The access to inholdings, 1110(b) and also 1323, which, well, 1110(b) is for the parks and refuges and a few other types of units, and 1323 is for BLM and Forest Service lands. But anyway, that's a real access guarantee. It's probably the strongest guarantee, in terms of an exception of any other provision of ANILCA, a very strong guarantee of access. But it is not a, but you don't get to write your own ticket, so you've got to work with the federal agency that you're, whose land you're crossing to get to your land, but they can't just say no. So the federal agencies can't say no and the land owners have to work with the landowner whose land they're crossing. And if they can't figure out how to, they can't get it together, it's going to have to go to

court. But those two principles have been pretty much established.

The Park Service did a, after sort of the Pilgrim Family fiasco, where everybody was behaving badly kind of on all sides, the Park Service kind of stepped up to the plate and invested a huge amount of time in developing this 'Inholder Access Guide', which resolved a lot of kind of the longstanding problems and injected some reasonableness into the situation. And it's working pretty well; it's not without flaws, nothing is, but it's actually working pretty well. And I know when I was working for the state I invested quite a bit of time on that on behalf of Governor Murkowski. That was a big thing for him.

The next provision I want to talk about is 811, that's the Subsistence Access Provision. And that's an interesting one, because it's open-ended in terms of what methods of access you could use, whereas 1110(a) is just snow machines, airplanes and motorboats. The Subsistence Access Provision can kind of include kind of anything that would be something that you could consider traditionally employed, which can obviously in Alaska include off-road vehicles. So that is another one that, unfortunately, the federal agencies for the most part early on were very afraid of ORVs, didn't want to allow ORVs, and so they kind of swept them under the rug and kind of pretended like they didn't exist, and there was very little, very few studies on what was, what kinds of uses were happening at the time at the passage of ANILCA, which is to me practically criminal, because now, if you're trying to look at a situation where you're saying, well, was this activity traditional, was it traditionally employed or not?

Well, we're a long way away from 1980 and there's less and less access to direct information, or interviewing people, there's not very much written documentation about this sort of thing. The only really thorough study was done for the Wrangells, for Wrangell-St. Elias, which is this big thick thing with maps, but except for that there's very little documentation. Denali did an area-specific, kind of a local area-specific study where they several years ago acknowledged finally some of the under-the-table, under-the-rug use that they knew was going on in ANILCA, they were trying to ignore. They finally acknowledged it, which then put, in light of 811, it essentially made it open until closed, so as soon as they acknowledged it, they had to do an emergency closure, otherwise the entire area would have been open to unrestricted ORV use, which would have been very environmentally damaging. And then they rapidly embarked on a process to work with the local residents and all stakeholders of interest to iron out a process, iron out a solution that would provide some offer of vehicles on designated trails, avoid areas of wetland activity, or where there were wetlands that were very sensitive, and to provide some access to get out in the countryside, to get the game that they were, the local residents of Cantwell in particular were looking to get to. And it was one of those solutions that nobody was happy with, completely happy with, but it kind of got the job done. But what for me was, I liked about it was the fact that it showed that it was possible for a federal agency to acknowledge ORV use and come out with an outcome that wasn't, where nobody was laying on the train tracks getting run over.

The next item I'm talking about is the transportation and utility system, part of Title XI, the so-called TUS sections of ANILCA. When ANILCA, when Congress was debating ANILCA, they were trying to figure out what's the best approach. Do you figure out where you want to have corridors and lock them in so that they're going to be there forever for you, or do you come up with a process where you figure out, okay, who needs it and where do you need to go, and work with a specific need? And there's a lot of pros and cons about both approaches. Obviously, if you lock them in, they're there, they're not going to go away, but like what if your corridor is over here and you need to go here, it's like, anyway, so it was, there's a lot of pros and cons about which approach to take, and for whatever reason Congress chose the process method.

And it's not an easy process, but it is a coordinated process and there are some pretty tight time frames for moving forward, and the important part is the federal agencies can't just blow you off.

And the first real opportunity to have tested that would have been the access to the Red Dog Mine in Northwest Alaska, but that was right after ANILCA passed and everybody had, NANA and the folks up there had good connections with D.C. and they thought, ah, we don't need to go through a process, we'll just go to Congress and get it fixed. So I think because they did that, and they just went and got their solution from Congress rather than going through a process, a perception was created, sort of what I consider to be kind of mythology. The mythology was kind of built up that, oh, it doesn't work, Title XI doesn't work. Well, actually, it does work, and there are dozens and dozens of small and medium-sized projects that have been approved under Title XI, certainly no big pipelines, but where would they come from? Some of the big projects maybe just haven't even been proposed yet. But it is a process that is viable. The most recent example is the GCI broadband internet project that has fiber-optic and tower sites on Lake Clark National Park, and Togiak National Wildlife Refuge, and even some of those wildlands at BLM. And they got that through in a timely manner, so just a little bit of myth busting. It's not an impossible project. It does work and it can work.

All of these access provisions come with regulations. The regulations for Department of Interior agencies have these really cool preambles which talk about the rationale for why these regs are the way they are. There's a lot of really good additional intent language in those things that is, if you're going to be working in this stuff, you really need to read those things. It's fascinating and very enlightening and it will bust a lot more myths about ANILCA access. Those regs do not apply to the Forest Service. The Department of Agriculture never did their own version of Title XI regs, so on your little cheat sheet of ideas for recommendations, maybe put on there, get Forest Service to get some Title XI regulations that emulate the Interior regs, since those were tested. They were sued by trustees for Alaska and Interior prevailed, and so they've been tested and they're solid, so I wouldn't want the Department of Ag to start over again.

The last item I'm going to talk about with, here we are, what are we doing, wilderness. I'm not going to say a lot about wilderness. I was going to say more, but I'm going to say less. The challenge with implementation of wilderness management in Alaska is that there's so much conflicting, I don't know if intent is the right word, language in the statute about you have to manage it according to the Wilderness Act, to protect wilderness character, it's just like the Lower 48, but there's all these exceptions for things like cabins and chainsaws and snowmachines and potentially ORVs for subsistence, or there's just fish hatcheries. I mean, there are a ton of exceptions in ANILCA that apply across the board to all Conservation System Units, which include wilderness. So on the one hand the agency has to sort of suffer all of these exceptions; on the other hand, they have to manage for wilderness character. And it's like, well, good luck with that. I don't want to be the manager that has to sort that out, so that's really, it's really hard.

And an example of one decision, which I think was usefully appreciated recently, was a Forest Service decision on the White Sulphur Springs cabin in southeast, I think it's in the Sitka ranger district, where there was a controversial result. It was a pre-ANILCA, pre-wilderness bathhouse associated with one of the public use cabins at White Sulphur Springs. It was a hot springs that has been very popular for decades. And it was falling apart and so the Forest Service did an EA to decide what to do with that, and the usual polarization, polarized views, like, oh, tear it down, it's in wilderness, no, build it back, it's traditional.

Anyway, the first decision was they were not going to rebuild it, and then they looked at

it again and decided that they were going to rebuild it. That is a good example of an exception for a use that is longstanding and really, in my opinion, not in conflict with the larger wilderness values of the area.

I was going to talk a little bit about ANILCA implementation. The first ten years of ANILCA there was an intense amount of work to like write regs and write policies and figure out what all this stuff meant. And a lot of that happened under the auspices of the Alaska Land Use Council, which was set up in Title XII, I mean, a whole Title on state-federal cooperation. When I started in '84, the council had already, they were already in gear and I kind of got on board with that and spent a lot of time through the council, especially with land use, getting land use plans for the Park Service and Fish and Wildlife Service through the council process. It was a really, really valuable process, because it forced the federal agencies, state agencies and representatives of the Native community to sit down and talk to each other and discuss things, and it was very valuable. Unfortunately, it got politicized, especially toward the end, which made it really difficult to get stuff done. But the staff committee, the underlying professional staff committee that was doing all the work, they were amazingly productive and amazingly immune to the politics, which was very helpful.

I'm going to jump to my own little recommendations. Require more ANILCA training, you've heard that before and I bet you'll hear it more. Understanding the law is the first step toward trying to implement it, and the more and more time that goes on, fewer and fewer people have firsthand information or experience with it, the harder it is to figure out what you're supposed to do with it. It's very difficult for people coming up from the Lower 48, without pretty serious training, for them to even begin to know where to start.

And fund federal participation in the curriculum development, I mean, right now the Institute of the North is kind of holding the bag with mostly retired state people like me trying to figure out how to keep the message going. And we need the feds with us and they can't afford the staff time, or they can't afford to give us money to work on the curriculum, so everybody is in favor of it in principle, but it would be good to have some, to give them resources to be a part of that curriculum development, because if you don't have federal input into it, then it's going to be marginalized.

Make training available to non-federal people; the public, the state, industry, Native groups, I mean, everybody that's involved with implementation needs the training, not just the feds.

Entice more Alaska youth to get into land management in Alaska. Alaskans need to grow up in the ranks, even if they work for the feds. I mean, if you get Alaskans working on land management issues that will help a lot in understanding what's going on. And kind of a corollary to that is, get those decisions out of D.C. as much as possible and bring them here where there's an understanding of the context and the real world. It's just very difficult for decisions to be made in D.C. I mean, obviously, we're not going to figure out what to do what ANWR here in Alaska, but I mean most of those decisions about Alaska land issues can and should be addressed here with Alaskans.

Revive the Land Use Council, or something like it. Forcing, for lack of a better words, the agencies to talk to each other is very, it's very useful and a lot can come of that, to try and get people out of their offices and talking to each other is really, it's key.

A little thing about wilderness, I think that wilderness recommendations should have

some kind of an expiration date. They're either administrative or in Congress. I understand the value of wilderness recommendations, but the way that the policies are set up, the agency policies are, once something is recommended they're going to manage it like it's designated, and if nothing happens then it's like an administrative designation, which I believe is inappropriate. So if there's a way to move that forward, it doesn't mean that you have to throw away wilderness values, but to minimize that sort of in perpetuity as designated management, I think that's got to be done.

And I'm going to have my notes on the website, so there's actually more in them than I have time to say. Litigate when it's important, but don't just shotgun the federal agencies with litigation. I think that's pointless, it's expensive. If you've got a real issue, find the right facts. I appreciated what the Attorney General said about looking for the right cases and the right facts. I mean, litigation is all about establishing case law and you don't want to lose, I mean you don't want to do more damage than good. Going to court is risky business for everyone and I would rather have federal and state employees hash out an issue here in Alaska at a table where you've got nuances and tradeoffs and side agreements and negotiations, than to throw it off to some judge in California or D.C. that doesn't have a clue. And especially having the state prevail in federal court is always particularly difficult, given the court's propensities to defer to the federal agencies on discretion. So sue when you have to, but be careful when you do that. And lastly, just sort of....

Senator Coghill - I know we're pushing.

Sally Gibert - ...and be respectful of the people that you're debating with; everybody is trying to do the best job they can. Everybody believes that they're, that what they're doing is in the public interest. I've worked with zillions of bureaucrats, federal state and otherwise, and everybody believes in what they're doing. And so to listen to them, understand where they're coming from, look at what parts of the law they're looking at and read it and think about it, figure out how you can make your part make sense with their part. Don't just, it's not all about me, I'm going to win, it's not going to work. There are too many tradeoffs and counter measures in ANILCA, you have to work together. And then don't, and if you get into a tangle with an agency or a person, don't assume that everything that that person at that agency does is bad and you're walking away. And you've got to stay at the table even when times get rough, and sometimes that's tough, but it's more effective than just writing hate letters back and forth. So anyway, thank you.

Senator Coghill - Thank you. As you can see, how do you take really a career and condense it down into 45 minutes. Thank you very much, Sally. Also, so I don't take up Mr. Somerville's time, he's sitting close to me, he can kick me if he wants to, so, but just to be fair, the 'PowerPoint' and the documentation that we're having here will be on the CACFA website. If you're a presenter and you haven't gotten them to us, we'll be on you. All right, Ron?

Ron Somerville, ANILCA Compromises and Agreements - Thank you, sir.

Senator Coghill - Just give a little brief history, too. I didn't....

Ron Somerville - Well, thank you, Senator, and also thanks to Representative Keller for putting the whole conference together. I've been on CACFA now for just over a year and I've learned a lot about the process and one of the people who really supported this process, and I'll try to explain why. A little bit about myself, my name is Ron Somerville. I grew up in Craig. My folks moved there when I was a year old and my dad decided to stay. He was a commercial fisherman, worked in a store there in Craig for many years. And I went away to school,

Humboldt, University of Montana. I worked for Fish and Game for 24 years, worked my way up from the first seasonal ever hired by the Department, to eventually becoming Deputy Commissioner, which I appreciated the opportunity. When I was Regional Supervisor here in Anchorage, I served as a department liaison with the Federal and State Land Use Planning Commission for quite a number of years. I also was the Department's representative on Jay Hammond's d(2) Task Force. And I think one of the first people, as Bill Horn has said, who walked into his little cubbyhole saying I was representing the Task Force. He didn't know there was a Task Force and he sure as hell didn't know who I was. But we had a good time and we've become good friends.

And in reference to Don, despite some of the things you may have heard, I consider him a friend, though we had some disagreements on some things, but we've also agreed on a lot of others. And I'm not here to bash all the things he did in Title VIII. I'm sure he's disappointed.

I was a Natural Resource consultant to the issue of both the state house and the senate, and you can imagine that was kind of interesting at times, and also to Governor Murkowski. By the way, a couple of things that have come up in this conversation is the road from Cold Bay to King Cove always has baffled me. There's virtually no impact on wildlife for that road. My recommendation to the Governor is just tell them we'll trade the oil and gas leases we're going to propose for the eelgrass beds, which belong to the state, in exchange for this nonimpact road. It might have some impact, anyway. But I want to talk about the unintended consequences of not just ANILCA, but I might deviate just slightly.

My dad was a very strong state's rights person. He believed in statehood. Primarily being from Southeast, you might imagine it's because fisheries was a big issue. And one of the big issues, of course, in statehood was the mention of our fisheries, so I inherited a little bit of that, a little DNA washed over. And interesting, my dad was a solid Republican and my mom was a solid Democrat, so I had all sorts of interesting discussions at the table.

I want to talk about where the state is in this federal-state relationship. And I want to be really clear, I'm not here to bash any federal employees. As one of my best friends once told me, when you pay somebody to paint your barn red, you generally get a red barn, and I think that applies. However, when I look at the whole list of things, some of which Sally and others will say here in this meeting, the state's not winning. I really respectfully disagree with some of what Sally says. We put a lot of effort in, and I respect her efforts, Tina Cunning's, trying to educate these people. But I look at what the impacts are, for instance in the Wilderness Act and how they're implementing it, in comparison to what they told us when they testified on ANILCA, there's just no comparison. And I'll give you a good example of that.

You know, when we talk about access to inholdings, I'm sure Bill when he was Undersecretary of Fish Wildlife and Parks, I called him about once a week, you've got to fix this, Bill. And a lot of things were just, they were asking for huge amounts of money for the most ridiculous things. If you have a cabin, well, we're going to charge you the rates which they charge for cabins in Los Angeles. Well, that doesn't make sense if some poor guy's got a trapping cabin. Anyway, what I wanted to talk about, though, is where we are. And I summarize it when I make talks to the Chamber of Commerce, or other things, and that is, I look at it and I say, I hate to be pessimistic, but this is a football game, it's 99 to nothing, and it's only halftime. And I feel strongly that's the case.

Let me give you a few examples. For instance, I want to focus on the Endangered Species Act, another one that Bill and I have had a lot of history with. It doesn't resemble, and it

kind of relates back to what Don was also saying, it doesn't resemble what Congress said when they passed the Act. You can look at the legislative history. It was not intended for the endangered species to be treated the same as the threatened species, but they are. Now, the courts have forced some of that, I agree, but the point is, why aren't we trying to fix it? Well, we've had a couple attempts. I was involved in one with Fish and Game working through the Western Association of Fish and Wildlife Agencies, the Western Governors Conference, the National Governors Conference. We actually produced the basis for a bill that would have improved the Act with gutting it. Representative Pombo came on the scene later and he wanted to gut the act. That didn't go over very far.

But the point is, a lot of states are having a problem with the Endangered Species Act. Why don't we try to fix it? Why do we just keep sitting here and taking it? And if it means we've got to spend some money on the best minds of how to do that, and the best lobbyists, which I would argue Don's one of them, we need to get some better people back helping our delegation to fix the Endangered Species Act, but we've got to work with the other states to do that. We need to have a more concerted effort on a wide scale of things in cooperating with the other states, and I'm sure mining and timber and a whole bunch of others fall in that category.

Navigable waters is another enigma to me. I look at it, and obviously when they passed all the acts that relate to submerged lands, they weren't thinking of Alaska. We have 20-some thousand rivers in Alaska that could qualify as navigable, upwards of a million lakes. Now tell me, and I have, again, great respect for Scott Ogan and people are trying like heck to get some of this done, Senator Halford for talking to the Secretary about getting Recordable Disclaimers of Interest, started all these things, but the point is, it's going so slow. It doesn't take a rocket scientist to decide that it's going to take thousands of years for us to resolve our navigable water entitlement from statehood. To me that's baffling. We also, but the feds are issuing permits for people to use state navigable water that may be adjacent to, or run through, or whatever these conservation units.

Now, when they leave the conservation unit there should be some argument, for crying out loud. They still don't require a federal permit, but in many cases the permits continue. Now, CACFA has spent a lot of time arguing over these sorts of activities by the feds, and unfortunately it still continues. The problem is, which Don alluded to, is that prior to 1983 the BLM, when they gave, went ahead and gave the title to land to the Native villages and corporations, unfortunately, they had erroneous determinations of navigability. Those are not going to be resolved. And federal intent is now to try to get this title resolved at some cutoff date, so to speak. When the state at some point decides to claim its title to those lands that were covered under those issued prior to 1983, guess what's going to happen? We're going to be fighting with the Native corporations over who owns the title to it, and they're not going to have the opportunity to select those lands again.

The other big one with navigable waters is the issues of the court cases we've had in Alaska, where the Quiet Title Act has been determined by the courts in some cases and the federal government, that the state can't quiet title if the federal government doesn't claim some interest in it. And what that means is, we're kind of in a catch-22. We can't claim title to it, we can't file quiet title action because the feds haven't claimed an interest. We need to have legislation, which we've proposed this before. I know the Legislature passed a resolution asking that the Quiet Title Act be addressed and that we force the federal government to either take a position or concede title to the state when the state wants to quiet its title, if that makes sense. If it doesn't, meet me afterwards and I'll try to explain it.

I do want to talk about Title VIII in this sense, and that's called dual management. What was the intent of ANILCA when it passed? I'm not arguing about what's in ANILCA, I'm just saying, what was the intent. It was supposed to apply to federal public lands. I think that's clear. I wanted to tell you, from my perspective working with Fish and Game for 24 years, that the mess we're in is not improving and it's getting worse, and I don't think it's the intent of the Native community, or the rural residents in general, to create this mess that we've got right now. A lot of it is because of the federal agencies. If you look at 1314(a), you'll see that Senator Stevens got a little something added into that section which says, a state would not be required to amend its constitution. Unfortunately, this is continuously overlooked. We talk about implementing ANILCA.

I also want to point out, and I've put all mine down in writing, I have some documents that I've attached as appendices. Bob LeResche, who was Commissioner of Natural Resources, and Ron Skoog, Commissioner of Fish and Game, asked the Attorney General's office to review some of the last sections that we received of HR 39, which essentially eventually became ANILCA. And we had three or four major things that came from the AG's office. One is, the waters and interests therein should be deleted from it, because it doesn't recognize the state's interest and ownership of its submerged lands. One of the other ones is we should be excluded, or something to clarify how NEPA applied to us. The third one was that the section that applied to rural resident requirement was probably unconstitutional under state law, the same reason as Governor Hammond rejected the Native priority, because we couldn't implement it under state law because of our constitution.

But my point here is, I personally delivered that letter from the AG's office to our delegation and we still have waters and interests therein in the bill, and we still have rural residents. The problem is, what has, since then we didn't clarify in the Bill what would apply to. My other point, though, as it relates to that, and I think the intent, at least from my talking to Senator Stevens all those many years of going back and forth, was that the intent was not to force the state to amend its constitution.

When I was on the Board of Game, Wayne Regelin, Dr. Regelin, was Deputy Commissioner of Fish and Game, he and I produced a white paper. And the idea of the white paper was, okay, we've got these two laws, state law on subsistence, the federal law on subsistence, but there are a lot of inconsistencies in the application of these two laws that are creating a phenomenal amount of problems for the people; not the bureaucrats, for the people. And so we met with a group, if you will, from mostly Interior Agriculture and a group from the state. Nothing much came out of that. We proposed a lot of different sort of things that would make the system simpler, would make it easier for the people who were trying to understand the conflicting regulations, but as a result nothing came out of that. And I think I can summarize it, which I did in my paper, was a comment by Drue Pearce, who was representing Interior, and she said towards the end, well, you must understand these regulations that we're adopting are meant to be as onerous as possible to force the state to adopt a constitutional amendment. And that's where essentially that cooperative effort failed.

We've already, you've heard something about wilderness management. I thought there were 13 exceptions, I kept saying that for years, and I went back through ANILCA and tried to round them all up and I came up with nine. Anyway, I remember in the hearings on wilderness, and the Forest Service in particular was very adamant that they recognized that Alaska was different. There are large wilderness areas that they're designating up here and that the climate's a little bit different than it is in South Bend or in Miami, and so they're going to have to do things a little bit differently. And they kept telling Senator Stevens in particular that. And a lot of it

related to, well, what are we going to allow? Now, Tony Motley, some of you probably remember him from the CMAL, and I was arguing aggressively with the Senator that we need to put everything in the Act. Now, Bill, I'm sure he remembers some of those conversations, we didn't trust the feds. But Senator Stevens and significant lobbying from the Forest Service, decided that we would identify some things, like airplanes. You can fly an airplane in the wilderness areas and nobody argues that, but there's all the other things that they told him in that committee that they were going to allow, just give them the discretion of some reasonable regulation. I'm sure you've heard that term before.

I want to give you an example. Territorial Sportsmen, which I'm a part of in Juneau, has for 30 years prior to the passage of ANILCA, had built, maintained, provided the transportation for, in other words, boats and outboards and stuff like that, for people who wanted to use these cabins within the Tongass National Forest, particularly on a couple of the islands near Juneau. Now, everything went fine. I mean, we went out there and we cut wood, we repaired the cabins, in fact sometimes we rebuilt the cabins, but we used chainsaws, we used generators, if you will, for power tools and things like this, and it was always allowed. Then when ANILCA passed, then we could fly in there and everything, that's all perfectly legal, and we could use generators and chainsaws and things like this, which made us being able to cover a larger area much quicker. Unfortunately, after 2003 the Forest Service decided, we want these areas to look a lot like the Bob Marshall Wilderness area in Montana.

Now, I think they have a school there, don't they, that teaches people what to look for in wilderness areas? Well, guess what they've done now? They don't allow us to use chainsaws. You've got to use a two-man bucking saw, which there's nobody in the Forest Service can file and sharpen a two-man bucking saw, to cut their wood. But now they require oil, because they can't cut enough wood, so they put oil stoves. And of course when people don't have oil when they go in there after their canoe flips over, they go in and they burn wood in the pot for that oil stove. And guess what that does to an oil stove? Anyway, this is the sort of thing, they're not going to change it. We've appealed it a number of times. For 20 years after ANILCA passed, the Territorial Sportsmen continued the service, cooperation with the Forest Service. After 50 years our club said, we have to stop this activity, because we can't afford, we don't have the manpower to send people in there with two-man bucking saws and all these hand tools to repair these cabins.

So what's happened from that now, which goes into another subject? What's happening is the Forest Service is trying to cut out all these, some of these remote cabins so they don't have to bother with them anymore, because they can't repair them. This is a vicious circle, and to me that's a classic example of what, they promised this on the record in front of the Senator and Congressman Young and Senator Gravel that they wouldn't do, but they're doing it. So the end result is, and wilderness management doesn't resemble anything of what they promised us, in my opinion.

The 'No-More' clause has already been mentioned. To me it's, and I also agree with Sally, that the agencies that I've worked with them on wilderness, they're keeping a lot of areas in quasi wilderness status until the stars align that they can get Congress to pass some more wilderness bills. I mean, that's what you're getting right now. Now, if we call that working, well, I've got a bridge to sell you back.

The remote cabin policy has also been a big one of mine that I worked with the state and federal agencies on. The remote cabin policy was not just something to take care of a few special interests. It's really important to a lot of people, particularly like trappers and subsistence

users in some of these remote areas. These areas that we're talking about are large, not just wilderness areas, but conservation units, so allowing people to maintain these cabins, again, the agencies promised that they would continue that, there wouldn't be any problem continuing with that policy. They continued to try to get rid of those cabins, charge exorbitant fees for those cabins, requirements and regulations for those cabins that are forcing people to give them up. To me, again, we're losing.

The access to inholdings, as people have pointed out in other documents, once again, although I agree with Don on the change that was made relative to river site access, one of the purposes of 17(b) and other access was to allow people to have access to their inholdings. They were guaranteed they'd have access to these inholdings, and we'd have access to public lands beyond Native lands, some reasonable access. Well, BLM decides they can vacate those 17(b) easements whenever they want to at some request of the Native Corporations. I don't begrudge the corporation for asking for it, I'm saying BLM should still try to look for some way to provide access into these areas that are now not accessible, because they gave up the 17(b) easement.

Now, regulations, if we think we're winning in the regulation field, boy, I don't know where I've been for the last 20 years. You look at CACFA's file on compendium regulation from the National Park Service, you know what those are? Those are regulations that are designed for emergency purposes, short-term in nature, that they can pass and they don't have to go through an elaborate public relations or public disclosure process, they don't have to file all these things that you'd normally have to file, as required by ANILCA if you filed a permanent regulation. Well, to avoid using ANILCA' process, guess what they do? They keep the compendium regulations on the book for years, so the people in the area, if you're from Naknek or someplace like that next to a national park, you don't get an opportunity to comment on this thing unless your internet is working at 4g capacity and you can download all the stuff that they're proposing. Again, it doesn't fit what they were promised in ANILCA.

National Preserves, this is a big one with me, because being with Fish and Game, when the parks were being proposed initially, some of them were huge. I mean, think of the areas we've got now for Denali, or Gates of the Arctic, some of these others, I mean, they were really very, very large. And Senator Stevens, I can't remember who was all there, but anyway in a discussion we had, and Bill Horn and Congressman Young were there that day, said we've got to find some other method here to try to blunt the effect of getting 80 million acres of national parks. So I went rummaging through all the records of anything I could find on national park systems, or other associated ones, and we came across one in Texas called a National Preserve.

I contacted a fellow I knew there with the Fish and Game Department and he said, well, it's worked really well here. Of course, you people understand Texas is different, and when Texas wants something, generally speaking, when it comes to public lands, which there isn't much in Texas, they get what they want. Anyway, they said it was working pretty good, so we went back and sat down with staff and redrafted some recommendations to the parks, that if you're going to have a park here, recognize these other uses that are not traditional for parks. Put them in a preserve, hunting, fishing, trapping, access, remote cabins, all these other things that people like to do that you've prohibited in a park. And thankfully it sold that way.

And I'm not going back and saying, well, we made a big mistake. The problem is, the only way we avoided getting those large parks. But anyway, these buffers, as they're called, now we're of course getting proposals for buffers, and that's what the preserves were for, was really buffers to the core park areas. Now of course the Park Service is trying to restrict, I see Mr. Spraker here from the Board of Game, always going to the Board trying to get them to restrict

more and more activities and threatening to use their powers to restrict these activities in these preserves, which are supposedly protected by ANILCA.

I want to, and I do have some specific recommendations. I will save a little time here at the end, if I may?

Senator Coghill - Sure.

Ron Somerville - Planning documents; I didn't realize, and I want to say to the staff of CACFA, it's a phenomenal, I recognize some of you before, because Tina Cuning and I worked close in Fish and Game, and Sally with DNR, and Mr. Mylius, we've all worked on these areas of planning documents. Now, I think we've done a pretty good job as a State, but the general public has no concept of what's happening out there. I mean, they look, for instance, I'll use my club again down there; well, we're getting this proposal for Southeast, and I say, yeah, but this same proposal was for the Arctic ten months ago, or something like that, why don't you guys come? We didn't know that, we don't have time. The public does not have the time or the resources. You can go to any of the villages and their major complaint is, we've got too many committee meetings, and that's partly what's happening here. We're being inundated with this planning process. Again, with due respect for the people and the agencies, they're trying to keep up with it, but it's sadly underfunded, in my opinion. They need more staff and they need more help in keeping this forward to represent who; not the agencies, the people out there.

Well, I did have one on Wild and Scenic Rivers I wanted to, wilderness, Wild and Scenic Rivers, but Wild and Scenic Rivers in particular. We were baffled during the whole process of d(2) discussions, why they were coming forward with some of the Wild and Scenic River proposals that we're seeing popping up in various locations. And finally I did have a few friends in the conservation community, I'll put it that way, that said, it's clear what they're trying to do is block the state's access to ice-free saltwater ports. Now, you look at the Alaska peninsula is a good example, where we were not successful in getting what we wanted there. But the point is, if you think you're going to ever put a pipeline across the Alaska Peninsula, I'm not advocating it, Senator Halford, but if you ever wanted to, your chances are slim to none to ever get it done. I don't care if Title XI is there, or whatever else is there, I'm saying Wild and Scenic Rivers, the refuge systems, the way they've concocted and positioned them, they're going to block the state's access in many cases. And they've successfully done that, except we're able to cut back significantly on those Wild and Scenic Rivers, but it's still a topic. They're still holding some of these major stretches in quasi Wild and Scenic River status, so to speak, until the stars align that they can go ahead further in their agenda, and that is to get more of this. So if you think I'm issuing a warning, I guess that's what it is.

Okay, the last. Do we have a problem? I think we do. Can we fix it by just cooperating with the feds? No, it just isn't working. I mean, if you could show me where in fact we're winning, I'd be willing to say, well, we should maybe divert a little bit and keep doing it, but we can't.

I did have a recommendation for Senator Stevens and he kind of laughed. The Western states should be paid in lieu of taxes for all federal lands that are withdrawn. Now, they do pay some in lieu of taxes, but if they're going to withdraw all this land, not allow us to develop any of it, and they are not meeting their responsibilities, then pay us in lieu of taxes for it.

Okay, my recommendations. I think the Governor did a good summary of the problems, but first the Legislature, Governor, citizens as a whole have to decide whether we have a

problem, and there's a whole bunch of little issues that everybody's special interests are involved in. But if we do have, we've got to commit to the resources to resolve these issues. We've got to do that. We just can't keep going down this road, or as a friend of mine once said, Alaska must continue to fight for its side of the bargain, or it will simply slip into a constricting tangle of federal restrictions, requirements and regulations that will suck the life out of the Last Frontier. That was Bill Horn's statement about ten years ago.

We must collaborate with other states and amend ESA, that's one. We must collaborate with other states on a whole host of other problems. We must amend the Quiet Title Act, which I indicated, either force the feds to take a position, or concede state's ownership of the submerged land. Adjudicate submerged land title where necessary. Clarify ANILCA for wilderness designation and management. We must limit dual management of Fish and Wildlife to federal public lands, as intended. We've got to get some sort of handle on where the feds side, where the states is, and then I think some cooperation in Fish and Wildlife Management will occur, but until that occurs, they're going to keep pushing the envelope further and further out into state jurisdictions, something which I predicted back before ANILCA passed.

We must apply administrative standards to simplify and clarify federal subsistence. Enforce or cancel Fish and Wildlife MOUs. Some of the MOUs we have with the federal government right now, particularly the National Park Service and the U.S. Fish and Wildlife Service, was signed back when Bill was Assistant Secretary, they say are still in effect, but it says they will use the state's regulatory process to the maximum extent possible. They don't do that. It says that they will even assist us in creditor management programs. They don't do that either. I mean, the whole thing is a sham.

We must clarify remote cabin policies in ANILCA, clarify access provisions of ANILCA to inholdings and public lands. I'll give these to you later, Senator. Prohibit vacating 17(b) easements, unless compatible access is provide, force federal agencies to follow the law and their regulations, in setting regulations and policies, oppose further wilderness and Wild and Scenic River designation. The Legislature needs to establish a formal state's right, or federal-state relations commission made up of legislators and a few key members of the public. A concrete plan needs to be developed, by which areas of conflict can be resolved or minimized. The public needs to be educated about the federal-state conflicts, the plan to resolve or minimize conflicts and the progress in implementing the plan. A special state's rights section needs to be established in the Attorney General's office. There must be a commitment from our D.C. delegation, the Legislature and the Governor to implement the plan. There must be a commitment to funding.

Last but not least, do not rely on hearing records or committee reports to protect our interests. You're going to have to write everything concisely, precisely into a law. And that's all I have, nothing else, and I'm not passionate about the issue.

Senator Coghill - Once again, an incredible amount of information, good history, and I got the privilege of living a lot of the history that you were working, but I got to see kind of the emotional side of it, I didn't get to see the technical side of it, so I'm learning at a breakneck speed today. So Don, Sally and Ron, thank you very much. I appreciate the efforts and all challenging and good recommendations. So I'm hoping that each one of you have information that we can put on the CACFA site. And for those of you who are presenting, I will ask the same thing again.

So I think we're right at the lunch hour. When we come back we'll be talking about the

public access issue and how they are being asserted. Scott Ogan and John Sturgeon will be talking to us about efforts on RS 2477 and litigation issues. And then we'll go into some of the natural resource development with Chuck Hawley and Steve Borell, another good chunk of history there, and then go into the rest of the day. Thank you very much for attending. My intention is to be as tough as I can to get us situated at 1:00, so if you want to have lunch, I guess time is now ticking. You're dismissed for lunch. Have a good day.

12:00 p.m. Lunch

1:00 p.m. Navigable Waters and RS 2477

Senator Coghill - All right, so just one announcement, Carolyn, where are you at? Carolyn, right here, Carolyn is part of the State Senate Majority, is videotaping interviews with presenters and participants as part of the documentation of the event. So on issues discussed, if you have personal experience, or if you want to say something, there's a video camera here. Carolyn will direct you, Graham or Daniel, but really Carolyn is the lady in command here who'd be glad to do the interview. So thank you for coming back. And I'm only assuming that you had a chance to eat. I know I had half a sandwich. It went that fast, so I appreciate it. And so those who aren't here I understand. They probably didn't get as fast of service.

So as you can see, I'm going to try to keep the time on schedule as best we can, because every story told here within each segment can run just as deep as a half a day, if we wanted it to. So my appreciation to those presenters who have kept it concise, kept it informative and substantive. So thank you very much and we have much more to go yet. This segment is on the Navigable Waters, RS 2477 issues. So people in the back are having trouble hearing this? Is that true now? Okay. It is true, my voice probably booms a little more than others, so I will remind people to stay close to the microphone. In the order, I'm going to change up because of some technical issues, so we're going to have John Sturgeon come up at the very outset. He said his is probably a little more brief, but it's on litigation background and a status report on the Sturgeon case. So John, why don't you come on up and present, and thank you for taking the time to be here. We really appreciate it.

Mr. John Sturgeon, Litigation Background and Status Report - Thank you. Good afternoon. Everybody hear me okay? If you're looking for a real polished presentation, you'll have to wait for Scott for that. I'm going to kind of wing it here a little bit. Several years ago, I'll kind of start with my story, several years ago, in fact a lot of years ago, in 1970 I started hunting out of Eagle, Alaska on the Yukon River. I've hunted the Yukon River in that area for moose every year since 1970. Starting in 1990 I started bringing up a small hovercraft to help me moose hunt. It wasn't very big, it weighs about 500 pounds. Actually, I put it in the front of my riverboat. It's not real big. It has a 65-horse engine on it, but it allows me to go up some of the shallower sloughs and rivers on the Yukon drainage.

And several years ago, it must have been about six years ago, I was just starting my moose hunt and I had a cable broke on my steering. And as I was fixing it, I was approached by three Park Service uniformed officers who started asking me questions about my hovercraft, and they were kind of nice questions. They were asking, what does a hovercraft do, how does it work, how long have you been up here. And I said, well, these are kind of nice guys, they're really interested in hovercrafts, just kind of unusual crafts, so they probably haven't seen one before, and so I thought they were genuinely interested in my hovercraft. And they talked to me for about 15 minutes or so, and then all of a sudden the conversation just turned like a Dr. Jekyll and Mr. Hyde. They pulled out their law book and said, did you know that hovercrafts are not allowed on the Yukon River within the preserve? And the tone from there just changed

completely, that they had turned into curious, friendly law enforcement officers, to heavy-duty enforcement officers packing guns and the whole works.

He informed me that the hovercraft was not allowed in the Preserve on the Yukon River. And I say, "...well, I thought the State of Alaska owned submerged lands, I thought they owned the gravel bars; I thought they owned the column of water." These three officers were not very well informed. They said, "...no, it's owned by the federal government. There are some mining rights and stuff that you have, the state has, but that's about it." They were completely wrong. So I said, "...okay, well, how do I get my hovercraft out of here?" And he says, "Well, that's your problem." And I said, "I can't start it up?" "You start it up, we're going to cite you." And I say, "Okay."

So I got my boat up to this little shallow river and I hauled it in my boat and I got it out of there. But when I got back I did some investigation and talked to State of Alaska, Tina Cunning and some other folks, and they informed me in fact what I understood was correct, that navigable waters and the submerged lands underneath them and the column of water are, in fact, owned by the State of Alaska. I told them my problem and they said, "...well, we're working with the Park Service, have been working with them for quite a few years, and just be patient. We think we can work it out with them, we're pretty close." And I waited for a year, another year, and finally talked to the state and they said, "...you know, we've hit a brick wall here. We just, we can't work anything out with the Park Service, and we don't know what to do." So I said, "...well, maybe I'll do something."; and decided that I was going to maybe take on the federal government. And the first thing I did was ask for, I solicited three legal opinions from three different attorneys and asking if I had a good case, if in fact that the State of Alaska had jurisdiction on navigable waters within ANILCA designated conservation units. And all three opinions came back the same. They said the State is right on this, the State has jurisdiction, not the federal government.

Then the next thing I did was I decided that being in business, being a business person, one thing you learn in business, for people that are in business, is you never ever want to get in a lawsuit, but if you do, you want to make sure you have the best attorneys you possible can. So my next search was trying to find some attorney firms that specialized in this area, and if not specialized, had some very good knowledge in navigability and the federal government. And I ended up with two of them that had some pretty good qualifications, I thought, but one of them was more kind of on a procedural kind of expertise working with the federal government, and the other law firm was more on conceptual law, and so I decided to hire both of them.

So when I filed my lawsuit, I actually have two different attorney firms working for me. As you'd suspect, it's probably not an inexpensive process, in fact, it's very expensive, but it's something I decided to do. I consider it a public interest lawsuit, because I did not get a citation, and it's been a very slow process. The first thing we had to do is exhaust our administrative appeals and we sent a letter to the Secretary of the Interior explaining our problem. And the way it's supposed to work, he gets back to you and said, you know, you're wrong or you're right. But a year went by and still didn't get back to us. And then we filed our lawsuit and about a week after we filed the lawsuit then we get a letter from the Department of the Interior saying, real short, sweet letter saying, you're wrong, we're right, but then the lawsuit started.

And as it stands right now, the lawsuit, we have filed all our petitions. We filed two, the feds filed two, and we are set for oral arguments the 28th of this month. The judge that's handling the case is Judge Holland, the same judge that handled Katie John. And I've got to compliment the judge, he's been moving along the case very quickly. He responds very quickly

to everything that we do. And we expected oral arguments to be about, my attorney said, well, I'll warn you right now, they're going to be about maybe 10 to 15 minutes, 15 minutes at the most. And when Judge Holland came back, he gave everybody 45 minutes. I'm not sure what to read in the tea leaves. My attorneys said that's a good sign for us, but we'll see. I prefer not to get into details of my lawsuit, but one thing that's significant is that the State of Alaska intervened in my lawsuit, which was very, very helpful from a procedural standpoint. It's kind of hard to challenge the federal government on a sovereignty issue and the State of Alaska is not alongside of you, and fortunately they are.

One thing that's important to know is that a lot of people think that, wow, the State of Alaska joined you, and it means that the case is going to cost you less money. That's not the way it works. It actually costs more money, and the reason it costs more money is that everything the State of Alaska generates, that my attorneys, both attorney firms have to review it and make sure we don't have any discrepancies. I don't want to talk too much about the case, but the essence of the case, the state would probably give you a different, I mean, I'm sure the state will give you a little different spin on it, but what we decided to do is focus on a very narrow point of law, where State of Alaska is a much more broad approach to the same problem. We're both intervening, they're both working on the same case, but working side by side, but their approaches are a little bit different. My attorney said our approach was that we want to poke a hole in the dam, and once you get the hole in the dam, the whole thing will go. The state's approach is that we want to blow the whole dam up all at once, so a little bit different.

But the essence of at least my case is that there's a section in ANILCA called section 103(c), and what it basically says is that on ANILCA designated conservation units like the Yukon Charlie Preserve, that state and private regulations do not apply on those conservation units. It was specifically put in there by Senator Stevens and Representative Young, so that the federal government wouldn't be harassing inholders. And it was very clear and to the point, and in simple reading of the law it's hard to understand why they would have, the Park Service would have any objection. But what their management's response is, not your legal response is basically when the preserves were established they had a preface, or an introduction which talked about the role of a national park or a preserve, and talked about preserving all the eco system, everything a national park normally preserves. But then following that, that preface or introduction, was a lot of specific things, like the section 103(c) that said they don't get to apply their regulations to state and private land in their inholdings.

And so they say that the broad preface is what rules, not the specifics. And it doesn't make any sense to me and I hope it's not going to make any sense to a judge, but we're going to find it out. This case will no question go to the U.S. Supreme Court. We're already planning on going to the Ninth Circuit and we're planning that it's going to be ultimately settled in the Supreme Court. And the reason it's going to go to the Supreme Court, because it's a question of sovereignty between the State of Alaska and the federal government. And in the case of sovereignty, the way I understand it, that the Supreme Court has to take those cases. In fact, there's, I also understand that if the state wanted to, the state could go directly to the Supreme Court and skip District Court, skip the Ninth Circuit. However, the problem with that in talking to the state is that it doesn't allow them time to refine their case, and they've done this before and when they get to the Supreme Court, if they haven't refined their case, the case goes to a Master, and the Master pretty much does all the homework and then kind of makes a report to the Supreme Court. And they've not had much luck in the past on that, because it just doesn't allow them to really develop the case well.

So we're looking, we started about four years ago and I suspect it's going to be another

three years or four years before we get a final resolution, if we're lucky. And like I said, fortunately Judge Holland is moving us along very fast, in fact, after we filed, the federal government had the last brief and it was like maybe ten days after they filed their last brief, that Judge Holland contacted our attorneys, and give them some time for oral arguments, and one of the times was like a week-and-a-half from when he sent out the request. So he was ready to hear this thing very quickly, and the idea that he was going to spend so much time on it, 45 minutes for each person, each entity, the State of Alaska, the federal government and for my attorneys, is a long time. So we're encouraged that we're at least going to have a chance to really explain our case and that the judge is not just passing, he's taking this very seriously, because of the time he's allotted to it. And so we're hopeful that we'll have some decision we're hoping by sometime in December or January, and we're hoping we'll have a decision.

Let's see, what else. I had some notes here, better look at these in case I miss something. I think that's the gist of it, and my attorney is asking me not to get into too much detail on the exact lawsuit, and besides, I don't understand it anyway. It gets pretty complicated and there's a lot of points of law that I don't understand. But I guess for questions, or what should I do, Senator?

Senator Coghill - Well, just go ahead and sit down. If there are questions, I don't want to put you on the spot to have to answer questions on the case, so thank you very much. That gives the example that this is a long journey, and for those of us who work in other realms and understand a little bit about tenacity, but the private citizen approach and the cost to you, John, is well noted and appreciated, and that will help me double up some of my efforts as well, since I'm not paying out cash. So thank you. Also, the reason we had to switch Scott Ogan around with John was we're having trouble getting the screen up, so why don't you go ahead and get Scott Ogan's issue up. Scott is on a PAAD unit, and PAAD stands for what, Scott?

Scott Ogan, Department of Natural Resources, Public Access Assertion and Defense - Public Access Assertion and Defense.

Senator Coghill - Public Access Assertion and Defense in DNR. And RS 2477, the waterway issues, he'll get to speak to very clearly about. And I've enjoyed a long personal friendship with Scott, but more than that I deeply appreciate his commitment to Alaska. So Scott, why don't you come on up and present your case.

Scott Ogan - Good afternoon. I too would like to express my appreciation to John for the courageous and expensive stand he has taken and it really makes a difference. My name is Scott Ogan. I'm the manager of the Public Access Assertion and Defense Unit with the Department of Natural Resources. I've been in this job about six years and it's been quite engaging. I tell people I think I have the best job in DNR and I look forward to coming to work every day still. I enjoy the support of my boss, Wynn Menefee, he's back there, my director, Brent Goodrum, as well as the Commissioner and the Governor's office and the Legislature, and without that support we couldn't do what we do, so I thank you all for doing that.

I had the privilege of coming here yesterday from my cabin at Kachemak Bay. That's the view from my front desk. I navigated there in the fog and I couldn't see Homer Spit at all when I got out into the bay, but I knew where I was. And anybody that's a navigator or a pilot knows how to dead reckon, and to dead reckon, and I deliberately did not turn on my GPS, because I like to practice my dead reckoning navigation skills. And I'm happy to say that I was only maybe two or three degrees off when I finally could see the Homer Spit, which was maybe seven-eighths across the bay. The point is, is that as a state we don't really know where we're at. I

mean, we're kind of in a fog on all this. Some of our more senior folks that lived all this have moved on to other jobs. Guys like me that have come in, I'm relatively a Johnny-come-lately compared to a lot of the people around here. We're trying to figure out where we're at, so this is a very, very valuable thing. I'd like to thank Wes Keller, the Chairman, and John for his leadership, and the CACFA commissioners, because I think this is going to get us to that point on the chart where we can say, okay, folks, from here on out this is the course we need to take.

With that said, I'll get into my presentation. Statewide access issues. We deal with navigability, RS 2477, we assert 17(b) easements across Native lands to assure access to public lands and waters, and we review the federal plans for access issues, and believe me there's a lot of plans. (Next slide, please.)

We also defend title to state submerged lands. We look at the ANCSA, the Native Claims Settlement Act conveyance documents, we make sure that BLM does not purport to convey those submerged lands to the Native Corporation if they had belonged to the state, and regrettably they have in the past, or what we believe are navigable waters and submerged lands that we own. So it causes a lot of contention sometimes. We file Recordable Disclaimers of Interest, which is a process that actually short, well, it somewhat shortens up and it's certainly less expensive than litigating, and it clears the clouds to title on our state submerged lands. But we have to get agreement between the federal government and the state in order to achieve these. Sometimes it goes fairly smoothly, but it does take too long. Like, for example, the Kuskokwim River, we just got a disclaimer on that one. It was seven years in the process, so about \$950,000 cheaper than litigating, but just about as much time.

Resolving disputes of ownership, and we make navigability determinations when people have an action that they want to do on a river, like mine, or they want to do some actions that need permitting in a river, we say, yeah, it's navigable, the state owns it. (And next slide.)

Why is it important? Well, resource development, transportation, hunting and gathering, and the economic well-being of the state. I mean, these river ways are our roads and access. I mean, we don't have a road system in Alaska, and really the road systems are the rivers. (Next slide.)

This happens to be the Nation River right on the border in Alaska, which is the same river that Mr. Sturgeon is in litigation on, and the state. And I don't know if you can see it, but going up that mountain there's like a little trail, and that's actually the border of the United States and Alaska. And when the border survey went out there, the USGS border survey guys went out there, they hired some guys to drag canoes up that river, literally drag them. It took them 30 days to get a Peterborough canoe, a thousand pounds of gear approximately, and they had to literally dig out the gravel bars to get up there, but it's an awesome place. But we were admitted to the union on equal footing, which means we got the title to the submerged lands. I think we've covered that in other speakers. (Next slide, please.)

Is it navigable? The submerged lands, tidelands are navigable, they belong to the state, the shore lands, which is the state statute definition for inland water, and then there's public trust navigability. So if it's not navigable for state ownership purposes, the State of Alaska, the Constitution of the State of Alaska, I believe it's Article 8(13), section 13, says that the public has a right to access water that's determined navigable by the State of Alaska, by the Legislature, actually. So even if the ownership is ambiguous, people have the right to walk, boat, get out and fish, bathe, not many people swim in rivers in Alaska, but all that is a protected public trust right. And when the land is conveyed to a Native corporation, for example, or another private owner,

sometimes they think they own it and they can keep people off of it, and that's not the case. And so whose land is it? (Next slide.)

There's a couple of interesting cases. Daniel Ball is case law that goes back to the Civil War. Utah, a Salt Lake case, Kandik Nation. By the way, the Kandik and the Nation Rivers were actually adjudicated by the Ninth Circuit to be navigable, and I believe it was denied by the Supreme Court, so that's, and my reference Bill Horn is back there nodding his head yes; Gulkana River, that was adjudicated navigable. PPL Montana is the latest case. The U.S. Supreme Court just spoke on that and it confirmed that if the river is susceptible to navigation, then it's owned by the state as well. So it's a mixed bag, but mostly that particular case we like most of the rulings. This happens to be on the Mosquito Fork of the Fortymile, and that's my hydrologist. (Next slide.)

Again, there's title navigability and there's public trust navigability. (Next slide. Next slide.) I think I covered that. (Next slide.) How to assert and defend ownership; well, it's a lot of research, it's field verification, we have to get our hydrologist out, take a look at it, see how deep it is, how much water is going through it and compare that to other cases that we know. Yeah, this river is navigable and it's this small and this much of a boat can get through. Determine the ordinary high water line, that's the mark where the water, the submerged lands in the upland (inaudible) where that tidal, where that line is. We have to do the tidal research, so we have to know whose land it is and that's, on these big rivers that's a lot of work. And the Recordable Disclaimers of Interest process, which I spoke about, and there's also possible litigation, which is known as a Quiet Title Action, and that quiets other people's claims to your title. (Next slide.)

Recordable Disclaimers of Interest - I think I said they're about 50 grand, compared to about a million dollars and eight years of litigation. We have the only successful Recordable Disclaimer of Interest process in the United States. It's a regulation that's on the books. It could technically be applicable to RS 2477s, but Department of Interior policy is that it's not. We have achieved 20 of them. And one of the things that we really need to do, one of the action items we'd like to see, is we'd like to see a clear criteria from the feds on what is a sufficient watercraft and what is sufficient water to be navigable. And we've asked them for that formally, we haven't gotten an answer, we asked them that in one of our complaints and we haven't gotten an answer, so we're going to keep asking the question. (Next slide.)

Again, ordinary high water mark, that's that boundary between the, like if it's a state river and the upland owner, and that kind of shows it. Basically, I try to tell people, they ask, where can I go on the river? And I give the equation, if it walks like a duck and it quacks like a duck, it's a duck. So if it looks like a riverbed, it doesn't have upland vegetation, it doesn't have mineral soils, then it's probably a riverbed. And I once went to a conference where they had all these experts from all over the United States that were, and it was a conference on determining where the ordinary high water mark is. And honestly, it got so contentious by about halfway through the first day, I mean it was almost, we had all these experts and they all disagreed and everybody was arguing. And finally I just said, well, it depends on what you're asking the question for. But anyway, so the experts get it wrong sometimes. (Next slide.) I think I said that. (Next slide.)

Current issues: we're litigating on the Mosquito Fork of the Fortymile. We filed a complaint against the United States to quiet the title to our property, what we believe is our property. What spurred that is some miners went out to set up and do some mining operations under a state permit, and the federal guys showed up with a badge, probably some of Sean's

friends. And actually, these guys were BLM, not Park. But they said, no, you start up that dredge, we're going to cite you, so that's where we got into the fight. Kotsina Creek, Lemon Creek, Skagway, those are all private lots, people that are private groups that are suing us. We usually get into those donnybrooks over who owns the gravel. And we know about John Sturgeon and the Nation River. I think I covered that, and I think I covered that.

This is the Kotsina River. The fish wheels are down at that alluvial fan where it pushes into the Copper River and that forces the fish in close. And the BLM determined that non-navigable and we believe it is. And we're in litigation on that, but we're working it out. (Next slide.)

Lemon Creek is another case. It's smaller, but we believe it's navigable and we believe the federal government had an obligation to hold that in trust for the future state. (Next slide.)

Skagway; a gentleman's been mining gravel in Skagway for quite awhile and we're pretty close to reaching a settlement on that and just working out the details. Again, that's the Sturgeon Nation River case. This is a better picture. That's me standing in the river with a grin on my face, because it's an awesome beautiful place to be, very hard to get there. But that river is determined navigable all the way to that border. And so we're going, okay, if that little thing is navigable and the federal courts agreed, then we should use that as somewhat of a litmus test for other rivers. And again, the good thing about it is these are all specifically very fact specific. Both these navigable cases and the RS 2477s are all based on historical fact, and if you don't have good history, then you have a hard time making your case. And on these rivers the guys they hired to drag these boats up the river, these were some tough guys. They poled and they lined and they were small boats with heavy loads, but they kept good notes, and so we had real good historical evidence.

And my group, I have a really, really super group and they're really smart people, they work really hard, and I kind of, anybody watch that History Detective show on Channel 7? I must be a geek, the only one watching it. But it's really cool, they get this issue and they try to discover the history behind it. And we're kind of like history detectives and so we're looking for witnesses, we're looking for evidence, we're looking for records, we're looking, we comb through all kinds of stuff. And we have a whole bunch of really; I'll call them super focused trial attorneys driving you to turn over every stone. It's a lot of work.

Let's see, again, ANILCA did not include the state lands, so you have all these state rivers going into these ANILCA parks. And I went to a conference, one of the first things I did when I came to work with DNR, and it was a Federal Land Managers conference. And I kind of felt like I was a mole there and they invited a couple state people. And the whole idea of the conference, they put up this map and they had red blotches and they had blue blotches. And the red blotches were the federal lands and they had these little blue spots in the middle. And they basically said, to summarize it, red is good, blue is bad, and we're going to teach you how to make your park all red. And so the whole week's training was how to acquire all this private land and eliminate these inholders. And it was very, very, very eye-opening and it was money well spent, and thank you, Wynn, for sending me there six years ago. I'll never forget the lesson. (Next slide.)

Elements of research, was it historically used or susceptible for travel, trade and commerce? What types of vessel, we're having a lot of fun with that. In the last few weeks we've discovered what we think are neat new things about the types of vessels used at statehood. The physical characteristics, this is a big one. Is it in its natural and ordinary condition? So we have to go back in and look at all these different pictures of things, and old historic photographs

from around statehood, and make sure that there's been no major alteration, man-made alteration, especially, of the river that would change its navigability characteristics, because if there is then we're not allowed to, well, I don't want to get into the details. Sorry, my lawyer is yelling in my ear; then locating and deposing witnesses.

One of the challenges with this is that so many people that are witnesses had to be around at statehood and remember things. And let's face it, they're all getting older, and so when we find these witnesses we want to immediately depose them as soon as possible, because just taking a deposition or an affidavit is not really solid evidence. We consider it hearsay and so we want to get them deposed and give the other side the opportunity to cross examine, and then you can, it's just better evidence. So we meet with a lot of old-timers and it's been really, really neat to get the stories. (Next slide.)

This is one of my little pride and joy things. We were out in Chicken looking over the Mosquito Fork and looking at RS 2477s, and one of the guys out there said, yeah, I know, we were talking about boats used at statehood and he said, I know where one of those is. Really? He goes, yeah, it's right down by the river over there. Well, how far away? Oh, about a half a mile. I was just like a kid in a candy store. I was like, really, really? You know, what are you doing right, can we go down and look at it? Well, we went down and looked at it and it's an old historic poling boat. And so my bosses were nice enough to give me the latitude to, yeah, let's go out and find out what's there. So we got our archeological team out there and we excavated about eight inches of dirt, and we got a boat builder out to do plans. And so we have an actual plan, a working plan, we could build one if we wanted to, of a boat that was used, that was clearly pre-statehood, in our humble opinion. So yeah, our archaeologists like to dig around in stuff and we found all kinds of neat artifacts around it to kind of support that. (Next slide.)

So we work very closely with the Office of History and Archeology. They are really our allies in that and I can't speak highly enough of them. And when I was in another body serving with this guy, I cut your budget, so I mean, I've come completely around to the other viewpoint now. What kind of boats? Native skin boats, the aboriginal folks used to go up the head of these rivers in the spring before they thawed, set up a camp, hunt bear, hunt moose, whatever they could. They'd build skin boats out of just Alders and different things, and they'd sew the skins and stretch them over the boat, and they'd float these huge loads of stuff down to their village. They'd smoke the meat and they'd put it in these pits, these storage pits. And we went out and actually found of those sites on the Talachulitna River to kind of prove the theory. So we think that's pre-statehood travel, trade and commerce. I mean, Native subsistence was the pre-statehood travel, trade and commerce.

So Gulkana type guide rafts, which the BLM likes to ignore, poling boats, I mean, can you imagine getting up these rivers just using a pole and walking, just walk to the front of the boat? I mean, these were tough guys. Freight canoes; tunnel boats is the latest thing we found. They're almost as good as jet boats. They work where it sucks the water up into the tunnel and the propellor was actually above the bottom of the boat, but they would still go in shallow water. And then there's a guy named Comeau up in Fairbanks, and his dad in the 1940s was making these mechanical lifts. So you'd be in the boat and you'd just throw this lever and the prop rises up. And I'm a boat nut, so I like going to work every day. (Next slide.) This is our historic poling boat in the original condition when we found it out by Chicken. (Next slide.)

What needs to change? We need BLM to articulate the minimum standards of navigability criteria. What is a boat that's sufficient for navigability? And we could speed up the RDI process tremendously if we could agree on that criteria, and I intend to get that criteria out

of them. That will improve the process again on Recordable Disclaimers of Interest and hopefully mitigate and reduce the amount of rivers and things we have to litigate. We have to begin to make some of the navigability decisions based on physical characteristics. So if we don't, we don't have a history in a lot of these rivers. It's really hard to find these people that did this at statehood, but if it's deep enough and it's wide enough and it's got enough water running through it, it's a duck, it's navigable and the state owns it. So that's another thing that we're working on. (Okay, next slide.)

Now we'll get into RS 2477s. I think I'm staying on time. What is it, and why is it important to Alaska, and some recent developments. This happens to be the Chicken Ridge trail, which is an awesome ride if you ever get a chance to take it. It's pretty amazing. Those are my folk out there on that trail and it's out in the Fortymile area. It goes out of Chicken. It actually follows the old WAMCATS Trail. WAMCATS, for those of you that don't know, is the Washington Alaska Military, somebody help me out. Yeah, telegraph line. The telegraph line was actually functional in 1905, and again, tough dudes. This thing went all the way from Seattle, and there was a station in Sitka, then there was a station in Valdez, and then it went all the way up to Eagle, and then all the way down the Yukon River, functional in 1905. And this is on the WAMCATS route, or near it. (Next slide.)

What is an RS 2477? It derives from section 8 of the 1866 Mining Law. That's a self-executing grant. In other words, if it's used by someone or developed by someone before the law was repealed, that perfects the use by acts or acceptance or by public authorities. (Next slide.)

This is the Iditarod Trail. The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. That's the whole RS 2477 law. It's a very small, you know, talk about ambiguity, ambiguous, the judges and the bureaucrats get to decide, well, there you go. But it's also pretty succinct, in that what does it mean construction of highway over public lands not reserved for public uses? Those are withdrawals, like a military reservation, a homestead or a mining site, patented mining lands, things like that. So if it was just general federal lands and somebody used it on a regular basis, someone developed it, one of our great sources of that is Alaska Road Commission reports, because the state, the territory, that was before the state, spent money every year on improving these accesses and those are wonderful records. (Next slide.)

Do they still exist? FLPMA, Federal Land Policy Management Act, repealed RS 2477s in 1976; however, valid existing rights were protected. And as recently as 1993 Secretary of Interior Bruce Babbitt affirmed RS 2477 2477s as valid existing rights in a report to Congress with his signature on it. They had to be used and perfected from 1866 to 1969 when FLPMA repealed the law, and they only exist on federal lands, and also on state and private lands that were acquired from the federal government. So a lot of lands have been later on conveyed to the state or an individual, then that land, those right-of-ways are still valid. (Next slide.)

Examples of well known RS 2477s; the Dalton Highway, Farmers Loop Road in Fairbanks, DeBarr Road in Anchorage, Klutina Lake Road near Copper Center, the Iditarod Trail and the Chilkoot Trail. Why are they important to Alaska? Well, these routes are critical as access for public lands. And these mixed with the 17(b) easements, which are the easements across Native Claims Settlement Act lands, along with navigable waters, provides the transportation network for rural Alaska. It also provides access to public lands and can be really critical to resource development. In fact, most of these, and you'll see a map a little bit later, most of these are associated with mining and old postal routes. In fact, I talked to John's dad about it and he said, yeah, you know, most of these, they're postal routes. The U.S. Post Office

was delivering mail across these things.

State policy is to assert a 17(b) easement on top, it's the ANCSA easement, on top of an RS 2477 whenever we can. The 17(b)s are only valid across Native lands to access public lands and waters that are blocked by the conveyance, so we can't do it in every case, but we try to whenever we can and that's proved to be a good policy. 17(b)s are managed by BLM. We review all the Native claims title conveyances to make sure that appropriate easements are asserted, because that's a right that the state has. We have a number of appeals, knock on wood. We've been really successful in our appeals, and that's appeal to the Interior Board of Land and Appeals.

Let's see, the problem is that 17(b)s are usually limited to ATV and smaller. Thus, they're not as useful as an RS 2477. So that's another reason why we try to put a 17(b) on top of a 2477, because it's a broader bundle of rights. It's a hundred foot, it's state owned, it's state property, and so especially for mining development and things like that, it's really important to have bigger machinery going across it. But the 17(b)s also are not valid across Native allotments. (And next slide.)

So here's the state highway system. As you can see, it's kind of focused around the east end of the state and there are a couple little snippets here and there, a road down the Kenai Peninsula. There are a few roads out of Nome. (Next slide.) Here's the state highway, and I use highway in quotations, system with RS 2477s. And the next slide shows you what the land ownership is. I'm not sure it shows it too clearly. But if you look at where the clusters are on this map, where there's like just lots of spaghetti in a real concentrated area, those are all, generally speaking, those are mining areas and those roads were put in by the miners, which I mean it was the 1866 mining law. And this slide is a little bit clearer. You would see that there's been a lot of withdrawals, ANILCA withdrawals in those mining areas. So again we have those fingerlings, the state sovereignty, both RS 2477 and navigable waters that go into ANILCA lands, and blue is bad. (Next slide.)

We hired an Assistant Attorney General dedicated to RS 2477. His name is Kent Sullivan. He works out of our Juneau office. And Kent is a trial lawyer's trial lawyer. I think it's one of the best decisions we've made. A lot of the Commissioners have all heard him speak and maybe some other folks have. He's got a very good background in real estate law. And so we've also coordinated with the State of Utah, in fact, we had Kent on board for a week and I told his boss, I said, well, we're taking him to Utah. And he goes, let him read the case law first. So, no, we're taking him to Utah. So we went down to Utah and it was really a good trip. Utah is really the pioneer with this and other state's rights issues and they've had some successes and they've had some setbacks and we've learned a lot. And they filed suit on 18,000 RS 2477s. They were facing a statute of limitations problem and bit the whole enchilada. And I guess there's an old saying, how do you eat an elephant? One bite at a time. Well, they're trying to swallow the whole thing.

Let's see, we've developed a diversified strategy for further RS 2477 assertions, and we've done significant field work in historical analysis of routes across Alaska. And again, these are very, very fact specific; they're very labor intensive to uncover these facts. And we're doing careful selection of initial litigation. We want to win; we want to build good case law. (Next.)

We obtained a judgment in State Superior Court against a private land owner blocking RS 2477. That was in Palmer Superior Court, defending public use of the historic Iditarod Trail across private land, for private land owners suing us in State Superior Court. We're defending

validity and public use of Klutina Lake Road across Native Corporation and other private land, and this is also a 17(b) easement. And we asserted six RS 2477s in the Fortymile Region near the Chicken area, and that's in Federal District Court. (Next slide.)

We have approximately 65 miles of roads and trails in the Fortymile area. We also include everybody that's got an interest, so the private landowners get swept up into it. Most of them have disclaimed an interest. It provides access for miners, hunters, trappers, recreationalists and subsistence users. And those of you that are familiar with Fortymile know that it's a historic mining district. It includes portions of the Wild and Scenic River corridors. Why was this area chosen? Well, BLM failed to recognize the state's interest. BLM imposed significant management restrictions on the use of the right-of-way. And there is very high current use and significant public interest, with good witnesses. And a recent proposed Eastern Interior Draft Resource Management Plan sought to make some changes to RS 2477s in the area. (Next.)

We've got a long road ahead of us. I would argue that these are cornerstones that we're putting down. We need good cornerstones of case law in the State of Alaska. To date we don't have any against the federal government. The other point I would make is that it's very, very important to defend the cases brought against us by private citizens as vigorously as we would assert a case against the federal government, because it's all case law and we don't want to lose them. So they don't provide all the access needed, but it's certainly a good start. The federal government needs to recognize these rights. We must be willing to address all parties crossed by RS 2477s.

Again, litigation is not the preferred action. We're increasing efforts to work with landowners to resolve issues in a constructive way, including the federal government. But we're in it for the long haul. It's not something, once you start, my dad used to always say, never start the fight, but make sure you finish it. So we're committed, and again, I want to thank my bosses and the Governor's office and the Legislature for the support of what we're doing. I think that's the end of the slides, right? Okay. Thank you very much for your attention. Have a good afternoon.

Senator Coghill - Thank you, Scott. I know when my dad was Lieutenant Governor, that was one of his major projects was the RS 2477, and I can't hardly have a conversation about the administration or legislation without him asking something about the RS 2477. And I think Mike Dalton, who did most of that work that you get to work off of, so we do get to work off of the shoulders of those who have come on before us. So it's kind of interesting to me, most of the travel didn't have respect to boundaries early on in our history, and then through the Statehood Act, the Claims Settlement Act and the ownership of land as it came to be, we probably in the State of Alaska have more contiguous boundary than anyplace in the world with federal, state and Native landholders. It's just amazing if you look at how many boundaries. We certainly have coastal land that rivals the whole United States, but when you look at tidal land boundaries, it's just phenomenal what we have in Alaska. So John Sturgeon, thank you for you stepping up, at great cost to yourself. It is public interest and we'll be watching it closely. And Scott, thank you for your work. I know you've dug in very deeply and I greatly appreciate it. So I'll go ahead and dismiss you two and thank you very much. There are a couple questions that have arisen out of both of them, but I don't want to put Mr. Sturgeon on the spot and I don't want to give Scott too much time in front of the microphone.

Natural Resource Development is one of the reasons we came to be a state, so why don't I have Chuck Hawley and Steve Borell come up. Both these men have paid their dues. And

resource development in Alaska is one of the things that, with regard to federal-state ownership, Native land ownership, the whole idea of even coming into a state, certainly this is a big part of it. So are we still doing good on sound all the way in the back? All right. Chuck? He's with the Hawley Resource Group. Chuck, you're going to be talking to us a little bit about the d(2) portion of the ANILCA act, right? So why don't you just go ahead and come on up. And in the interest of time, I chose not to introduce them. I want them to kind of introduce a little bit of their history, because that credibility is so good, and you'll quit listening to me if I do it, but if he does it you won't quit listening. So Chuck, why don't you come on.

2:00 p.m. Natural Resource Development

Mr. Chuck Hawley, Hawley Resource Group, Inc – “Statehood-ANILCA-D2-1” - Thank you, Senator, also to CACFA. I really appreciate the opportunity to talk about some of these issues, because I really was deeply involved in a lot of it. I came up in 1966 as a USGS geologist and almost immediately got involved in all the state issues that were at the time. And later I had the opportunity to serve the Miners' Association as the Chairman of the Anchorage branch, later as the Executive Director. I was appointed to the Advisory Committee to the State-Federal Land Use Council. I was the founder of CMAL, and so I have paid my dues, I think. Anyway, because of the background that's been furnished by other speakers, like Dick Mylius and Sally and Don, I can kind of skip over some of the general issues, so most of what I talk about are going to be related to mining.

Land selections, as Dick summarized, early land selections were made for general purpose urban expansion, oil and gas and coal. Tom Marshall helped select oil and gas lands on the North Slope that we did. And although Alaska was widely believed to be rich in rare minerals, few if any selections were made for lands with potential for hard minerals like copper and gold. Two things were involved. First, the exact locations of such lands were unknown. Furthermore, valuable metallic mineral deposits could be obtained by discovery on location on the federal domain, so why waste the state selections on deposits that could be acquired otherwise. And so the selection was also constrained by the amounts which could be chosen in any year without penalty, and really by Governor Egan's natural conservatism.

But the state selection process was halted abruptly in December 1966 when Secretary Stewart Udall put further state selections on hold. Then this set something that wasn't really resolved until 1971, five years later, when ANCSA was passed. But it gave us some time to build up a mineral inventory that had been, okay, first of all, Alaska's historic prospects and minings were almost always held in this period from roughly 1880 to the World War I. There's prospectors all over the state that discovered the gold at Juneau, Nome, et cetera. But all those deposits that had been in Kennecott, they were gone, they'd been depleted. The dredges were still running but they weren't making very much money. They existed because they had, all their infrastructure was in place.

Two things happened in this interim period from 1966 to 1971. First, mining companies had decided that Alaska should be able to yield resources and industrial metals, metals like copper, nickel, moly and zinc. And there wasn't much private interest in gold, because gold was still operating on \$35 an ounce, the price it had gone back to 1934, the Great Depression, when they raised the price of gold. Gold hadn't gone anyplace since then, it was a fixed price; but the private sector interest in, this will be some background for awhile. There wasn't much private sector interest in this because of that price. But the Department of Treasury was very interested, because treasury gold that had been acquired at this \$35 price was leaving the Treasury vaults to go to places like Macau and Hong Kong where gold was freely trading at \$50 an ounce.

Based on the discovery of rich surface deposits in Nevada that had potential for gold

being profitable at \$35, the Treasury decided to fund a mineral exploration program by government geologists to find similar deposits. Anyway, because the Treasury dumped about \$10 million in the USGS, and the USGS used that to set up major gold projects in 1967 and '68. And so with the increase in private sector, interest in gold and copper, things like that, but there was a lot of mineral information that for the first time became available, and most of it could be used to guide state selections. Also, the thing that had happened, it was no longer feasible to think that you were going to have the public domain to search; I mean, you may, but a lot of the lands that you were the most likely to search were all of a sudden going to be withdrawn, which brings us up to ANCSA.

The Alaska Miners Association convened its members in mid December 1971 to pose a question from the congressional delegation in Washington. Would the Association support a Native Claims Settlement Act that granted both a substantial cash payment and acquisition of 40 million acres? The Association voted to support. That answer was not a forgone conclusion. Earlier Alaska miners, led by pioneer dredger Norman Stines, had opposed strongly any Native selections, and Phil Holdsworth, who favored settlement, was deposed of his lobbying position after stating his views, but things had begun to change. Views from Alaska's placer mining interior had moderated and most of the new generation of company explorers thought of Native corporations as potential partners, not enemies. Another factor was that Charles Herbert, who was DNR's commissioner in Governor Egan's second administration, he was resolutely for settlement and his views carried a lot of weight with both the placer miners and the modern explorers.

One thing in which the miners and the state were in agreement was that there should be an immediate restatement of the state's land selection process under statehood. And so that theoretically should have been solved in 1971, but all of a sudden there was a new batch of withdrawals. What to do to counter that? In early 1972 Secretary of Interior Rogers C.B. Morton withdrew more than 100 million acres from all applications of mining laws, but apparently they weren't withdrawn from state selection. Anyway, the winter of 1972 was the beginning of a war of maps that only ended with the passage of ANILCA. The Alaska Miners Association assembled teams of private and public geologists, and that includes Fairbanks, Juneau, Spokane, Salt Lake City, to develop new mineral resource maps of Alaska. The maps, with their recommendations for land selections, were submitted to Commissioner Herbert, who mixed their data with those of his own experts on mining, as well as recreational and forested lands.

So in late spring of 1972 DNR submitted selections from more than half the state's remaining entitlements to the Department of Interior. Washington was really surprised and they were mad. The Secretary of Interior threatened litigation. Governor Egan, even though Chuck Herbert privately, Chuck Herbert was totally loyal to Governor Egan and he didn't think he ought to do that. But anyway, Egan didn't want to litigate and so the state came to an agreement with the feds on the land selections. Key mineral selections were retained and a number of the state selections were dropped. Key selections in the Brooks Range and the Alaska Range were maintained, but the state lost a lot of lands to the exchange there.

And as you know, ANCSA established the Federal-State Land Planning Commission, but it had to do its work. It had to make its recommendations on land utilization by May 30th, 1976, as the Commission itself would cease to exist at the end of December. Early on the Commission heard from kind of strange bedfellows occasionally. One was the combination of New-Deal Democrat type Ernest Gruening and conservative Republican Wally Hickel. Both the men were populist; that's not an adjective. Together Gruening and Hickel proposed a special land

management unit for the copper rich Wrangell's that would allow mining development, but under tight management. Their idea went nowhere, as did later Governor Jay Hammond's creative ideas on establishing a federal-state co-management of new conservation units. Congress was just not going to allow any state control over state lands.

The Commission did work through all these issues, and one person who turned out to be very important to everybody was John Katz, who was the co-counsel of the Commission. He was particularly interested in mining issues and John made sure that his externs or interns, who were mostly bright young attorneys from outside, were briefed on the peculiar merits of the free market federal mining law, as against the leasing bill, probably favored by the majority of the Commission. And it was a really, I wish John could have come. Anyway, it was a great beginning of a long friendship. The Commission completed their work timely and it was time for legislation.

I'm going to talk a little bit about the formation of CMAL. The Alaska Miners Association held their annual convention October 28th to the 30th, 1976 in Anchorage. It was our first statewide convention. It opened with a session on Alaska mining development, led by Chuck Herbert. Ted Stevens addressed a luncheon and then I followed with a session called, Mining and the Environment. In it, John Katz reported on d(2) lands and the mining law, and there was a panel titled, The Place of Mining in Alaska's Future, in which representatives of the Forest Service and the Bureau of Mines painted a rather rosy picture for Alaska as a mining state. The third panelist was Jack Hession, and he told a different story. Jack was the representative of the Sierra Club at the time. He maintained that wilderness preservation would be Alaska's future, especially on the d(2) lands, which would be much more than 80 million acres. Legislation later called HR 39 had already been prepared and it had several co-sponsors. They believed it was going to be passed immediately.

In late spring of 1977 field hearings would be held in Chicago, Denver, San Francisco and Seattle, to be followed by a triumphal return to Washington, D.C., where legislation would be passed. The new environmentally inclined President, Jimmy Carter, would approve the package and there was nothing more the miners could do to stop the program. Probably Jack shouldn't have been quite so dogmatic, because there was an immediate counter-reaction. Within a few weeks the miners rented the Endeavor Room in the Captain Cook and invited a bunch of people, Chamber of Commerce types like Lee Fisher, Bob Fleming, several contractors; some realtors, Bertha Midyett, Carol Maser; resource attorneys Bob Hartig and Paul Nangle; foresters John Hall and Terry Brady, more than fifty people in all.

We told them what Jack Hession had told us and it scared the heck out of everybody, so everybody wanted to see something happen. At an early meeting in the winter of 1977, it was agreed that a new organization would be needed for the settlement of the d(2) lands issue. Bob Hartig, Natural Resource attorney, came up with a name, Citizens for Management of Alaska Land. It had a good acronym, CMAL. A template for CMAL's structure was suggested by that of Outdoors Unlimited, which was active especially in Wyoming, Utah and Colorado. Outdoors Unlimited was an organization of organizations. You had hard users like state mining and timber groups, and then you had softer users, Jeep clubs, the Good Sam Club, RV interest, all these people. They had a common aim, and their aim was the preservation of multiple use management on most BLM administered public domain lands and on the Forest Service lands, which were for the first time being under Wilderness review. We decided to adopt a similar approach in CMAL, multi-organizations, but we added two important ones that were not in the original structure. We added Native landowners and organized labor. Without them, CMAL would appear to be only another industry tool. With their addition CMAL could realistically

claim to be a broad-based Alaska citizen's organization. In dealing with Congress, where numbers only are really definitive, the presence of labor and Alaska Natives should open some doors that are otherwise closed.

And I think the coalition approach, one thing you're addressing suggestions, that coalition approach, I mean, and that's, well, RDC pretty much operates that, but you always need to keep trying to stretch it out with your inclusion with people.

On the Native side CMAL, we never could capture groups that were held as totally subsistence viewed, but we got at least tacit approval from all of the regional corporations. Emil Notti, who at the time was the president of the Alaska Native Foundation, had led a panel at the miners convention with three other Native corporations involved. Each of the groups believed that mineral deposits on Native regional lands might be developed to the enrichment of both Native owners and miners and we decided to continue dialog. And also, Natives moved into the leadership positions of CMAL. Carl Marrs, who should have been here, but anyway, he was elected the first President of CMAL and he continued to serve throughout the next impending battle. Probably by backing the priorities of Native regional corporations, we lost some support from some professional hunter groups, but not others, we retained some.

Also, throughout early 1977 we had a lot of organizational and brainstorming meetings, which were kind of a debating society, so it began to look like we were kind of paper tiger. We lacked a charismatic leader, but to find one we had to have funding, which is a typical problem of grass roots organizations. The AGC, Alaska Association of General Contractors, broke the financial dam. Through their Executive Director, Dick Pittenger, AGC pledged to support CMAL with \$15,000 per month throughout the year 1977. Almost immediately Alaska Lumber and Pulp, ALP, out of Sitka agreed to double that amount to \$30,000 a month. And ALP's President Clarence Kramer also agreed to let us use Jim Clark, who was with the Juneau firm Roberts, Monagle, Eastaugh, and Bradley, to CMAL. Already Fred Eastaugh and J.P. Tangen were already firmly committed to CMAL.

But anyway, the early pledges by AGC and ALP gave CMAL the confidence to find an operating manager. We were very fortunate that Tony Motley was available. Tony was a former Air Force Staff officer. He had just resigned as Commissioner of Commerce and Economic Development and he was looking for a job. We felt that his competence and confident personality would go over well in D.C. Tony took the position with CMAL thinking it was going to be four months and that turned out to be four years. With Motley on board CMAL established a Washington presence, and the miners again helped.

The first office space for CMAL in Washington was furnished by the trade group, Forest Products Association, FPA. The director of that was George Cheek, and George Cheek had been raised in McGrath and still, he was active in Alaska. With a boyhood friend, Toivo Rosander, Cheek had brought national newspaper editors and environmentalists to Southwestern Alaska to view family-scale placer mines. At Nyac and other mines they saw good wildlife habitat created after dredge mining. The guests were impressed by miners that preserved family values with mines that have few lasting environmental consequences. Through their efforts, Cheek and Rosander gained some unlikely converts to mining's cause, and George shared his list of contacts with CMAL.

While Tony Motley concentrated on important contacts, the staff concentrated on developing briefing instruments to show, and we worked solely with the committees of jurisdiction. We knew it was too much of a job to try the Congress as a whole. We used local

lobbyists and CMAL staff, but whenever possible we enlisted visiting Alaskans. A couple of members that were very effective were Dick and Mary Bishop that came in from, I think Dick at the time was still with ADF&G. Anyway, we had a presentation that was built around a video that mixed Alaska scenery with resource information, and we used this as a briefing tool. Almost every congressman agreed to accept a visit, although sometimes we could only talk to staff, and we had some really surprising results. Paul Tsongas, a Democrat from Massachusetts, who was a very strong environmentalist, he grudgingly promised us, he'll give you 15 minutes, maybe. Well, after viewing the video and listening to the resource messages, he remained for two hours and he promised us we could come back when we wanted to. And he and other environmentally inclined Congressmen learned a lot about Alaska resources that they hadn't heard from the Sierra Club.

Also, the field hearings that were scheduled were not going as planned. There wasn't any time for CMAL to prepare for the first meeting in Chicago and they had, the Sierra Club just brought in hundreds, maybe thousands of young bright-eyed, bushy-tailed college students to tell them how great Alaska was going to be. So we couldn't do much about that, but we did find one man, Ted Van Zelst. He was the President of Belden Copper Company and he had claims in the Wrangell Mountains. Anyway, he pledged the services of his Washington law firm, which was called National Counsel Associates. It was another, it was an old-time firm, more Democratic inclined, but again, because of that we were able to get into some places where otherwise we wouldn't have gotten. The second hearing was in Denver and we were much better prepared. Molybdenum mining company AMAX was ready with counter testimony from Stan Dempsey and Dave Delcour, and the numbers of people for and against were nearly, were not very far apart.

The hearing in San Francisco, we more or less conceded that, because that's where the headquarters is for the Sierra Club. But we were prepared in Seattle. There was mixed testimony from both, but two strong Seattle interests, Boeing Company the Port of Seattle; both had significant problems with the legislation, as did Ted Stevens and Scoop Jackson. The results in Washington were close to a draw, but there wasn't any environmental return to Washington.

Under Motley, CMAL continued to gain strength. Mining company activity was strong throughout the late 1970's and companies contributed to CMAL to protect their investments. Several people, there's a lot of this name dropping, I probably should drop more, but these are the people I really remember that came through again and again and again; Russ Babcock of Bear Creek, Dave Heatwole of Anaconda, Paul Glavinovich of Noranda, Gerry Booth of Cominco. The Chairman of U.S. Borax, Carl Randolph, led the defense for the giant moly prospect at Quartz Hill that had been placed in a hastily redrawn Wilderness area.

Also, the map wars that had begun during ANCSA continued. In committee hearings, prime HR sponsor Morris Udall skeptically referred to the Hawley maps. Oil companies contributed maps, but miners and oil were not the only ones. I remember that Fish and Game sent maps and I would meet Ron Somerville coming to maps at the same time as bringing in mineral maps. We also continued, even though it was background work, we continued to work on white papers. The white paper on Agricultural Lands was prepared by Alan Epps with support from Jim Drew and others from Alaska's Agricultural Extension. Foresters Terry Brady and Jon Hall worked on forestry. Jon Hall was an interesting case. He'd retired from the U.S. Forest Service and he was one of the original backers of federally mandated Wilderness, with a capital W. And we also had at least several others from the original Forest Service Wilderness group. They wanted to continue to advocate wilderness, but not to the extent of destroying Southeast Alaska's commercial forest industries.

In local meetings, independent logger John Schnabel of Haines and Don and Helen Finney of Ketchikan consistently supported CMAL's forestry position. And law firms, especially those with an Alaska base, contributed countless staff hours. Examples would be Bill Horn from Birch, Horton, Bittner, and Cherot, and Steve Silver from Monagle and Bradley. Steve Silver came from an apprenticeship on Senator Stevens' staff and both Bill and Steve worked very well with Tony Motley, the congressional staff, and all the rest of CMAL.

Another thing that happened was we were very, we found that field trips were an important way to influence people. In the summer of 1978 both Congressman Don Young and Senator Ted Stevens brought congressmen to Alaska. They very quickly found that the bulldozers which the Sierra were promised to destroy Alaska, were largely absent. Moreover, almost all of Alaska was already wilderness and would likely remain so. The miners had a chance to show their operations. Over the 4th of July holiday in 1978, Ted Stevens brought Senators to a picnic at Skwentna on the Iditarod Trail. The Senators included Cannon of Nevada, who had seen many mines in his home state, and Leahy of Vermont, who probably had never seen one. Helicopters furnished by nearby exploration companies took the Senators to visit the placer mines in the Petersville area and hard rock prospects in the rugged Alaska Range. On another trip I took Congressman Udall into the Kantishna Mining District of Denali. He was an opponent, but he was always friendly and he already knew how to pan gold. Dave Heatwole of Anaconda found that John Seiberling of Ohio was quite different. Seiberling, whose family's fortune, Seiberling was the main sponsor of HR 39. His family fortune came from rubber tires on America's roads, but he could see little merit in roads that would give access to highly mineralized state lands in the Brooks Range.

But anyway, we really disrupted the environmentalists timing, but we had, something had to be done before a 1978 sunset clause. In May 1978 HR 39 was passed by the House and sent to the Senate for mark-up. Senator Stevens succeeded in making significant pro-development amendments, but then we ran into kind of a jurisdictional checkmate battle between Ted and Mike. Senator Gravel wanted to add some additional items, but basically I don't think he'd done his staff work, and so it ended up he didn't have, that issue failed and it was withdrawn.

Then faced with the sunset date of December 18, 1978, environmental interests prevailed upon President Carter to use the Antiquities Act to create National Monuments. On December 1, 1978, Carter created 56 million acres of Monuments, and under section 204(c) of the BLM Organic Act, also called the Federal Management Act, Secretary of Interior Andrus withdrew an additional 80 million acres, making a total of 136 million acres of conservation withdrawals.

In the final resolution of the Alaska Lands legislation, environmentalists who had gained with the Antiquities Act were forced to moderate their positions after the election of President Ronald Reagan. ANILCA was signed into law on December 14th, 1980. As passed, ANILCA appeared to give significant protection to miners who had inholdings in the new units. It protected their valid existing rights which, however, were often rather uncertain. What rights existed under a claim with uncertain discovery? It seems likely that Congress intended to protect those rights, but few congressmen knew the mining law well enough to understand its nuances. In later intent hearings, testimony given by Morris Udall suggested that he really did intend to give economic protection to miners on a more or less common sense basis, but for various reasons that has not happened.

Unlike the general access provisions, which had at least the impression of fairness and common sense, the promise of future access in ANILCA section 11, Title XI, especially 1104-1106, was a disaster to a state that lacked even the semblance of surface transportation access system. Section 11 erected so many barriers to access, that after ANILCA many state and Native

corporations became essentially land-locked, as they are today.

Although the immediate post ANILCA management of units in the National Park Service allowed mining to proceed, later NPS management plans and court decisions took a lot of the concessions away, or rather where we are today, which is a rather poorly gerrymandered state with beautiful national parks and only a few mines, which fortunately are very good ones. Thank you.

Senator Coghill - Quite a history.

Chuck Hawley - Thanks, John.

Senator Coghill - Thank you, Charles. Wow, what a history. Here's your water. Steve Borell has been equally involved with the Miners Association and has been a great friend and instructor to me, so Steve, equally, give a little bit of your background along the way, too.

Steve Borell, Former Executive Director, Alaska Miner's Association - Well, thank you, John, and thank you, Chuck. I so much appreciate that history. And Chuck has always been extremely open with his time and energy to educate me. In about 1952 I went with my dad to a neighboring town in Kansas and we saw some home movies of moose hunting on the Kenai Peninsula. And you know what, I decided then that I'm coming to Alaska and I'm here now, been here for 27 years-plus. And so from about 1952, Senator Coghill, to this very day I've been watching Alaska and I've been reading everything I could find on Alaska, including I spent a year at Galena in the Air Force, maintenance officer, facilities officer there. And then ANILCA came along and it utterly blew me away, because nothing that I was reading, either in the mining press, or in the sportsman's magazines, or anywhere that I saw, gave me a clue of what had taken place and was happening. So first slide, or second slide, actually.

I'll give you a little bit of a historical context here first. We missed an outline, didn't we? Yeah, let's, this is what I'll talk about. And Senator, at ten minutes till the end of my time, you beat on me, because I've got some stuff I need to be sure to hit on at the end. But the historical context followed, talking about ANILCA impacts, other federal overreach. And I've added a dozen items sitting here today that I'd forgotten about and didn't get on there, so I'm going to read those to you.

How to mitigate, avoid and fight the overreach and how to defend against the future overreach. Next slide.

The context; yes, at statehood the state was given plus or minus 104 million acres, except for a few parks and preserves, but the remainder of that 365, now, you'll never forget that number, will you, because that's the number of days of the year, so no one should ever forget how many acres Alaska has, so you put it into context with whatever other numbers someone throws out. But most of that 365 was open to operation of the mining law, and as Chuck said, the industry wasn't initially real concerned about the state getting mineral lands, because you had the Federal Mining Law and didn't have to worry about that. But that meant that BLM lands and Forest Service lands were available for timber, they were available for tourist lodges, commercial guiding, oil and gas development, and operation of the mining law, and specifically the staking of mining claims is what that term means.

1968 Prudhoe Bay was discovered. Of course there was only one logical route for that pipeline, and Alaska Natives saw this as the mechanism to really force the issue that they had

been working on for decades of a land settlement, they filed a suit. The result of that, and a bunch of other things, of course, was ANCSA in 1971. And Chuck mentioned that early on the mining industry did not support, or at lot of the folks in the industry didn't support that, but as, and I'm not speaking for the miners now, I'm speaking for Steve Borell. I look at that as possibly one of the, maybe the single most important piece of legislation since the Statehood Act, because that adds private fee-simple land in Alaska. And whatever other requirements may come along, there still is the Fifth Amendment to the Constitution that says, you take my land and I have a cause against you, and so that is so important.

But then of course in 1980 ANILCA was passed and 104 million acres were removed from the land that was available, increased congressionally designated lands off limits to a total of 165.5 million. And so you say that 165 million acres and nobody knows how big that is, so I tell them that's a comparison to the size of Texas. Texas has 168 million acres, but nobody knows how big Texas is either, so here's how to remember it. Those 165 million acres is the combined total acreage of the States of New York, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana and Illinois. You take Interstate 70 from New York City and you go to the Mississippi River, those are the seven states you cross, that's how much federal land right now is totally off limits to any development in the state. Next slide.

Impacts from ANILCA, plus subsequent regulations and policies, if you will, based on ANILCA. ANILCA was, we're told every ten years they have a celebration here, the environmental groups do, and they celebrate ANILCA, and we're told that ANILCA was the great huge compromise. But tell me, who was it that compromised? I contend that the State of Alaska compromised. There's 104 million acres that could no longer be selected for state lands, and those are lands that were potentially, in many cases, the highest mineral value lands. The Native corporations, they sure compromised a bunch. A lot of the best lands around the Native corporations, guess what, those couldn't be selected any longer, and we still have problems today. Sealaska, I saw the representative here, that's part of the problem that they're fighting right now. They never did get their required allotment, their promised lands they couldn't get at the time of ANCSA, because so much additional land was already set aside, locked up.

What about most Americans? Most Americans, think about it, will never benefit from those 165 million acres. The ones that will are those that are financially independent, physically fit, and able to take off long periods of time. They're closed to the elderly, they're closed to disabled, disabled veterans included, they're closed to young families with children. Well, technically are they closed? Well, maybe not, but go ahead, get some 85-year-old retiree that comes up on a bus, they can't see those lands. They can see pieces from a distance; they could charter a plane and fly over at a thousand feet, but to me that's not benefitting from the lands.

Immediate impacts in 1980. The immediate impact of that signature was that 104 million acres were forever closed to mineral entry and mining claims. That's a major issue to the industry. After plus-ten years of hope with uncertainty, many companies at that point just closed their doors and left the state. They had been hoping that something more reasonable was going to happen, but if you're an inholding within a national park now, you look around you and say, hey, life's too short to spend it fighting to get permits for this, and they left. And of course the guides in the national parks were immediately and, hey, they were ordered to leave on the spot. Next.

ANILCA impacts that followed later on. In 1985 there were, early '85, let's make that clear, there were 24 family mines operating at Kantishna. If you drive 92 miles from the park entrance at Denali, you get to, you cross the border out of Denali National Park, Old Park, and

you come to the Kantishna Mining District. That district was specifically excluded when Denali was designated initially in 1916. It was excluded because, hey, it's a tremendous mining district. And by the way, that road was built by the miners to get in there. That's why we have some access to one of the national parks. And at the end of that road is this place called Kantishna. It became incorporated into the preserve when, let's see, is that correct, or was it, was that made big park, too? Does somebody know right offhand? Say again? Okay, that's the park addition, I'm sorry, it wasn't preserve. So anyway, at that point at least the 24 family mines were operating there. They were busily about their business. The Sierra Club and Northern Center for the Environment filed a cumulative affect Environmental Impact Statement. They claimed there needed to be a cumulative affect statement. It took the Park Service five-and-a-half years to say, no, there's no mining going to be allowed. Actually, you could technically do it, but the criteria was so strict and the way they had designed it was so, my term is perverse, that nobody could actually begin mining. And one particular miner spent over \$30,000 to design the mine plan, settling ponds, reclamation work and all that, and finally he was privately told off in the corner to say, don't even apply anymore, don't waste your money, you're never going to be given a permit, don't think you're going to get one. And so there were the lives and livelihoods of 24 Alaska families that were shut down at that point.

Over the next ten years, and some of you might remember Duane Gibson worked for Senator Stevens, Duane and I worked on four different pieces of legislation that all became law, and the intent of them was to provide some kind of relief to these people at Kantishna, and then later on to a broader group, not just the Kantishna inholders. But out of that, I don't know if there were six individuals that actually got some compensation, and I don't mean just the 24. There were the 24 families that were operating, but there were dozens of others in other park units and elsewhere, but very, very few ever got any compensation and they had their lives tied up in those properties. They had been there for some 30, 40 years. Some of these guys were in their 80s, 85 years old, and guess what, they've all died now, they didn't get a thing for their property. That was their American dream.

Ongoing federal, oh, and let me just, I made a couple notes there as we were, as I was watching. The name Ted Van Zelst was mentioned awhile ago. Ted Van Zelst, he actually took one of Senator Stevens, the last piece of legislation, said that if you take and file a quit claim deed, you give your rights back to the Park Service, then you'll get compensation, and here's the model, here's how it will follow. And Ted finally said, you know, he said, all I need to do, my life has been spent with so much energy on this, if I can get a tax deduction for giving what I've spent back to the government, that's all I'm going to hope for. The Park Service says, that's great, they sign it off, he signed over the claims. And two years later, guess what, IRS says, well, what do you mean, you couldn't mine there anyway. That wasn't of any value whatsoever to you. You can't mine in a park. And the Park Service said, no, you can't mine in a park.

What did Ted get out of it? I don't know. I meant to give him a call. I don't know if he's still alive, but anyway, I mean, Chuck. But that was one. There's a few others out there. One of them is in the audience right here that's still trying to fight to get compensation for some of the claims, in one case at Kantishna. Another fellow has additional property in Wrangell-St. Elias. A property in Wrangell-St. Elias, patented private simple land that he can't do anything with, and he cannot get the Park Service, the Department of Interior to do an inventory of it to say, I mean, a mineral inventory, not a surface inventory, and say, no, you could never build here. But what does he actually have, what's that thing worth? He can't, nobody will tell him.

Well, there's a new angle. I say it's a new angle, but it's been happening now for awhile, and that is that, yes, valid existing rights, that's the important word, those are important promises

out of ANILCA. And so you have a mining claim. How do you determine if it's valid or not? If you do not have the patent yet, what you do is you call in the Bureau of Land Management and they have experts. These people know how to do it. They scrutinize that ground and the mineral values that you've found and they say, oh, yeah, this is a valid claim, there's no question about this. If you were mining this, you would make a profit right now. So you're very pleased, you have this in your hand, and you go now to the Park Service and you say, I have this, your people have reviewed it, and I want to be compensated. And they say, well, we think we need to do a reevaluation of that evaluation, and to some people it's happened three times now. They got their original evaluation by the government, the competent people, but evidently the answer wasn't the right one that the Park Service wanted, so they ask somebody else to come. They brought in an independent consultant. The independent consultant said, oh, my goodness, this is good stuff, this is good, oh, we don't like that report either, so they invite somebody else. If that isn't overreach, Senator, I don't know, Representative, I don't know what is. And you have a lot of Alaskans, quiet people that have been off in the corner, you might say, that have been treated like that. They've been kicked around and it continues on and it's not slowing down. I'm saying I believe we have a crescendo right now happening.

Refuges - long history of hassles to obtain new and renewed guides. I'm told that maybe not most have been forced out of business, but some definitely have. Ongoing ANILCA overreach, Park Service management plans seeking additional control, both inside and outside the park. Let's see, today's the comment deadline for Gates of the Arctic National Park, a permit amendment, a plan renewal. And you look at some of those statements and they're trying to reach outside the park. If you look at Gates of the Arctic, there's a box on the bottom of that thing, it's called the boot. The bottom comes across and then there's this big thing that, I don't have a map of it here, but it cuts across and then it goes back up. And I don't know how much land there is in there, but it blocks what would be the normal expected route to get from the Dalton Highway, the pipeline highway, if you will, across into the Amber Mining District, and that block was put there on purpose to block access. And so the folks that have that park, that manage that lands, guess what, now they're trying to say, well, maybe we can stop it, even though there are some promises to get through the park, through that boot, there were some extra specific words there, but they're already preparing the way right now to block that access.

Management plans, that's one of them, but every management plan you are going to ever see I contend will be more restrictive than the one it replaces, it will cut down probably access, it will cut down private rights, remove some that you originally had, whatever the previous plan said. I have yet to see one in the 22 years I was Executive Director of Alaska Miners, have yet to see one that did not further restrict what was already extremely restrictive.

Buffers on conservation system units - Ron Somerville mentioned that the whole concept of the preserves, in addition to parks, was to provide, quote, buffers. How many times are we seeing legislation? And oftentimes we even see some state legislators that get hoodwinked to go after things like Stampede west of Healy there. Guess what, we need a buffer around Denali National Park. It's a huge park, but it's not big enough, because a wolf might run off onto Stampede, or a moose, and get shot by a local family that needs the meat, in the case of the moose.

Other things that I didn't list on here, ANILCA promised a thing called AMREP, Alaska Mineral Resources Evaluation Program. That lasted and was funded for a few years, and that funding just went down and down and down and pretty soon it went away completely. That was a promise of ANILCA that the federal government would continue to look at the mineral resources of Alaska. They didn't do it. That was a promise they've not followed. Another one, a

pretty simple one, the promise in ANILCA was that they would produce an annual report of the mineral studies that were done. And you know what, I think somebody tell me, 1996, that may have been the last one of those they did. It's a requirement that the Department of Interior put together this report every year to Congress. They're not doing it. Next slide.

Valid existing rights, I didn't write down the quotes and everything, but you have to ask, how could Congress have been more clear? Major promises of ANILCA, the no-more section 101, we've had various people articulate far better than myself. But Congress believes that the need for future legislation designating new conservation system units, new conservation areas, and new national recreation areas has been obligated, it's been met, that need has been met. That's an intent of ANILCA, I agree with Sally Gibert, it's an intent, it's not a specific statute that you can go to court and sue on maybe.

Section 1326(a), no future executive branch actions. Well, what is wildlands issue? What is the roadless inventoried issue, inventoried wilderness lands? Those are all administrative actions, totally illegal. Under that specific section, no further studies even, you can't even study it further. Again, if Congress wanted to be more specific, how could they have done it? I don't think they could. Next slide. Okay, ten minutes. Great.

Other areas of federal overreach. BLM management plans limit, every time I say that, every time you see a new plan, it has additional restrictions. Forest management plans, further restrictions to access and use. NPRA, plan after plan always more restrictive. We've seen that over the past, what, 12 years now. Plans always evaluate for more wilderness and Wild and Scenic River designation. Why not also evaluate for removal of those existing designations? If you can do the one, you need to be able to do the other, because both of them have to go to Congress anyway. All right. Cannot change the law by legislation? Well, then you bypass it. Antiquities Act, and thanks to ANILCA the specific use in the Antiquities Act is now limited to 5,000 acres. But executive orders, if you want to have heartburn, go on your website, search on that and read those things, especially in the last ten years. Roadless Rule, and you know what that, you see I put in inventoried. It has nothing to do with the existence of roads, it's what they want to say is, quote, roadless. There are massive, massive amounts of roads in their, quote, roadless, areas. I mean, they call it a Roadless Rule and then they define it however they want to do it. And the Forest, especially the Forest Service, it's just, well, it's where they focus, but especially the ones in Alaska.

Other interpretations contrary, oh, the Millsite Rule, that was a mining issue. Other interpretations that are contrary to 100 years of both administrative and legal settlements. John Leshy, when he was Secretary, he was a solicitor for Interior, hey, he did several things like that, and administrations are still trying to clean up the mess that he left. Fish and Wildlife Service contracts with environmental NGOs to, quote, study something that both the service and that organization oppose. And Friendly NGO lawsuits, it's called sue and settle. There was about a month-and-a-half ago a very scathing approach to a description of that is how working environmental groups, working with an agency; now, if that isn't overreach, I don't know what is. To sue and then to settle out of court, well, guess what, State of Alaska needs to be in that court so it can't be thrown away.

Well, real quickly, I added the following items, and I'm not going to talk about any of them, but I'm up to 12 of them. Clean Water Act, Clean Air Act, Wetlands, National Environmental Policy Act, CERCLA superfund issue, and Ed did mention that about the bonding, the Wildlands Initiative, Endangered Species Act, Bristol Bay Watershed Assessment, Office of Surface Mining Coal, changing the rules after 20 years, d(1), public land owners that

are now obsolete, the purpose for which no longer is valid, the purpose has been met, Bureau of Land Management exploration on selected lands that just got changed this spring. That one just changed now again, administrative. And Department of Interior policy to not recognize Recordable Disclaimers. Next one.

I'm here to say that item number 1, what DNR is doing on RS 2477s is absolutely essential. I think that's great. Navigable water is the same way. Within Fish and Game we have an office that focuses on Endangered Species Act, absolutely essential. That has to be an individual responsibility of someone. ANILCA position within Fish and Game, and I utterly forgot, and I missed putting DNR has a similar kind of a position. I think between those two there's opportunity for better collaboration for better coordination between the two, because I'm just concerned that something's going to fall through the cracks, that each one will think the other's maybe working on.

Areas where similar approach is needed. Number 1 is ocean zoning. That's called, let's see, executive order on this was about a year-and-a-half ago now on Marine Spatial Planning. That's zoning the oceans. There needs to be a responsible office and person in the state that's focused on that. Number 2, World Heritage sites, and I go into a bunch there. It needs a responsible person. These things only appear every maybe three years, but you have a Park Service and you have environmental groups that are working hand-in-hand every day of the stupid year to create these things. Federal legislation is needed so the Congress, only the Congress can authorize some kind of, quote, international designation of lands or waters, and that's what a World Heritage site is, that's what a biosphere reserve is, an international park. And in 1999 HR 883 passed through the house and 510 got into the Senate. It was in the Senate, Congressman Young in the House and Senator Murkowski, Frank Murkowski in the Senate. American Land Sovereignty Protection Act, that needs to become law. It got stopped in the Senate and it didn't go on. Next slide.

Let's talk a little bit about this. How am I doing? Oh, I've got five minutes. All right. World Heritage Sites. Here's the one that I don't know if you're going to hear about from anybody else, but you need to be aware of this. This is one of the gorillas that's out there that nobody is paying attention to. He's just running around doing anything he wants to and he's being paid. I think there are four people in the National Park Service here in Alaska, here in Anchorage, that are working on the topic, as we speak. Wrangell-St. Elias, it is listed, and in 1993 environmental NGOs referenced the designation as a reason to block the Icy Bay Timber Harvest on Chugach Native lands. I don't know, is it 60 miles from the Native lands? Somebody's nodding their head, but they used that argument at that time. Okay, so what?

All right, Yellowstone National Park, it's a World Heritage site, one of the first ones, we'd all agree. In the mid '90s it was used to generate a huge international response to stop the New World Mine in Montana, which was several miles from the park boundary, it was in a different state, it was in a different watershed, it was a historic mining district that had all kinds of pollution issues, and this new mine was going to do what, they were going to clean up all that. But using the argument of being close to a World Heritage site, was used to block that project. By the way, you ended up paying for that. The mining company didn't pay for it, you paid for it, because you paid the mining company to give up all their rights and walk away, and you're still going to pay for the cleanup, too.

Volcanoes of Kamchatka, it was listed on the 18th of December 1996, the same day Environmental Defense Fund, Pacific Environment and Resource, Sierra Club, sent letters and press releases demanding that the Overseas Private Investment Corporation not provide political

and finance insurance for the adjacent Aginskoye Mine. The Aginskoye Mine area had been explored for 20 years. There were people living all around that are. They had been, mean, it was, I've been there. And immediately this came out and said, oh, no, this is adjacent to a World Heritage site, you have to block this. And the Russians were really upset. They thought that the companies involved were pulling some kind of a trick to get a better deal out of it, and then they realized, no, this is an environmental trick that just got pulled on us. Well, Russia just said, well, phooey on you, and they moved the boundary further away, and so the issue went away and the mine's up and operating.

Kakadu, Australia, listed. It was used to block a different uranium project. It was adjacent to the Ranger Uranium Mine, which had been operating for 20 years. And the environmental groups even sent lobbyists to Germany to lobby the power companies that bought the yellow cake, the material from that mine. I mean, these people are networked, they are busy. And then we have Beringia, so next slide.

So what is Beringia? Well, I took this off Saturday night off the website. Today, note today, Beringia is defined as the land and maritime area bounded on the west by the Lena River. See, the last time I looked at this site it just went to the Kolyma, all right, and it went to the Mackenzie, but now it says the Lena, that's another, what, 400 kilometers west. The Mackenzie River on the east, they haven't changed that one today. The 72 degrees north, that's about 150 miles north of Barrow, 72 degrees north latitude, and down to Kamchatka Peninsula. That's it on the left side. So you draw that horizontal line across and you, where do you come? You just included all of Alaska in Beringia. Next slide.

Current activity, I didn't know this until looking around the website, that in January 17, 2013, Prime Minister Medvedev at that time, he signed a decree making a Russian National Beringia Park, and at the bottom it says, it's very important for inclusion in an international protected area spanning the Bering Straits. Next slide.

We'll talk some more about Beringia, but the Summit, something else has to happen here, more ways to defend. We need to have this to continue. We need to raise the profile for all Alaskans. We need to be alert. We need to assign responsibilities. We need to review every piece of legislation and provide comment right on through. You need to monitor those folks. You need to watch the federal agency proposals to the Fish and Game Board. Just think, go through those sometimes. Next slide.

More defense, the opposition, I say the enemy, you follow the money. Environmental grant makers often come every summer, fall, to Girdwood. They sit down and divide up and decide where several hundred million dollars of environmental grant monies go. What are the issues we're going to work on? And leading the charge is always a few foundations, there are some others, but follow what these folks are doing. You won't find the environmental grant makers online unless you have some kind of a code that I don't have, but you can follow Pew and others. Follow Alaska Conservation Alliance, they launder that money and then pass it around here locally, so find out what they're supporting and you'll know where to look out. Endangered Species Act, Center for Biological Diversity, whoever is following that needs to go to their website every week, every Monday morning to see what mischief they did the night before, and visit sites often of these other groups to keep track of them, and attend Beringia Days. Next slide.

Conclusions, I didn't finish everything I needed to say on Beringia, but that Act to require Congressional approval, that has to get initiated, and I think you guys need to, my

recommendation is to the Legislature, is that the Legislature, both House and Senate, do resolutions to get the Congress to get that moving again, Senate Bill 510 and, what, 883 in the house. But, hey, the attacks appear overwhelming. Each agency has a propensity to reach and grab for power and expand whatever they do. Be on guard, state agencies, you have that same propensity, but watch out for it. We are unbelievably outspent when it comes to this. The hundreds of millions of dollars that are spent trying to make all of Alaska one big park, like Jack Hession wanted, they haven't changed their goals. Yeah, and the NGOs, they have realized they have few scruples, if any. The promises of ANILCA mean nothing to this generation of the NGOs. And I say, well, I didn't sign that, that was some other guy before me. But we can win, we can prevail, and you've got to be diligent. Thank you.

Senator Coghill - Thank you, you two, and I'm sorry I had to stand up. We're going to take your turn at break, but one comment. While Chuck was talking, I was reminded, I was in the military. I got drafted, I was on the wrong end of the dean's list when the draft came around, so from 1969 to 1974, one of the critical moments in Alaska's history, I was off in England, but there were people in Southeast Asia. We have had a war probably continuously since then to now, including the Middle East. And they study war, they study the strategy, and so must we. So thank you. Have a break. We'll get back here in ten minutes.

3:00 p.m. Break

3:10 p.m. Natural Resource Development

Senator Coghill - And it looks like Friday afternoon out there. Lisa, could I get you up here, Lisa? And J.P. Tangen, where are you at? He went outside? Rynnieva, would you get Mr. Tangen, please. If the presenters don't come, I'll subtract the time from them. The issue we're going to deal with coming up here is Natural Resource Development, a continuation discussion. The State Tongass is one of the key elements to the economy of Alaska. Probably one of the saddest lessons I've learned as a State Legislator is what happened to the people in Tongass Forest. The Iliamna Native Corporation, talking about some of the resource developments there. Thanks, Lisa.

And then the mineral exploration in Alaska, we have huge potential, so I'm going to not wait for Mr. Tangen. Where is he? I don't see him yet. So I'm going to go ahead and get going and then I'll depend upon Rynnieva to be kind of my other long arm. I'm sorry for having to be such a taskmaster, and I know that many seats are empty because everybody has a Blackberry or an iPhone or something that has messages on it, so I understand that. But in the interest of trying to make sure everybody gets a chance to have a part of what we asked them to present, we really do need to move forward. So I'm going to ask Kyle if he'll come forward. He's with the State Tongass Leadership Team at Alaska Department of Natural Resources, and the good news is Alaska is trying to do its best to make that Forest Management productive. The bad news is, he's in the Tongass Forest. So why don't you come on up, Kyle.

Kyle Moselle, Alaska State Tongass Leadership Team, Department of Natural Resources - Good afternoon. Thank you, Senator, and thank you, Representative, thank you to the Commission for having me speak today. Once again, I'm Kyle Moselle. I am with the Alaska Department of Natural Resources, Office of Project Management and Permitting. Part of my responsibility is coordinating the State Tongass Leadership Team. This is a team of resource specialists throughout numerous state departments that works collaboratively with the Forest Service at many phases of project development on the Tongass National Forest. And we work with them and we comment through the NEPA process, and we work on the planning and design of major development projects on the Tongass. So I'm here today on behalf of Chris Maisch,

Alaska State Forester and Director of the Division of Forestry. Mr. Maisch apologizes for not being here today. He's chairing the Alaska Board of Forestry meeting in Kenai.

I'd like to begin by discussing the concept of a Working Forest, which the State of Alaska embraces and believes is essential for considering forest resource management issues. The Working Forest concept utilizes forest resources to create jobs and healthy communities through active forest management. A healthy environment should support a strong social structure, which will in turn support a robust economy. The State of Alaska and others use the phrase, Triple Bottom Line, to refer to this relationship, which is also described as sustainability. When any one of these elements is emphasized disproportionately, the other elements suffer in measures of quantity and quality. Unfortunately, in Alaska and other parts of the Nation, an unbalanced relationship between the three bottom lines, environment, society, and economy, is causing major challenges for state and local governments and communities. Federal policy on National Forest System lands has shifted away from the Working Forest concept to disproportionately embrace a preservation-oriented approach, as illustrated by federal management on our two National Forests in Alaska, the Tongass and Chugach.

The Tongass is our largest national forest and encompasses about 17 million acres of land. Roughly 10 million acres of the Tongass is forested, and through a series of legislative withdrawals and administrative allocations, the forested land base available for commercial timber harvest, the most common form of development activity, is restricted to approximately 663 thousand acres, about 4% of the Tongass, or 7% of the forested land base.

The legislative withdrawals, as we've heard here today, are a combined result of the Alaska National Interest Lands Conservation Act, ANILCA, and the Tongass Timber Reform Act, TTRA, while the administrative land allocations are defined by the current Tongass Forest Plan. The State of Alaska was a cooperating agency in all phases of the 2008 Tongass Forest Plan Amendment, and we have maintained that role with the U.S. Forest Service, at the forest level, during the past five years of implementation through a series of Memorandums of Understanding. The two most significant changes since approval of the 2008 amendment are the reapplication of the U.S. Department of Agriculture's 2001 Roadless Rule, Roadless Area Conservation Rule, is the full title, and the implementation of the U.S. Forest Service's Transition Strategy policy.

I'll start by talking about the Roadless Rule here. The U.S. Forest Service, under the U.S. Department of Agriculture, considered exempting the Tongass from the Roadless Rule in 1999, but declined to do so in the final rule published January 12th, 2001. Alaska sued the federal government on the grounds that it had violated ANILCA and other laws by applying the Roadless Rule to the Tongass and the Chugach National Forests in Alaska. The Forest Service agreed to exempt the Tongass from the Roadless Rule, effective January 29, 2004. However, on March 4th, 2011, the U.S. District Court for the District of Alaska vacated that exemption and the Forest Service reinstated the 2001 Roadless Rule on the Tongass, rather than revise the rule or the exemption. The State of Alaska has appealed to the Ninth Circuit Court of Appeals and we are currently awaiting a decision.

The Forest Service's decision to reapply the 2001 Roadless Rule presents a host of concerns, but I'll highlight two specifically. First, the 2008 Tongass Forest Plan Amendment was approved while the Tongass Exemption was in effect. Therefore, major components of the current Forest Plan, such as its Land Use Designations, Old-growth Conservation Strategy, and management goals and objectives, which were designed specifically to address the management challenges of the Tongass, are effectively superseded by the 2001 Roadless Rule.

The 663 thousand acres known as the suitable and available land base is where timber harvest and other development activities are allowed under the current Tongass Forest Plan. This is the only land base from which the U.S. Forest Service may meet its obligation under ANILCA, as amended by the TTRA, to seek to provide a supply of timber from the forest that meets the annual and planning cycle market demands for timber.

Senator Coghill - And TTRA is?

Kyle Moselle - Tongass Timber Reform Act. By reapplying the 2001 Roadless Rule to the Tongass, this land base is significantly reduced, and is likely incapable of supplying timber that meets market demands on an even-flow, sustained yield basis. Setting timber aside for a moment, roads are also important for providing access for traditional and cultural, recreation and commercial uses. With 91% of the Tongass in a roadless condition, either as Inventoried Roadless areas, or Wilderness, and less than 100 total miles existing, miles of road existing in the 5.4 million acres of the Chugach, it is clear that our National Forests in Alaska are outliers for a national rule that was developed to preserve remaining roadless areas, which are limited in the rest of the National Forest System.

Moreover, through ANILCA, Congress found, quote, sufficient protection for the national interest in the scenic, natural and cultural and environmental values, and quote, adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people. Congress also found that ANILCA represents the proper balance between lands set aside in national conservation system units with those public lands available for more intensive use and disposition. Further, Congress prohibited administrative agencies from withdrawing more than 5,000 acres of additional Alaska land without Congressional approval. The State of Alaska considers the 2001 Roadless Rule a withdrawal in violation of ANILCA, and the state continues to pursue its legal challenges to the validity of the 2001 Roadless Rule on this and other grounds in the Court of Appeals for the District of Columbia.

Second, the U.S. Forest Service's decision to revert back to the 2001 Roadless Rule, rather than revise the rule, disregards the fact that authorized road building occurred in Inventoried Roadless Areas on the Tongass during the seven years under the Tongass Exemption. This produced what is known as roaded roadless. Operating under provisions of the 2001 Roadless Rule, the Forest Service is unable to authorize commercial timber harvest or additional road building from these roaded roadless areas, even though they may be zoned for such development activities under the current Forest Plan, and previous harvest may have occurred there.

An example that underscores both of these concerns is the Tonka Timber Sale on the Petersburg Ranger District in the Tongass. Approved in April 2012, the planning and environmental review for this timber sale straddled the District Court decision vacating the Tongass Exemption, and Inventoried Roadless Areas were identified as a significant issue during scoping. Initial planning identified a maximum harvest opportunity for the roughly 62,000 acre project area, of approximately 120 million board feet of timber. Although not all of that timber would have been economical to harvest under current industry conditions, it represents the total timber opportunity in the project area under the management framework of the current Forest Plan. The 2001 Roadless Rule reduced the available planning area by more than 50%, thereby taking a significant amount of suitable and available timber land off the planning table before NEPA even started.

With the loss of the Tongass Exemption during planning for the Tonka Timber Sale, most

of the alternatives developed avoided inventoried roadless areas completely, but the Draft and Final Environmental Impact Statement both evaluated an alternative that proposed timber harvest in roaded roadless areas within the project area. Unfortunately, reinstatement of the 2001 Roadless Rule precluded the Forest Supervisor from selecting any of the proposed harvest units accessible from these roaded roadless areas, which contained an additional 11 million board feet of timber available for harvest under provisions of the current Forest Plan. That additional timber volume is roughly 44% of the current annual volume for the Viking Lumber Company in Klawock, who was the successful bidder on the sale.

In his decision, the Forest Supervisor selected an alternative that avoided all roadless areas and approved the harvest of 38.5 million board feet of timber, only 32% of the 120 million board feet identified as the maximum harvest opportunity for the project area.

At the forest level, the Forest Service's decision to preserve roadless areas by reinstating the 2001 Roadless Rule on the Tongass preempts the more balanced management framework of the current Forest Plan, while at the project level it results in loss of development opportunities for the region.

As a solution, the state has requested, through our comments during the five-year review of the Tongass Forest Plan, that the Forest Service comply with Congressional directives in ANILCA and the TTRA by administratively reinstating the Tongass Exemption through a new rule making, or amending the original 2001 Roadless Rule by exempting Alaska lands. Without taking steps to address reinstatement of the 2001 Roadless Rule in Alaska, it may not be possible for the U.S. Forest Service to produce any forest plan that complies with federal law.

I couldn't come up with a good transition here to transition to the transition strategy, so we're moving to transition now. In May 2010 the Forest Service announced development of a, quote, Transition Framework, program for the Tongass National Forest that included facilitating, quote, a transition of the forest sector to young growth management. Young growth definition here; young growth is basically any managed stand, anything that's been previously cut. It's also referred, some folks refer to it as second growth.

More recently, the Forest Service released a Leader's Intent paper to, quote, clarify the Forest Service's leadership's intent for the transition to young growth in Southeast Alaska. The State is concerned that the Forest Service is implementing a strategy that directly affects project-level planning on the Tongass National Forest as part of a broader agency policy that has not been formally adopted through a public process.

The Tongass Forest Plan is essentially old growth centric, but with respect to young growth, it includes the following management objective on lands designated for Timber Production. That management objective states: Plan a transportation network of roads and helicopter access that will eventually access most of the suitable forest lands for standard logging or helicopter yarding systems and transition to young growth management.

Yet, the Leader's Intent states that the U.S. Forest Service's long term goal is, quote, that the majority of active forest management on the Tongass will be comprised of ecological restoration, pre-commercial thinning, small and microsale old growth timber sales focused on niche markets, and young growth forest management. The State is concerned that policy direction from the Washington Office of the U.S. Forest Service and U.S. Department of Agriculture is trumping the Tongass Forest Plan, which underwent rigorous public and scientific review.

The final Environmental Impact Statement for the 2008 Forest Plan Amendment lacks a specific discussion or evaluation of a transition away from conventional old growth harvest and towards a timber sale program that emphasizes restoration activities and a timber sale program dominated by young growth timber harvesting. As a result, or as such, the public and resource specialists have not had an opportunity to critically evaluate the impacts to the human environment that may result from implementing such a shift in forest management policy on the Tongass.

As a solution, and again through our comments during the five-year review of the Tongass Forest Plan, the state has recommended that the U.S. Forest Service develop forest-wide standards and guidelines for young growth management on the Tongass. Such an addition to the Forest Plan would allow the U.S. Forest Service to identify goals, objectives, desired conditions compatible with managing the suitable and available land base of the Tongass, in perpetuity for a variety of wood products, on a sustained yield basis, to both domestic and foreign markets. This approach to formalizing what is currently an internal policy, would also allow the public the opportunity to evaluate and comment on the Transition Strategy policy through the NEPA review process.

I'd like to end by acknowledging the generally productive working relationship the State of Alaska has with the U.S. Forest Service at the forest and regional levels in Alaska. We don't agree on everything, but we have adequate lines of communications in place to daylight issues and resolve them. However, national regulations and policies developed from the Washington Office of the U.S. Department of Agriculture and U.S. Forest Service, like those I've just discussed, present a greater challenge for resolution, because they tend to diminish the importance of federal laws that are specific to Alaska. They also tend to supersede the individual forest plans that are the product of extensive public and scientific review, and they usurp the decision making authorities from forest and regional decision makers.

Again, thank you for the invitation. In addition to my talking points here, I've provided the Commission with the Final Report of the Governor's Timber Jobs Task Force and the State of Alaska's recent consolidated comments on the five-year review of the Tongass Forest Plan. Both of those documents have a lot more detail surrounding the issues I've talked about briefly here today. CACFA I think will put those on their website. So thank you, and I appreciate it.

Senator Coghill - Thank you very much. And just looking at the recommendations, I know that in the back there's kind of a matrix of recommendations that are, I think three variations, short-term, mid-term and long-term issues, right? And so I greatly appreciate that. That's going to be helpful for us in looking forward to that. Iliamna Native Corporation. One of the things I don't know is enough of your biography, so when you introduce yourself, give us kind of some of that background. Thank you very much for coming to be with us at this particular roundtable. Thank you very much. Come on up. And just so that I don't get totally lost, it's Lisa Reimers. Sorry, my apologies. Thank you very much for coming.

Ms. Lisa Reimers, Iliamna Native Corporation - My name is Lisa Reimers. I'm from Iliamna, Alaska. I was born and raised in Iliamna. And Iliamna Development Corporation is a subsidiary of Iliamna Natives Limited, which owns 90,000 acres in Iliamna. Thank you guys for having me here. When they asked me to speak, I'm not, everybody in Iliamna goes, I don't want to do it, it's your job. And it was like, no, you should try it, no, you need to do it, you're good at it. I'm like, okay, so I'm the one that ends up talking about all this. So somehow this has become a passion for me about the EPA, because this could really affect our Native lands out there, because we've

done our own research on it. And everybody wants to make it about Pebble, and this is not just about Pebble, it's about our Native lands. You can switch.

That gives you a map of where Iliamna is. I know Iliamna is on the news and about Pebble, and I don't know if everybody knows where Iliamna is located, but it's 250 miles southwest of Anchorage. And you see the surrounding villages in Iliamna. The next slide.

It's our mission of the Iliamna Natives Limited and Iliamna Development Corporation to pursue business endeavors that benefit shareholders through jobs, contracts and economic benefits. Our goal is to emphasize quality to all that we undertake. Through our efforts, we will protect the lifestyle that shareholders deserve, while providing economic benefits to our communities, as ANCSA intended.

Our vision statement is: Iliamna Development Corporation bases its work on quality, teamwork, meeting clients' needs and maintain the highest ethical, technical standards. And that's where we work really well with the state, because there's a lot of permits we have to do because of our bargaining and everything else to follow the regulations. Next slide.

These are some of the things we do. We are 8(a), but mainly we do contracts out in Iliamna. We have bulk fuel supply, delivery, freight and marine transport, facilities support services, road construction, land management, environmental, actually, we had an oil spill so we cleaned up our own oil spill. Food, housekeeping services and much more. Next slide.

We're actually blessed with a lot of different things out there. We have our fish, we have mineral development, and we're pretty unique in that way. Next slide.

70% of all revenues received by each regional corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the regional corporation among all 12 Regional corporations. Each Regional corporation distributes 50% of the 7(i) distributions to its village corporations and to its at-large shareholders, pursuant to ANCSA. This is really important, because the way we see it as a village corporation, is why are we fighting resource development when we all depend on it? All the regionals depend on it, and the village corporations depend on this, too. Next slide.

Since inception of ANCSA, over \$1 billion has been shared from the ANCSA 7(i) resource development of oil, gas, timber and mineral projects to 12 regionals and 225 village corporations. Next slide.

In this we have training benefits, we provide social programs, there's a lot of alcohol and drug abuse so we provide, where there's no services out in the villages, so we send them here into Anchorage to get help and things like that. Community infrastructure, we have a ball field that we are building out there, things to help the community to do things to keep the kids entertained and everything. Next slide.

Why does natural resource development matter? It matters because we are the largest private landowners in Alaska, with title to 44 million acres of selected land throughout the state. Natural resource development of Native lands offers Native corporations an opportunity to generate jobs and other economic benefits for the Native shareholders, and fulfill the implicit promise Congress made to Alaska Natives in exchange for extinguishment of our aboriginal claims. Next slide.

So this 404 Clean Water Act, I get really emotional talking about, because we all

depended on commercial fishing in Bristol Bay. That's how I grew up. That was how my family grew up and it sustained us for a long time until the prices dropped to 40 cents and we couldn't sustain our communities. And it just kept getting to the point where we couldn't catch up with how we sustained our community, so we were trying to come up with a way to do that. And then all of a sudden this watershed came into play and it could affect 25 Alaska Native villages. It was drafted May 31st, 2012. A review panel of 12 will recommend water assessment of affected area. Assessment is not regulatory in nature, but rather of potential impacts. So to us it was, why didn't they ask us, because Iliamna is closest to Pebble, we're only about 15 miles, we own a lot of land there. Why didn't EPA and all the communities that wanted this to happen, why didn't they come and ask us? Next slide.

These are the villages and the regional, as you see. Our regional Bristol Bay Native Corporation is one of the ones that asked, Nondolton Tribal Council, Koliganik, New Stuyahok, Ekwok, Levelock and Bristol Bay Regional Seafood Development Association. I don't know who that is. But Koliganik, New Stu, Ekwok, Levelock, I think they're about 125 miles away from Iliamna, and the BBNC, they do not provide a job one in our area in the regional corporation, zero jobs. If you would ask them today, they would say, zero jobs. Next slide.

The EPA scope of assessment. The assessment reviews analyze impacts of the large scale mine developments on Bristol Bay fisheries and subsequent effects on the wildlife and Alaska Native cultures of the region. Next slide.

The impact lands on this BBWA. It will impact surface lands, it will impact the 14 ANCSA village corporations that manage the sand and gravel programs in the BBWA area, State of Alaska lands, Native allotments, private landowners. The subsurface lands; the ANCSA regional corporations, all mineral and oil and gas, timber, State of Alaska and federal government. This will impact everything, so it's a big deal. Next slide.

The definition that Lisa Jackson used, the former administrator of EPA, of why she's doing this, she said, EPA undertook this assessment after numerous Native villages and other organizations in Alaska and elsewhere raised concern about potential environmental, water quality, fisheries and associated economic and subsistence impacts from proposed large-scale mining development in the Bristol Bay watershed. That is why she took it on, but she did not come to Iliamna and say, is this something you guys want? She went to Dillingham, which was 120 miles away and asked them, and they said this is something they wanted. Next slide.

Some of the Bristol Bay tribes and other outside organizations still want the EPA to invoke its authority under section 404(c) of the Clean Water Act to veto dredge and fill and permits required for any large mining project in Bristol Bay. The EPA has never used the 404(c) authority prior to the filling of a permit application. This has never been done. And our whole thing is, why would you shut down our Native lands and not give us an opportunity for an economic development, because our people need jobs. This is the only one they've ever done, where they did a preemptive veto under section 404.

The Mingo Logan Coal Company. In a harsh worded opinion, Judge Amy Jackson accused the EPA of magical thinking in its interpretation of the Clean Water Act. Judge Jackson felt that the EPA's position would create huge uncertainty among the regulatory community if permits could be revoked after the fact. Despite this order, the EPA has continued its efforts to expand its authority under the Clean Water Act. Next slide.

So what we feel is missing with the discussion of the BBWA is the science part and how

the loss of economic impact would have to ANCSA lands, subsurface lands, State of Alaska lands, Native allotments, federal lands. There should be a discussion of how this could be compensated for the ANCSA lands that we have out there that could drive some economic development for our area. Next slide.

What we see are flaws in the BBWA, it lacks sufficient data and information to support conclusions reached, yet the report's authors in many cases overlooked the voluminous site-specific data provided by the Pebble Partnership and parts of the Environmental Baseline document. So to us we think it's lacking a lot of information, because it's a hypothetical mine they're basing it on. Next slide.

Those are the things we feel like it will impact for our future. It will impact the value of our subsurface lands, our surface lands, the State of Alaska lands, the Alaska Native allotments and management system. Next slide.

The BBWA report overestimates both the likelihood and consequences of the range of potential systems and operational failures. The hypothetical mining scenario presented in the draft BBWA does not employ best mining practices, or the alternative engineering approaches, environmental safeguards and other mitigation strategies commonly used at modern mines to avoid environmental effects. So to us we visited a lot of mines, we've seen what the State of Alaska, their rules and regulations, what they have in place, and we think they do a really good job with regulating the State of Alaska and they wouldn't let anything happen to our fish or environment out there. Next slide.

On March 2013 Representative Lamar Smith of Texas questioned the Bristol Bay Watershed Assessment: By initiating the Bristol Bay Watershed Assessment, it appears as though EPA is selectively using its authority to conduct scientific assessments to create new regulatory burdens. We agree with him. We do not need anymore regulatory burdens out there, because it's a job killer. And the people out there are faced with hardships in the winter, they have no way to pay their bills, there's no jobs, and the only ones that are creating jobs are what we provide as a village corporation. Next slide.

Some of the jobs we provide and what EPA could kill are Alaska Native jobs. We have catering, truck drivers, heavy equipment operators, large operators, and the procedural process by EPA will kill Alaska Native jobs. Natural Resource Exploration supports Alaska Native jobs contracted to Iliamna Development Corporation. All will be lost if EPA orders closure under the Clean Water Act 404(c) study. That's our opinion. And we have brought up the Sacketts, we've brought up Victoria Cory; these are people that had to face the 404 Clean Water Act. Victoria, her dad went to jail for three years, because he supposedly violated the 404 Clean Water Act. The Sacketts, they're still dealing with it. It ruined their business, their lives. They're still trying to hold together, but they went to the Supreme Court, but they're still not done with it yet. These are things we don't want us to face out there. So next slide.

This would be loss of our future jobs, loss of a positive economy impact to our Alaska Native families. People are holding their heads high now because they have jobs. People are wanting to live there, they want to build homes. This is the difference of having an economy and having jobs. We depend on subsistence, but we don't rely on it. Next one.

The 7(i), it's a Subsurface Exploration Agreement led to resource development. Exploration agreements affect value of surface lands by way of exploration agreements. Federal mandates will affect ANCSA subsurface/surface lands and values. Federal mandates affect

value of corporate stock. Next.

The assumptions of the BBWA will lead to huge land closures, affect how ANCSA companies, State of Alaska, Native allotments manage their lands for resource development, tourism, subsistence hunting and fishing. Closure of the Bristol Bay Watershed area will result in increased tension and disharmony between the federal government and its landowners.

Iliamna Natives Limited supports natural resource exploration of Native/State subsurface lands near our community. We're the most economically impacted community of the Pebble Partnership exploration project.

The natural resource development leads to economic expansion and decreasing poverty. This is especially with regard to the following aspects of economic advantages: Higher income taxes of states, thanks to mining activity; improving services and increasing employment in local communities. The raised demand for foods and goods make the economy of local communities thrive.

Conclusion. What should we do? We can contact our Congressional officials to consider public hearings on the BBWA assessment to address EPA's powers, land assessments, et cetera, seek legal opinion on EPA's powers of the BBWA states rights, ANCSA rights, to manage its lands under law, subsurface/surface land of BBWA impacts, economic analysis of the BBWA order. Thank you. Sorry this makes me really passionate when I talk about it, because I know the impacts it could have on our Native land and the people out there. And right now we have enough regulations in place I think for a safe environment, to do any type of economic resource development. Iliamna has never came out and said they're pro Pebble. We're open to see what the plan would be and we'll never allow something to happen to our home or our environment. Thank you for the time.

Senator Coghill - Thank you very much. Really appreciate that, Lisa. Thank you very much. Coming into the Country is the next, by J.P. Tangen, so thank you very much for coming to speak with us. We really appreciate it, all three of you on the panel. Thank you very much.

J.P. Tangen, "Coming Into the Country – Government and Mineral Exploration" - Good afternoon, and congratulations to all of you for hanging in so long. It is late in the afternoon already. I will try to see if we can't keep you awake for a few more minutes and then run off. My PowerPoint is going to have some floaters in here, so therefore I'm going to have to work with my young friend here to ensure that you get to see everything, but let's go to the next one here real quick.

How many understand this joke? Just raise your hand high, I want to see. Okay. Because I wanted to ensure that there are at least some people here who probably don't understand it. If you don't understand it, don't feel badly. We'll talk about what it means a little bit later on. But the point is that not everybody sees things exactly the same way and so it doesn't make an awful lot of difference whether you're smart or intelligent or educated or whatever, there are still things that you may and may not see. And I think that talking about the relationship between the federal government and the state government right now involves a lot of that.

First of all, let's talk about the fact that Alaskans have a long traditional history of being at arm's length, if not opposed, to what's going on in the rest of the country, or putting it another way, the rest of the country is opposed to what's going on in Alaska. Going back to Seward's

Folly, for instance, when Alaska was first purchased the battles associated with the Statehood Act are well understood, well known. The Trans-Alaska Pipeline was passed only by a single vote cast by Spiro Agnew as President of the Senate. We came that close to not having the Trans-Alaska Pipeline, and of course everybody knows the impact, economic impact that the Trans-Alaska Pipeline has had over the past 40 years or so. And of course ANILCA was a hard fought battle. HR 39 was an environmental octopus, as the saying goes, and we were very well aware of the fact that the creation of all these new parks, and Wild and Scenic Rivers, Wilderness areas, Fish and Wildlife refuges, in addition to the national forests as well, were going to constitute a stranglehold on the state.

This is what Alaska looked like before ANILCA. Essentially, we had three national parks and two national forests, and a whole lot of opportunity. This is what it looked like after, actually, when the withdrawals were initially proposed in 1972. Huge withdrawals from state selection and entry for multiple use, reduced access to remote sections of the state and virtually eliminated many major transportation corridors.

One of the things, of course, that's been talked about in conjunction with ANILCA was the no-more clause, and I don't need to dwell on that particularly. But the no-more clause was one of a number of compromises and promises made in ANILCA in order to get ANILCA passed. Those of us who were in the trenches during the days of ANILCA, when it was on the table, and Chuck went into great detail about some of that, remember very well the fact that it was really, from the position of the people who were interested in the mining industry, it was really kind of a sword that cut two ways. On the one hand, the strong argument that was essentially presented by Senator Stevens, was we must get some of these issues resolved. On the other hand, some of the issues that were represented essentially by Senator Gravel, but others, was the fact that this was too much of a burden to pay and we could not trust the government, or the federal government to keep its promises.

Well, in point of fact, we did get it resolved, but by the same token the federal government has not kept a large number of the promises that were associated with the passage of ANILCA. And furthermore, you have a situation in which, even with things like the no-more clause, for instance, the administration doesn't have to implement the statutes along the way that Congress says it intends when it passes a law. Essentially, the way our Supreme Court looks at it, and they spoke of this issue just recently, is there is no such thing as a legislative review of the implementation of a federal statute. And so, therefore, if Congress passes a law, the President signs it into law, and Congress passes legislation, the President signs it into law, and the next thing that happens is the agencies take over and they interpret it as they see fit. And the recourse, the legal recourse, which people who don't like the interpretation of the law have, is to go into the Federal District Court, and under the Administrative Procedures Act prove that the implementation of the statute is arbitrary or capricious or without basis, in fact, a huge very high burden. And so therefore as a result, going to the courts is not necessarily going to make anybody happy who don't like the way that the administrative agencies are doing their job.

Since the passage of ANILCA, there's been enumerable incessant conflicts between the people who held ownership interest in Alaska and the agencies that were charged with the responsibility of looking at the lands that they were charged to administer. The Park Service I think is the worst example, because of the fact that they regarded as their responsibility to ensure, essentially to acquire, all the inholdings that are within the parks that they operate. But when these parks were imposed on large segments of Alaska, an awful lot of private landowners were picked up in the additions, and the result was that the Park Service and the inholders had to deal with this problem. They had to deal with the problems of access, they had to deal with the

problems of the rights that they had to use their own land.

There is just no shortage of the problems that have come along, but one of the things that has occurred recently, and again there was allusion to the recent publications by the Park Service in conjunction with Gates of the Arctic and also Lake Clark, is a situation in which the agency wants to ensure that the uses of the inholdings and the uses of the immediately adjacent areas, the buffer zones, if you will, are not inconsistent with the park values. And so the result of it is that the people who have an interest in those inholdings, people have an interest in those buffer zones find themselves being zoned, effectively, out of the uses that they could or should make of private land.

And of course it just doesn't stop there. I mean, we've just had these illustrations after illustration after illustration after illustration going back for as long as ANILCA has been on the books. You have the recent situation where one of the more picturesque wolves from the resident wolf pack in Mt. McKinley National Park strayed off the park area and managed to get herself, I think it was shot by a local hunter who was perfectly within his rights to do so and it was a legal take, but the Park Service was all upset because of the fact that that was one of its photo ops for folks who visit Mt. McKinley National Park. In a similar vein, you have the situation in which Jim Wilde, a 70-year-old man, was on the Yukon River minding his own business and buzzing down the river, in what he thought was an area that was the responsibility of the state; after all, the state does own the navigable waters in the state. Nonetheless, law enforcement officers wearing National Park Service badges hailed him, and when he did not cooperate with them fully and freely, he found himself at the short end of a citation, for which he went to court, and which he tried to fight unsuccessfully.

And of course I think all of you know about the Hales in the Upper Pilgrim. I don't need to go into any detail on that. It's a situation in which, I want to point out that I don't think that anybody mistook Pappa Pilgrim as the poster child of the land use movement, or anything like that. In fact, Tom Kizzia has recently written a book about the Pilgrim Wilderness, and rather than focus on the civil liberties aspect of it, he focused on the more lascivious aspect of it, which I think is probably an unhappy choice of where he should have focused his attention.

But in addition to inholdings, we also have issues of navigability. Navigability of course is a problem that the state has, because so much of the highways of this state are essentially waterways. And the right of, the state has the right to regulate navigable waters, whereas if it's not navigable, then the state doesn't have the right to regulate it. The navigability issues have not really been litigated extensively up to this point, primarily because of the fact that when the cases have come up, they have been settled, and the settlement standard right now I guess is a fully laden raft, I think you can put a thousand or two thousand pounds on it, and that makes, if you can float that raft, then that makes it navigable, that makes it state water.

Another little interesting tidbit, and again there was an allusion to the Clean Water Act a little bit ago when Steve Borell was up here, but an interesting thing talking about water is the fact that a good third of the State of Alaska at least is wetlands. Why? Because of the fact that it's covered with permafrost, and permafrost is wet, and so therefore the jurisdiction of the Army Corps of Engineers, which has responsibility under section 404 that we just heard about with regard to wetlands, extends in some places up to 3,000 feet above sea level, as I recall. But I mean it's a situation in which there's just a lot of problems associated with navigable waters.

RS 2477, of course Scott talked in great detail about that. Essentially, RS 2477 rights-of-way, and in the shorthand version is that access is a function of usage and acceptance, but there's

been an awful lot of conflict between where those RS 2477 rights-of-way are, and as a result the state now finally is mounting its considerable resources to address the RS 2477 right-of-way problems. A lot of work is going to go into it, but hopefully we'll get some good results. But it's a timely thing that the state is doing this. I think that there's a couple of points to be made about this timing issue. Alaska is different than it was 30 years ago when ANILCA was passed. It's a new state, it's a new day, the Department of Natural Resources has 30 years more of experience and maturity under its belt, and at the same time the federal government has changed. The national lands issues are no longer the same blazing fires that they were back in 1970. And the result is that by virtue of the state taking an aggressive position, which tends to level the playing field, under circumstances in which the majority of the majority in the House of Representatives is very desirous of not spending a whole lot of money, puts us in the position in which we have an advantage, which may be brief and fleeting, but at least we have a good opportunity to assert some of these issues in a context which may result in positive conclusions.

Another interesting thing, this ECI concept was just brought to my attention recently. But in point of fact, I think that we have, I think we've spent a lot of time talking about the environmental community over the years, and I think that it's properly categorized as the Environmental Conflict Industry, or ECI, if you will. The ECI in Alaska, of course I think you all know, is a strong and healthy industry. It brings a lot of new money to the state. I think that one of the speakers just a little bit ago talked about the hundreds of millions of dollars that they bring into the state each year. It's primarily from grants and private contributions. I think that anybody who brings new money into the state I think has to be recognized for that contribution. Occasionally, they even win a case or two in the courts, in which case they may get an award of attorneys fees, which the American taxpayers get to pay for, so all of that is I think on the plus side. On the other hand, I think that it's fair to say that the pro-development interests have not utilized effectively some of the tools that the ECI has been so frequently willing to use. And I think that it's a good idea for us to consider possibly using some of those tools. Of course, I'm an attorney, so what else can I do except recommend that we sue the sons of guns.

But anyhow, but there's a lot of things that we have, or a lot of arrows that we have in our quiver to deal with the conflicts between the federal and state government. We have the political solutions. I mean, I think everybody recognizes the fact that all roads lead to Washington when it comes to political issues with the federal government. I think that it's fair to say that the Congressional delegation has limited resources when it comes to solving some of these problems, because of the fact that occasionally, but very rarely, an issue which is raised by a constituent turns into a piece of legislation which is signed into law by the President, and not totally vitiated by the agency under the Administrative Procedures Act once they get hold of it. But at least the Congressional delegation is in a good position to ask pointed questions, and I think that we've seen that over and over again, especially with regard to some of the appointments in this administration. Likewise, they're able to shine some light, bright light into dark places, which is always a positive.

The state, I think right now, God love her, with Senator Giessel here, the idea that she is so proactive and so effective in representing the interests of at least the mining industry, and others I'm sure as well. And this administration, which has elected to ensure that the Department of Natural Resources has the legal backup to do its job, I think these are very, very positive things that are on the table.

And of course we have also our situation of local political activities. Our assemblies, local municipal assemblies sometimes are very effective and very positive. One of the assemblies that I talk about, for instance, is Juneau. Juneau is famous for being against

everything, I mean, the people are citizens against virtually everything, or CAVE people, but the bottom line is that, notwithstanding that, two of our six great mines are in the Juneau area. The Greens Creek Mine is a case study of everything that could possibly be raised by any stakeholder, anybody anyplace in the whole world who didn't want to see a mine go into place. And it has in fact gone into place, and it has in fact been at times the largest silver producing silver mine in the North America. I don't think it's the case right now, but it has had that, and it's of course a significant employer and has changed the face of Juneau.

Similarly, the Kensington Mine, a gold mine down north of Juneau, the Coeur d'Alene Mines spent well over \$100 million, maybe twice that for all I know, and spent a good 20 years trying to get that mine into production and succeeded, and it's making a positive contribution to Juneau as well. And of course the City and Borough of Juneau has a half interest in the A.J. and Treadwell Mines, which of course were historically very important mines. And a number of years go, 25 years ago or so, there was a long hard look at trying to bring them into production. The numbers didn't crunch for the folks who wanted to do it. But Juneau, it's my understanding at least until recently, was interested in taking at least another look at the possibility of opening the A.J. Mine, and of course the city sits on top of the A.J. Mine.

Education. Education is also a way we should in fact try to ensure that the people with whom we communicate in fact understand our point of view. But I have to tell you that I have grown old and cynical about education, primarily because of the fact that I know an awful lot of educated people who don't have a clue as to where the commodities that they depend upon for their standard of living come from, or how they get into their hybrid or their Apple or whatever. And of course those of you who at the beginning may have had some question about my joke, undoubtedly you'll understand the bottom line here where it says that there are some people who think there are 1,010 kinds of people in the world, and some people who think that there are only 10, which of course is binary. Everybody speaks binary, right?

Anyhow, I want to sort of suggest something here, and that is that I think that it's time possibly for us to consider pouring a little new wine into an old bottle. Essentially, ANILCA, among the many, many things that it had in it in the statute, was the establishment of Alaska Land Use Council. The Alaska Land Use Council was a little bit different than some of the other interface organizations that have been tried and applied around the state, primarily because of the fact that there was a representative of the President of the United States as a co-chairman, and the Governor of the State of Alaska was the other co-chairman. And so the result was that that council operated at the 20,000 foot level on a lot of issues, at least it had the potential to do so. One of the players in that was a friend and a cohort, and one of the people who was also very much involved in CMAL, when Scott was talking about it, and that was Vern Wiggins. And Vern Wiggins was the representative of the President when the council was in place, and at least during the Hammond administration the Council worked fairly effectively. After that there were some major disputes between the chairman and basically the Governors, two governors were Sheffield and later on Cooper, effectively boycotted the Council and it was ultimately defunded by Congress.

But it's a new day now and the players are different, the recollections of the individuals involved in the ANILCA battle are starting to fade, the people who talked about what happened in 1978 and 1980 are presenting history instead of contemporary news and knowledge. And it seems to me that this is just a little bit wrong, because I think that we have a new day dawning. I think that we have the ability to go forward to take advantage of the things that Alaska has to present, and I think that we ought to be optimistic about the future instead of somewhat pessimistic about the past.

My talk today was primarily based on Coming into the Country, and the reason that I chose that topic and chose that title was because of the fact that for the past 38 years or so that I've been practicing law, a good percentage of my client base has been Canadian exploration companies. These are people who are coming from next door with money in their pocket to spend in Alaska looking for minerals and other opportunities to mine here. And in point of fact, when they find something, they tend to package it up very nicely and they pass it on to a mining company, and then the mining company, Lord willing, will ultimately get to bring those properties into production. There is no shortage of opportunities for mining in the State of Alaska at this point in time. This is elephant country and there are elephants yet to be found, I'm told by all my geologist friends.

And so therefore it's my view, it's my thought, it's my hope, it's my expectation that in due course we're going to find the way to bring some of these mines into production. What did I say, we've got six great mines in production right now, we've got three great mines that are in the pipeline right now, possibly more that are a little bit further down the road as far as predevelopment and that sort of thing, but this is the second largest industry in the state. We don't hold a candle to oil and gas, but nonetheless mining is the second biggest industry in the state. And so the result of it is that the future I think is great.

And one of the, I can't get off the podium without pointing out that, first of all, mining is environmentally sound. Under the given regulatory framework we have, this is the best place in the world, as far as environmental considerations are concerned, to mine. Second of all, mining is safe. I don't recall exactly how many people, how many fatal accidents there's been let's say in the past ten years. I can think of a maximum of four, but don't hold me to that, but the simple fact of the matter is more people die of heart attacks in Walmart than die in mines. If you're going to a mine to work, the most dangerous place is the drive between your home and the gate, because the safety considerations which mines and mining companies bring to bear are just overwhelmingly impressive.

You have a situation in which, except the United States federal government, chases jobs to other countries where they don't have the same standards. You're just exporting misery, in my view. So therefore it's a situation in which I think that we actually have all the good things on the table for us to use. The low hanging fruit are significant in Alaska, and especially in this industry, and I think we have a great future here. And I'm just so delighted the state is being aggressive with regard to asserting the rights of Alaskans. I'm delighted to have the opportunity to come and to speak with you, and I really thank you very much for your attention.

Senator Coghill - Thank you, J.P. Thank you. And it is true, the safety record is just phenomenal in Alaska, but you wouldn't know that by those federal safety inspectors. Some of my placer miners are under the weight of their safety inspectors. So Kyle and Lisa and J.P., thank you very much. Thank you very much. Mr. Chairman, if there's anything you need to add, you need to get up here, or the Executive Director Stan, if there's anything you need to get up here. Two things I need to add, somebody lost their parking ticket, so if you have a parking ticket that's missing, this was clocked in at 7:32, so that means you've been here a good long while. Okay, come on up and get it. And also, somebody lost a gold button off something. I assume that it was a jacket, because I keep losing all of mine, but this is not real gold, it's too light, but if you want it, come get it.

Tomorrow morning, I know we're finishing early, that surprises me, and I probably cut the break a little too tight just earlier, so my apologies on that. Tomorrow morning we will have

Senator Murkowski, Senator Begich and Congressman Young here. And they will be here at 8:00 and to have them up here speaking, so my suggestion is get here, get your coffee and get sat down. And Bill, you get to speak after them. And that's four people that we're trying to do in an hour. That means that morning break is going to be tight, so just be aware. I wanted to let you know that we'll try to do that.

Fish and Game Management is another area in Alaska that we're going to deal with on Federal Overreach. Dual management in Alaska is one of the banes of our generation. We will hear about it, hopefully we'll get some suggestions of how to move forward. Obviously, the Tongass is one other issue, 10 million acres. Do you know that in the Interior of Alaska, with our Boreal Forest, we harvest more white and black spruce than they do in the Tongass National Forest? Did you know that? That's amazing. It's scrub brush in comparison, but we're making use of it. We're building houses and burning for heat, but it's an amazing harvest differential comparatively to the quality of the wood. I am going to turn it over to the Chairman to adjourn it for the evening. If there's any comments, Wes, the floor is yours.

Representative Keller - I probably wouldn't have come up, Senator Coghill, if I had realized you were going to do such a thorough job talking about tomorrow morning. But I would remind you that one of the best things we can maybe do to mitigate our relationship between state and federal government is to look our Congressional Delegation in the eye, and when they talk to us tomorrow. So I just hope that 8:00 o'clock is a good showing and that we interact with them at some level. Yeah, I'll just, first of all, thank you Senator Coghill, and see you tomorrow.

Citizens' Advisory Commission on Federal Areas
FEDERAL OVERREACH SUMMIT
August 12 & 13, 2013 in Anchorage, Alaska

Tuesday, August 13, 2013

8 a.m. Welcome and Introductions

Representative Keller:at a roundtable and then continue it even beyond that. There's a couple things I want to mention just as a matter of housekeeping before the delegation arrives but these green cards, they're back on the table. If you have a question for the delegation, please put on top who it's for, you know, and then put your question on there. Now, there's no guarantee that we're going to be able to get to all your questions. In fact, there's almost a guarantee that we won't be able to but what we'll do is we will compile the questions and from CACFA, we'll send them to the, who you addressed your question to and ask for a response back to CACFA. So if you would, get those cards, fill them out and when you get it done, if you'd just hold it up, there's staff folks around and we'll watch you and we'll pick it up and get them up here and we'll, hopefully, get to some of them.

Also, we're, I just want to spend a little bit of time describing the list of proposed solutions that have come out. I don't want to start listing what has been proposed because this is just the beginning. This is kind of like a draft list. We're going to be building on it. The opportunity, your opportunity is not gone after the summit. You can still turn in green cards. You can contact any of us in CACFA and we can press that on and the, another thing I want to point out is on our, on the website Stand With Alaska, CACFA, that we're initiating here, we want to put on their stories of situations where you, many of you have dealt with overreach of federal government. So we're making video clips and we have somebody here that will set up a time to interview you with a video, make a video clip and so we can post that on line. So if you're interested or willing to do that, again, talk to anybody you see, the staff out there at the front desk or Rynnieva or Earnest or Karrie or anybody walking around here and, Caroline, where are you? There's Caroline. Yeah, she's, actually is going to be the one doing the interview and there's a couple set up and I just encourage you to take advantage of that.

As I understand it, we're just going to kind of roll with the punches here a little bit this morning, of course, because you can't, we can't identify exactly when the delegation is going to walk in. So that's why we have a high paid MC here. I'm just going to turn it over to him and he's got to figure out what to do until they walk in the door and if two of them walk in at the same time and all that but, with that, thank you for, again for your day.

Senator John Coghill: High paid. Thanks, Wes. I did tell Mr. Horn to be ready so you might want to start revving yourself up, Bill. On the questions, we'll try to get both to the delegation but it is true we have questions for the state as well so one of the things that we're going to try to do during the noon hour, put it this way, we're going to do it. We'll attempt to make it successful. How does that sound? During the noon hour, we're going to create a roundtable here where the presenters and the commissioners for the Citizens' Advisory Commission will sit at the table with some microphones. We'll have it so that you can listen in on the discussion and if you have input into things that you think are action items based on some of the presentations or things that you think that got left out, those green cards, once again, are going to be very helpful.

My staff wrote up a list of about 22 items that we'll be looking at and the way I see them categorized, and this is going to be Stan and Wes's kind of bailiwick but I'm going to, from my perspective, the way I'm going to organize them in my office is I look at things that we can encourage the federal government to do and lobby our congressional delegation, things I think the state legislators can do, things that I think we need to encourage the administration to do but then there are things that I think we need private industry to come to the table with and it's been said that both the private industry, the Native corporations' voice needs to be heard probably a little louder. So I thought that came pretty loud and clear yesterday and we've got quite a few.

I'll do my best to read your handwriting to the senators when they show up. Perspectives from Washington, I think we could get a lot of perspectives. In fact, I think yesterday we did get some perspectives, those that have been there lobbying on fish and game, Ron, those that have gone there with maps. I think Steve talked about that a little bit yesterday. You feel a little violated. You go there to Washington to make your case and then they actually use some of that information against you. That is probably the bureaucratic problem but I think I've lobbied, for example, dealing with the ANWR issue and have gone to congressional offices and senate offices and getting to see the legislator is not easy and talking to the staff is not fulfilling. I don't think it really gets the job done. Even though staff does a lot of the work, the big policy issues, the direction of the office, really, you need to talk to the legislator and that is a tough, I can tell you it's tough.

But Bill Horn has probably some of the experience of how important that staff really is and, but it's also true that, the policy direction. I can only give you one small perspective as a legislator. My chief of staff, Rynnieva, carries a lot of weight in our office but I can tell you the policy direction and the vote really do come from the legislator themselves because they're the ones that kind of make the promises. But the details, I can tell you many, many of the details, I've got two staffers here today and they're going to help me remember some of the details and that's also true with staffers. Bill Horn has probably got one of the longest histories and, you know, Bill, here's, I'm thinking out loud now so this is always dangerous but I'd kind of like to have Bill speak at the end after the legislators have spoken too. So can I split your time? That's called flexibility, right? Maybe the early part would be to talk about, from the staff perspective, that perspective from Washington as you see these issues coming forward and then you've probably been used to this, when the legislators show up, we yank your chain and I'm not too sure when that's going to be. We are flying a little bit blind here. We're driving into the fog and I got one foot on the gas and one foot on the brake so come on up, Bill.

And, just talking to Bill, I have been encouraged and instructed both so, and I'm a newcomer to many of these policy discussions in many ways. He gets to traverse between my dad's generation and my generation, basically, but he's still a kid though, isn't he? Look at him, he's young.

Perspectives from Washington

Mr. Bill Horn, Former Assistant Secretary, Department of Interior: I wish.

Senator John Coghill: Mr. Horn, thank you very much.

Mr. Bill Horn: Thank you, sir. Appreciate it. Well, thank you and good morning to all of you. I certainly enjoyed yesterday and hope that we can replicate the same for today. Let me just say it's a pleasure to be back in Alaska to spend some time discussing a couple of intertwined topics, federal encroachments on state sovereignty and traditional uses and the provisions of the landmark 1980 Alaska Lands Act, ANILCA. They were designed to forestall those very encroachments and, as the senator indicated, and let me just say thanks to the, Representative Keller and the other members of the Commission for the invitation to be here this morning. I said yesterday it was a lot of old home week. Met some folks that, Brother Somerville recounted wandering into my poor staff cubby hole in February of 1977 when I was busy scrambling trying to learn all this stuff and I look around and I realize geez, back in those days, we had hair and it was dark. I mean, what a terrible thing, and it is hard for me to believe that for over 35 years, you know, my professional and, frankly, personal life have just been totally dominated by these very issues involving the great State of Alaska. It was 36 years ago that I went in to interview with Congressman Young to ask, seeking to join the old House Interior Committee staff and, as he explained it, oh, I need you to work on some gas pipeline stuff. That was a big issue then, still, and oh, by the way, there's this little lands thing called D-2 lands, I need you to work on that too and the next four years of my life were utterly immersed in that, the creation of ANILCA. I mean, that was a 24/7 job for four years, met a lot of the fine folks. I saw Chuck here yesterday and I was one of those 20 somethings that Don Mitchell talked about yesterday and I like to think, I hope I did a better job than at least some of the staff he referred to.

I do have to recount one brief war story. Listening to the tales of the field hearings, the first ANILCA field hearing that the House committee put together which was supposed to create this triumphant, you know, 18-month march to the enactment of HR 39 and a 180 million acres of wilderness in Alaska, the first field hearing was in Chicago and it was, let me put it this way, none of the Republican members of the sub, Alaska Lands Subcommittee went on the trip. They knew what was coming and they didn't want to sit through this John Seiberling love fest with the green community which is what it was but, you know, somebody had to show the flag so I got sent and they put me at one end of the table and during the course of the day, in the, in congressional parlance, you're the majority staff and you're the minority staff and in those days, the GOP was in the minority and throughout the hearing, Congressman Seiberling would occasionally refer to it and I guess I had a little placard that said, you know, minority staff. After this six hours or seven hours of interminable testimony about please save Alaska, we were ending up and this guy comes up to me, young guy, very earnest and he goes, you know, Mr. Horn, I think that's the first time I'd ever been called Mister in my life and he says I have a question for you. He says the chairman keeps referring to you as the minority staff. You're obviously not black, are you Jewish or Indian or something. I still remember that which is a, I think it's just a sideline on it. There's still a lot of folks who would get in these processes that weren't exactly tuned into the inner workings of, you know, legislative terminology.

Let me just say more seriously that these remarks this morning, split up or not, arise from really three perspectives that I'd been really fortunate to get. I spent four years immersed in the creation of ANILCA, both working on the old House Interior Committee staff for Congressman Young and then when we would get done with the bill in the House, Don would lend me to Ted and I'd march over to the Senate side and work with Stevens and his staff and so I was probably one of the only staffers that got to work the legislation on both the House and Senate side from beginning to end and, boy, do I remember the maps we used to have. So four years of being in

the room and watching the deals get cut and listening to the promises get made and sitting through all of those hearings with Udall and Seiberling, going out to the villages and just keeping pretty good notes and remembering all the promises and references that were made that we're not going to terminate the Alaska lifestyle. When that exercise was done and President Reagan got elected, I sort of put my hand up and volunteered gee, I'd like to go down to Interior and maybe you can let me have a hand in running this thing and, as my mother used to say, be careful what you ask for, you might get it and so in January of 1981, I went down to Interior. They made me deputy under secretary. I was the ripe age of 30 years old and I was in charge of directing the implementation of ANILCA for its first eight years and so a lot of the policies and regulations that date back that we heard an awful lot about these things yesterday, I was part and parcel of putting that stuff together and, of course, the grand plan was, and this is what I had promised, you know, Senator Stevens, Congressman Young, Governor Hammond and Senator Frank Murkowski was in. You know, my number one objective was to honestly implement the statute and make sure all of the promises that had been made to Alaska throughout this turbulent four-year process were, in fact, redeemed, that we would drive it home to the agencies that, you know, promises made must be promises kept and that was the fundamental mission for the first eight years. And, of course, after I left at the end of the Reagan administration, went into private practice, joined a law firm that's headquartered here in town, Birch, Horton, Bittner, and I spent the last 25 years, as many of you guys know, you know, practicing law around ANILCA and litigating cases and engaged with the state and so from that perspective of having been on the ground floor of the drafting, having been in charge of implementing it for eight years and then 25 years as a practicing attorney, I think brings a, I hope a somewhat unique perspective that allows me and I hope, you know, can share some thoughts and ideas with you and the Commission to prove where we stand.

The problem that we really confront is that I call it a , it's both an institutional and cultural problem. The federal land agencies have a particular mission and culture and their mission is basically protect these lands and in the Lower 48, they not only have this protection mission but they are given extremely wide latitude and discretion on how to achieve that. They don't operate with a lot of specific limitations. Here in Alaska, ANILCA is rife with these special exceptions and exemptions that were incorporated into the bill through the four-year process that are designed to run counter to the missions and put major restraints on their discretion and their authority and latitude. Well, that creates a collision. We have inherent tension in the problem because I can tell you for a fact that in the late seventies, those agencies objected to these exceptions at the time. They fought them. They wanted them out of the bill. When they got into the bill and they started getting implemented, I can tell you from personal experience in the 1980's they tried hammer and tong to avoid having to implement that stuff and those basic cultural and institutional predilections continue and unless the agencies are restrained and kept on track by somebody insisting that they fulfill both the letter and the spirit of these provisions, their institutional and cultural predilections are to go absolutely the opposite direction and systematically erode and erase all those provisions that got put in ANILCA over four years. That's why this is sort of an eternal effort that the state and traditional users have to be engaged in simply because you're up against, you know, as I said, bureaucratic and cultural imperatives that are not going to change and until the agencies are given some rein and reined in, you know, they're going to continue to go down this track and so in that sense, I think that the state and the users need to take to heart some advice purportedly offered by Thomas Jefferson that happens to be chiseled on a statue base on Constitution Avenue, or Pennsylvania Avenue, Washington, D.C.

in front of the National Archives that, you know, eternal vigilance is the price of liberty. Well, the price of maintaining the exceptions to protect both state sovereignty and traditional uses via ANILCA, it's going to take eternal vigilance by the state and its institutions to insure that that continues.

Let me offer a couple of examples and I think I saw Senator Begich come in so let me wrap up this one example and then I will vacate the stage.....

Senator John Coghill: All right.

Mr. Bill Horn:and turn it back over. I'd like to talk just briefly about at least a couple of specific instances, I'll just talk one this time, that eliminates, in part, kind of the insidious nature of the federal attack and part of the problem has been that the state response over the last 30 years has not always been consistent. In fact, the state response in many cases has been quite haphazard and opened the door for additional, you know, federal encroachments.

Now, during the political battle, I think we had up on the screen from at least a couple of the speakers yesterday the seven consensus points that were put together within Alaska that we tried very hard to codify at least in some measure within the four corners of ANILCA and I know that Senator Stevens and Congressman Young worked diligently to incorporate those related provisions into ANILCA and were fairly successful with provisions like 1110 and others. Two of the points related to traditional uses and guaranteed access and these objectives were met, in part, by Sections 1313, 1314, 1316, 1110(a) and 1317(c). I'll quickly run through that since I don't know how quickly you guys are taking notes. Snap quiz later on.

Sections 1313 and 1314 mandate that hunting and fishing would continue on most federal units consistent with applicable state law and regulations. 1316 which was first put together by Ron Somerville provides for the continued use of base camps, tent platforms and related structures in areas open to fishing and hunting. It was added because the agencies admitted during the mark-up process that, absent this kind of language, a lot of the hunting and fishing base camps could not be allowed in either the park preserves or the wilderness areas and 1110(a) which was discussed at some length mandates access by airplanes, motor boats and snow machines for the purpose of engaging in traditional activities. It's not traditional use that's codified and grandfathered, it's you get to use these if you're going to engage in a traditional activity and the closures and restrictions can only occur when an agency makes a sustainable finding that access is causing harm, tangible harm, not subjective harm and, secondly, goes through a very specific public process to impose the limitations. In short, it establishes an open until closed regime for access that is utterly contrary to what transpires in the Lower 48 and let me just add that this provision grew out of a 1977 hearing exchange in Fairbanks between Congressman Seiberling who chaired the Alaska Lands Subcommittee and Ken Fanning who was then representing the Alaska Professional Hunters Association and Ken was explaining that, you know, traditional Lower 48 access restrictions would effectively bar your ability to get into these vast multi-million acre land units and even if hunting and fishing were allowed absent the access, it wasn't going to happen. Seiberling responded by promising that ANILCA would contain a special provision to guarantee continued access for these traditional uses and, being one of those 20 somethings in charge of writing some, I, we came back and at the, I think one of the first mark-ups, Congressman Young had me draft an amendment that he offered and the

committee accepted that was the first version of 1110(a) and that was adopted in the, early in 1978 and survived in all of the provisions that lasted until signed into law in 1980.

Despite the plain language of these provisions and the intent, these days, the Park Service and Fish and Wildlife are systematically eroding the vitality of these statutory exceptions. When hunting and fishing guides have to bid now for federal concessions permits on the preserve and refuge units, the agencies make it very clear that the guides who are willing to make fewer airplane flights, not use their snow machines, run fewer boat trips, make smaller camps or use no camp sites at all, take fewer hunters and anglers in than is authorized by state law, the agents, the guide who's willing to accept all of those limitations is going to be given preferred treatment over the one who tries to stand by his statutory rights. Well, you can imagine what this does to the guide bidding. He's trying to keep his job, trying to stay alive and they really have no choice but to submit to this coercion. I use that word advisedly. It is coercion and, as I said, it doesn't matter that access is mandated by 1110(a), that camp sites are authorized in 1316, that 1314 says that state rules and regulations apply and 1317(c) says specifically that de facto interim wilderness management is prohibited. Doesn't matter. The agencies use the leverage that they have through their concessions programs to basically strip the hunting and fishing guides who compete for concessions permits of those statutory provisions and exceptions that were provided in law.

The worst part of this particular tale, and I'm about to finish up with Part One here, is that it was state inaction that let this case come to be. When ANILCA was enacted, the state administered the guide program and for the first eight years of ANILCA, there was no federal guide concession program. The federal agencies, we deferred to the state since the state occupied the field and, by the way, there's language in 1308 that indicates that Congress wanted the state to basically run this program. Unfortunately, in 1989, the Alaska Supreme Court struck down the state guide program but indicated how the program could be modified to be consistent with some provisions of the state constitution and a new guide bill was drafted in 1989 and '90 and I participated in that effort too and was introduced for a couple of sessions in Juneau but failed. Without the state program in place, there were no restrictions on the number of guides operating and Fish and Wildlife and the park guys tolerated this for awhile but by 1994, five years later when the state had still not acted to create a new program, the feds took action to fill the state-created vacuum and set up their own guide program and here we are nearly 20 years later and the federal program, thought to be a temporary stop gap until the state could fill the void, the federal program remains in effect and it's the program that's now being used today to coerce the guides into effectively voluntarily giving up their ANILCA rights. That's a sorry story and on that note, I see Senator Murkowski's arrived as well and people with election certificates always get priority.

Senator John Coghill: Thank you, Bill.

Mr. Bill Horn: Thank you, sir.

Senator John Coghill: Wes, if you want to go ahead and bring the senators up and I'll let you introduce them. Thanks, Bill, for being flexible and threw out a couple of good exclamation points right off the bat.

Mark, you showed up first. All right. Well, why don't you come on up and welcome and thank you for showing up to our meeting.

The Honorable Lisa Murkowski, Senator United States: Good morning.

Senator John Coghill: We'll let Lisa and there are some questions here. Just for what it's worth, the ground rules that I think we're going to do is we'll, we're going to try to give, respect your time, give you kind of 15 minutes to talk to us about federal issues and we've actually spent a day talking about, you know, federal overreach and a lot of those are agency type things that Bill just talked about and so our response is, you know, how do we best help you, how do we maybe as state legislators take advice from this citizens' advisory committee, how do we encourage industry. So we're looking for answers, not just looking for the problems. The problems are kind of self evident. And then after you two get to speak, if you don't mind, you know, I'm not too, I haven't thought this through entirely but there are several questions that we've asked from the audience and maybe if we allowed you to answer them, I guess I can give you the choice, would you rather answer them individually or would, or does it matter?

Senator Murkowski: Just (indiscernible).

Senator John Coghill: Okay. I think, just for time expediency, if we ask the question, give you both a chance to answer and we'll just alternate the answers. All right? Senator Mark Begich thanks for coming. Thank you very much. You get the floor.

The Honorable Mark Begich, Senator United States: All right. Thanks, John. Thank you very much. Thanks, John, and thank you very much for your work in the legislature and I will tell you for those that are here, I know when John comes, sees me on issues in Washington, it's a pleasure to have him there. I thank you all very much. Thank you, Representative Keller, also. You know, over the last half century as a state, beating up on the feds has been kind of good policy and good politics and I tell you they deserve a lot of it and I've done my fair share.

In my five years in the Senate, it's been amazing to me that, almost the ignorance and about what the state deals with and what we work on. Matter of fact, I love, I had this done a couple of years ago and it's a simple thing but it actually helps show the lack of understanding. When I meet people now and if folks have come to my office or meet my staff, you know, we'd give you our business card but the more important part is, and you can, some of those can probably see it from here but we make sure they understand the magnitude and size of the state. So we make sure we do the standard Lower 48 and then Alaska laid right over it. Why is this important and it seems so simple. Because the lack of understanding of what Alaska is and how big it is and the differences we have compared to Lower 48. You know, their lack of understanding on ANWR or Second Amendment rights or the national administration and Congress are simply wrong on many of these issues and no question that, as a member of the delegation and the delegation in total, we've been very aggressive in trying to point out what's important to us and the uniqueness of Alaska.

You know, a few years ago, many of us saw the headline in the Daily News column. It read Dear Feds, we loathe you, please sent us money and, not unusually in the business of handing out, I'm not usually handing out compliments to the media but this is a good point to

keep in mind. It seems like every few weeks, honestly, I get a letter, a press release or a threatened lawsuit, many from the capitol, third floor, taking federal government to task for some evil undertakings. At the same time, the federal government is a vital partner to Alaska in the form of both essential services and, honestly, the big dollars they bring to us.

According to ISER, the federal government spends about \$11 billion in Alaska in federal fiscal 2010 year. That includes benefits for our military service men and women which we cherish greatly here, retirement, disability payments to our seniors and health care to about half the population through the defense department, VA, Indian Health Services, Medicaid, Medicare. That healthy payout ranks Alaska third among the 50 states in per person federal spending. For every dollar Alaskans send, the federal government, Uncle Sam, we get about two back. This doesn't include the national gas tax. When we go out and pump our car full of fuel and move around the city or the state, Alaskans receive for every dollar we spend six dollars back and for road construction and maintenance.

The legislature and government recently approved this year's state budget accepting almost \$3 billion in federal funds for services from road improvements, Medicaid and payments to school system. That makes up about a fourth of the state budget. In addition to this routine federal funding, Alaska received the biggest single federal payout in memory. I like to call it the largest single earmark and that is \$2-1/2 billion in American Recovery and Reinvestment Act to help our state and nation recover in one of the biggest economic crises seen since the Great Depression. The historic legislation bill, essential projects, and created the protected, and protected about 8,000 Alaskan jobs. I was proud to vote for this and I can tell you project after project, it doesn't matter if it's finishing up Lake Otis and Tudor or the new Nome hospital or the wind farm on Fire Island or the Sikuliaq vessel that our university uses for research around the globe and around the state, a variety of investments were made that have a return to use over time.

Now, this does not deal in, as we know, the unprecedented federal debt which is about \$16 trillion, you know, \$46,000 for every man, woman and child in America. It's truly irresponsible and it acts as a, as an anchor in dragging down this economy as we move through this slow but steady recovery. That's why I did and I continue to do and put on my website and offer ideas on federal spending cuts. I believe we have to start with members of Congress which I opposed the pay raises for senators for the last five years since I've been in office, cut my own office budget, forced my staff to take unpaid furlough and I take the same amount of daytime pay reduction as they do.

It surprises me that we actually have made some progress on this. We've cut over the last several years \$2.4 trillion out of the deficit. We've cut the annual deficit by almost 60 percent but still a long ways to go. Not sure if everyone in this room has heard those statistics because sometimes what you don't hear is the progress and good news but at the flip side, we still have a lot more to do and, as I said, it's not enough. These automatic budget cuts that we now know in Washington and around the state are called sequestration. They're having impacts on Alaskans as I hear daily from around the state no matter where I travel. Fewer federal education dollars for schools and special education and child care, cuts to the Coast Guard, fisheries, law enforcement, reduction in essential air service which supports transportation to rural communities and longer lines now we see at the airport security, thousands of lost civilian and

military jobs at our bases. That's one reason why it's important and we are both on the appropriations committee, Senator Murkowski and I. This is one reason why I see this position, to be on the appropriations committee, because I think it's every day we need to be looking at the budget not just from what we need to allocate but how to manage it and spend it in an appropriate way and at the same time, look at this longer picture and the deficit and how to reduce it.

You know, when I look at the list, and I know, you know, John, you asked kind of what, the first day was kind of focused on here are some of the issues we're facing. Today will be similar, I'm sure, but what are the things we could be doing to create a better partnership, to move things forward on an aggressive level? After years of getting stiffed by the federal government on offshore development in the Beaufort and Chukchi Sea, a good example is we are moving forward but Shell had an effort last year not as successful as they would have liked but they'll be back in the water this coming year. Why is that important? Oil and gas development in the arctic can be providing thousands of jobs to our economy here but getting the federal agencies to work together was a critical piece in making sure that they had almost like a one stop shop which was not the case for years prior to that.

Work when I first came in the office sitting, I know, I remember this day sitting with Senator Murkowski in her office with the EPA director on Kensington Mine, if you remember that moment of, how do I say this, you might have different words but misunderstanding by the EPA. I'll be polite for a moment but a convincing argument laid out by the delegation, today Kensington Mine in production.

I remember Red Dog Mine, there was a great debate by two federal agencies arguing with each other and what I decided to do, I remember this call I made to one of the agencies and they said okay, we'll get back to you and I said whoa, whoa, whoa, no, no, no, no, no, I have you on the phone, just hold tight. So I took the other phone and dialed the other federal agency because they were both kind of it's their fault, their fault, their fault. So we got them both on the line. Today Red Dog is expanded by a lot of work by the delegation and efforts like that.

We're working again to prevent the transfer of the fighter jets out of Eielson which is an important issue in the Fairbanks region, one that in the Fairbanks economy, when you think of all the military expenditure and involvement and engagement is about 20 percent of the economy. So it's important to make sure that not only is it important from a national security perspective but also preserves and helps make sure we have a strong military in the region and it's good for economy.

We're battling, as years before I came into the Senate, the cookie-cutter roadless rule in the Tongass which restricts mining, hydro and timber harvesting. We've been working to reverse the burdensome USDA regulations prohibiting the use of subsistence foods in food banks and community events and let me give you one example. There's a young Alaska Native boy from one of the villages that was down in Washington State Children's Hospital and had never been out of the village but was down there for care and because of the way the programs work and the way that money is allocated and who pays for it, traditional Alaska Native foods were not allowed to be served to that young boy even though that would, is what he was accustomed to. We're working to change that. Or protecting bypass mail which is critical for rural Alaska

and fighting for basic rights on health and safety to our fellow Alaskans in King Cove that Senator Murkowski has been a lead and I know will be taking one of the secretaries on a boat ride. I, I'm looking forward to that one but, airplane trip, well, we hope it gets rough and she has to take the boat. That's what I'm hoping for.

We permanently reauthorized the Indian Health Services Act after 21 years and, as you know, we've had a battle recently on the fundamental Second Amendment rights that we've been working on. I could go on but let me use my remaining time to briefly outline five quick things because I think, John, your point is well taken and what do you do next and how do, what are those issues that I think we're facing. First, resource development. I commend the Governor Parnell on his initiative to identify the oil and gas resource beneath ANWR and I said the Interior Secretary was wrong in denying Alaskans this opportunity.

As we continue to open federal lands and waters to development, Alaskans must receive a fair share of revenue. Senator Murkowski has a piece of legislation I'm a co-sponsor on and I have a bill also on revenue sharing. Mine provides about \$38 billion to Alaskans all the way down to communities and tribal organizations. I welcome the legislature for acting this past session to jump start the natural gas pipeline. We at the federal level have been doing our part to try to extend the benefits of the federal gas line coordinator office to any Alaska gas project, not just a line through Canada to the Lower 48 as envisioned by the original 2004 law. This would help all Alaska gas line, an all-Alaska gas line, an export line or the larger line to middle America. It would create all of them as an opportunity.

Another great opportunity for state-federal partnership is developing Alaska's huge rare earth potential. At the delegation's urging, the Forest Service has approved an exploration permit for UCOR's rare metals to drill in the wilderness areas of Tongass. Their Bokan Mountain development on Prince William, on Prince of Wales Island holds enormous promise for our state and our nation.

Second, management of the arctic. I know, matter of fact, right around the corner here is a meeting on energy efficiencies in the arctic and what's going on with regards to opportunities there. As you know, Alaska is the only reason the United States is an arctic nation. What's happening in the arctic? Climate change, transportation, resource development is attracting a lot of federal attention. Alaska and the U.S. need to be at the forefront. That's why I introduced legislation to expedite arctic port development and urged the legislature to engage in public/private partnerships to develop these necessary port facilities. My bill also streamlines the permitting by creating, as we mentioned, as I mentioned earlier, this one-stop shop that we have now for permitting in the arctic. Oil and gas development is only by executive order. We want it by legislative action so it's permanent. I urge the state to do the same by honestly reauthorizing the Alaska Coastal Zone Management Program whatever the program looks like because, by not having that program, we give up our rights for input into the Outer Continental Shelf.

To better represent America's arctic interests in the international level, I was successful in including a provision in the recent foreign relations appropriation bill calling on the state department to create the arctic ambassador to put us on par with other arctic nations. Matter of fact, even non-arctic nations have an ambassador to deal with this issue. Singapore has an arctic

ambassador. Now, unless something changed, they're not part of the arctic but they have an ambassador to help quantify and develop their policies.

Third, we must do a better job of making sure young Alaskans are prepared for the enormous challenges of the global economy. It's why when I ran for office, I continued to say no child left behind was a disaster for Alaska. It was that top-down policy telling local governments how to do it from Washington, D.C. You know, I've spent a lot of time the last two years encouraging the state to seek the waiver from no child left behind which they have done. That's only a temporary fix. So we have a lot of work still to do on this issue.

More permanent and effective approaches are, to improve early childhood education, incentives for innovation and especially in rural schools and STEM education, science, technology, engineering and math. I've introduced legislation in each of these areas on the federal level and I urge, as the state continues to work on their education reform how we can meld these two to make sure our young people, no matter where they live, where they come from, who they are, that they can compete not only in the Alaska market but in the global market because that's what we are part of.

Fourth, we must continue, we must come together to express and address the especially troubled trends in rural Alaska. We're all familiar with the shameful statistics of skyrocketing rates of suicide and drug and alcohol abuse, domestic violence and child abuse, lack of economic opportunity. Late last month, I introduced my Safe Families , Village and Families Act designed to provide Alaska tribes more power to address some of the issues in their communities. I am pleased to have Senator Murkowski as a co-sponsor of this legislation.

I wish I could say the state is with us on this or not. We're working with them to try to get them on board because at the end of the day, the best way to solve some of our domestic and issues like this when it comes to crime is on the local level. As a former mayor, I saw this every single day, that the more you can do on the local level, the better impact you will have.

Another great partner, both the state and federal government, are Alaska Native corporations. As you know, these corporations employ thousands of Alaskans. They bring millions of dollars home to our state from all over the world. They provide important services for the Alaska economy from oil and gas development to pipeline security to tourism. Created by a federal act, they certainly should play a significant role and I would point out here if there's one group that has probably as much interest in government oversight, it is the Alaska Native corporations. They're the one largest single landholder collectively, 44 million acres, billions of dollars worth of businesses and I hope, as you move forward on your citizens' task force, you engage them in this discussion because I can tell you we spend more time talking about the issues, maybe subsistence or land use or development or 8(a) programs or you name it, there is some connection in this economy every single day with our Alaska Native community and I would encourage, as, again, as you move forward, that you engage them at a higher level and bringing them in as part of the panels in the future.

Fifth and last, our economy. In addition to focusing on Alaska's resource development, I believe we must do everything we possibly can to encourage the growth of small business. As a former small business person and my wife, a continued small business person, small businesses

in the past 15 years have generated two-thirds of the new jobs in this economy. To continue that growth, I introduced a small package of business, small business relief package of five bills with directives to recognize the key role of small businesses in our nation's economy. My plan focused on improving the health care law to make it work for small businesses, calls for permanent tax deductions for certain business expenses and quicker action to allow business access to capital. I'd urge the state to take similar steps. One idea I mentioned during my legislative address a couple years ago and which I think still is, applies today, Alaska's best and brightest entrepreneurs offer much promise in developing what we do here in the state. From high tech to innovative industries, you name it, they're engaged in it at some level but one of the things they lack is capital. I suggested that the state consider investing a portion of the state's surplus in an incubator and encourage these smart Alaskans to create new companies and jobs, employ Alaskans and create new opportunities not only for us but for the globe and I see a modest, and a modest state investment would go a long way in what we would see as a leveraging against federal and private dollars that are available especially from venture capitalists that want to see some engagement by the state level. So I mentioned that idea a couple of years ago. I would encourage it again now because that is the driver of our national economy. It's a driver of our state economy and anything we can do to help our small business people expand will be a huge benefit for us. Thank you all very much.

Senator John Coghill: What I'll do is I'll give you folks the mike and I will probably stand up here with the questions and let you just sit there and deal with it. Senator Murkowski, thanks for showing up here. The, what we did was we had Bill Horn set up, because we didn't know exactly the time so we've cut his discussion in half so be careful now, he gets to have the last say. Senator Murkowski, thank you very much.

Senator Murkowski: Thank you. How much time?

Senator John Coghill: Fifteen minutes? Do you need a bit more?

Senator Murkowski: Well, I want to make sure that we've got time for questions so I'm going to move rapidly through my remarks here but, John, a special thanks to you, to Wes as well. Appreciate all that you have done to kind of re-energize, reinvigorate the citizens' advisory commission.

The topic today when we're talking about federal overreach, I'm sitting here looking out at those of you that have gathered together and I see folks from across the spectrum of industry. We've got some folks from mining. We've got some timber. We've got some energy production, we've got some oil and gas and it doesn't make any difference what sector you are from. It doesn't really make any difference, we all recognize that we are in a state where when we talk about federal overreach, we all have examples. We all know that we are living in a state where, effectively, we feel almost as if we have lost control of our ability to move forward, whether it's on a resource production side or really even within our own communities and so the focus today, I think, is critical because what we're talking about is a threat to our ability to create new jobs, to enjoy the amazing splendor of our state and, really, to fulfill the promises that were made to us at statehood and so I appreciate what you have done yesterday with the focus on how we kind of got where we are today, what those promises were some 50 odd years ago.

There's a lot of us that talk bad about the current administration, that say well, gosh, you know, they're just smothering us. Our reality is, folks, if the Obama administration weren't in office right now, we'd still have a problem with federal overreach. So when we're talking about where we are right now, I think it is important to put it into the historical context. We didn't want to be in this place. I don't think any of us assumed at statehood that we would be sitting here 50 years later feeling kind of the choke of federal government around our necks. I don't think anyone anticipated that.

So let's talk a little bit about what it is, how we define what federal overreach is because I think that that's important. We've got folks back in Washington, D.C. that are probably wondering what in the world are Alaskans doing up there, they got a conference going on about federal overreach. It is just going to be about bashing the feds, bashing the feds. That's not the purpose of this and I certainly hope that the action plan going forward is one where we come together maybe strengthened by a little bit of history, a little more knowledge and a little bit of commitment and shared focus as to how we can make a difference going forth. So naming the problem, defining the scope and then focusing on the strategies to resist what we're talking about.

Now, I define overreach as the continuous sometimes callous disregard that the federal government displays towards the rights and interests of Alaskans and it can be a decision that halts a project, that cuts off access, that prohibits an appropriate use of our public lands or it can be, really, just a shocking indifference to the letter of the law or the seemingly deliberate misinterpretation of what the law plainly requires. We've all seen that one. It can be a double standard where Alaska is treated differently and unfairly compared to other states. It can be a new regulation that imposes an unacceptable burden on our families and our businesses. There are so many examples but just let's remind ourselves of some of the more obvious ones, our longstanding efforts to reverse the decline in Alaska's oil population through access to our prolific resources that are buried under our federal lands. We all know the story about getting the bridge over the Colville River, a small bridge over a remote river in the NPRA. Now this year, the administration has come out with a management plan that prohibits development in more than half of that area. To me it's absolutely hypocritical. The Department of the Interior has chosen, they've chosen to spend taxpayer dollars to prevent development on our lands rather than cleaning up the legacy wells or, as some of us are now referring to it, the travesty wells that are clearly the responsibility of the federal government. They don't argue that but they've chosen to prioritize and say well, we'll get around to the cleanup. In the meantime, we're going to work pretty actively to prevent you from accessing the resources on this land and, of course, we can talk all day about the 10-02 area and the non-wilderness portion of ANWR 60 miles from existing infrastructure and an increasingly empty pipeline system. So what have we seen? An unrelenting desire to turn it into permanent wilderness and, my friends, I worry about this every day. They say that they don't have any intention to lock ANWR up permanently but I, for one, am not letting my guard down on this. I worry that this may be the direction that they might want to take but this decision would explicitly violate our no more clause, an obvious refusal to deal with our reality, the fact that they're not taking seriously the Governor's effort to truly understand what it is that we have in the 10-02 areas.

Now, we all know these are the best known examples of federal overreach in this state but oil is hardly the only resource that's affected. I mentioned mining, the timber. I was down in

Southeast this whole week. I just came back late last night. Spent two days in the Tongass with the chief of the Forest Service there, Rick Harris was with us, an opportunity to look, really, on how our policies, how a level of overreach has effectively choked off any realistic timber industry within Southeastern.

I'm sure you've had conversation yesterday about the EPA's watershed assessment for the Pebble project. The agency is considering whether or not to preemptively veto a hypothetical mine that's designed to violate environmental standards. None of us in this room, I'm sure, would ever trade fish for gold but that's not what this fight is about. Right now it's about whether or not the federal government should have the power to stop development before a project can even present a plan and, by the way, and this is on state land, it should be the people of Alaska that determine the fate of this project.

Bill Horn was talking about wildlife management when I came in. The State of Alaska has exclusive jurisdiction to manage our fish and wildlife within our borders but that hasn't stopped the federal agencies from pretending otherwise. They're piling new requirements on. The National Park Service has taken to issue annual hunting regs throughout the preserve system in our state or consider this example. This is one that just really just, you just think what are they thinking. Wrangell, Alaska, small little community out in the middle of the Tongass. In Thursday's Wrangell Sentinel, there is an article about a woman who owns a day care center, Auntie's Day Care. Auntie took six kids, her preschoolers, out to a picnic area in the Tongass, you know, right off the road there, and the kids had a picnic on the picnic table but Auntie is a commercial operator because she has a day care. She was given a citation by the Forest Service for bringing the six children in and using the picnic table without a permit. She was fined \$350 plus a \$25 processing fee and given a court date.

Now, Auntie, hopefully, is going to challenge this but, in the meantime, I had an opportunity to not only see the article in the newspaper, I was able to get a copy of the citation so I had breakfast with the chief of the Forest Service on Friday morning and gave it to him with his coffee. Now, fortunately for us, he was shocked. He was horrified. He says this is horrible. I said sir, this is the problem that we've got, you've got folks that have a regulation back in Washington, D.C. that says if you have a commercial operation, you need to have a permit, for gosh sakes, could we use some common sense around here. So, hopefully, Auntie is not going to appear in court on October 15th. The chief of the Forest Service is going to take care of it but it ought not take an act of Congress, it ought not take a United States Senator meeting with the chief of the Forest Service to inject some ration into this process. Oh, my gosh.

So when we talk about federal overreach, it can be as kind of big picture as what we are seeing with the bridge over the Colville River or ANWR but more and more, it's the little intrusions into our every-day life when Auntie's Day Care gets slapped with a \$350 fine for using the picnic table. So this is why we come together, to focus on what it is that we need to do because we know that this overreach is real, we know that it has already harmed our state. We can't pretend that it's a problem that's going to go away with a new administration although I do happen to think that it might help a little bit but this is more endemic to where we are.

It's been 54 years now since statehood. I don't think this is where any of us wanted us to be. We didn't think the relationship with the federal government was going to go this direction.

Look at what we've done. We've sustained our fisheries in a way that is the envy, the envy of other regions. We have sustained our wildlife population. We really thought that the federal government would take note of this and begin to trust us. We took care of our public lands, whether, well, hunting or riding an off-road vehicle. We expect to gain greater access, not less. So I think we recognize this wasn't the deal that we thought we were getting at statehood. At a time when we need the federal government to act as our partner with us, more and more it seems to be an obstacle, a barrier to our success.

So when we say okay, well, what is it that we can do, I can tell you every single day, every morning that I wake up, it's with a focus on how are we going to do more to make a difference in our communities and across our state. I think the discouragement with Alaskans. I hear the frustration but on the day that you're really, really frustrated, think about where we're sitting because let me tell you Mark's right when he says people don't understand the State of Alaska so we keep educating and we keep educating and educating and educating and pounding the table and making the telephone calls and bringing the folks up here to show them how it is different, how it is, how it needs to be addressed but we need to be doing more.

I'm in some pretty key positions now and that helps us, on the energy committee as the ranking member, as the ranking member on the Interior Appropriation subcommittee. These are helpful and they are making a difference. We're seeing that translate. We've got the Denali gas line right-of-way bill that has moved through the Senate. We're working on legislation to advance the Bokan Mine, convey lands. I introduced a sportsmen's act just before we left. It's a host of bills that allows for greater access for federal lands. I, it's caught up in politics. I know you're shocked to hear that but we're going into election season and what I'm hearing is well, the D's want to run a bill that's similar in nature. Crying out loud, let's just move a bill that's good for the country, that's good for our state. So I'm hopeful that we will make some progress on that.

You know, we, we're making progress with these legacy wells, these, this travesty up north in NPRA. We've got additional funding in the appropriations bills to help advance that. We moved, we're, move, in the process of moving some legislation on helium that has, actually, revenues that are generated. We will take a portion of those to direct towards our clean-up up north. I think that that is critically important but I think we all recognize that legislation alone is not enough to keep up with the unrelenting pace of what we're seeing with the federal rules and the regulations and when it comes to the regulations, our tools are somewhat limited in the Congress. We've got the opportunity to move with the Congressional Review Act which is, effectively, a veto of legislation but it is a heavy lift. It is really a heavy lift and it's just something that, it's an option out there but when we look at how often we have succeeded on it, it, it's hard. So when we're coming together like this, not only is this a chance for us to compare notes on overreach but allows us to get kind of on the same page to coordinate the efforts to overcome.

So in terms of what I'm hoping for from you all is when you see these examples of federal overreach within your industry, within your industries, you've got to communicate them to us. I got a letter last year from a husband/wife veterinary clinic down in Soldotna that had been given a notice by the EPA saying that their little tiny pet crematorium there in that veterinarian shop in Soldotna was in violation of this EPA's small incinerator waste rules. The

same rules that apply to the operators up in Prudhoe were being applied to the veterinarian shop where maybe you got a few puppies that are not buried, we're going to go ahead and cremate them but, apparently, the emissions were too much for the EPA. They contacted us and after about a nine-month problem, I think we've gotten them off the list but, again, it's taken active intervention by a congressional office to get the EPA to see ration, that a one size fits all approach doesn't work. The way that I got a copy of that citation, a few of you in the room here know Frank Murkowski. He's not shy of making a point when it comes to federal overreach. He was the one that got me a copy of the citation. I said you're a good constituent, dad, keep it up.

But it's when we are fully engaged on this that I think we're making some progress. So work with us. I want to take a list of your action items back with me to Washington. We've got a lot that we can do. We know that there, the only way we're going to succeed is by working together so thank you for your efforts in this.

Now let's move to the questions where it's far more interesting.

Senator John Coghill: Sure. Thank you very much.

Senator Murkowski: Thanks, guys.

Senator John Coghill: Ernest, will you kind of give me a heads-up when the congressman shows up? All right. Thank you.

Senator Murkowski: I think you'll know.

Senator John Coghill: That's a good point. Why do I need to say these things, right? We have 10 questions and we do have some time but because there are 10 questions, we'll, I'll go through them in some rapid fire. Some of them you've been asked many, many times and so what we'll do is we'll start with Lisa, answer the first question, the second question, we'll start with Mark and we'll just kind of go like that. This one's the, kind of the problem that both of you deal with is the King Cove question, you know, so give us, it says what reason has been given for denying the permit to build the road.

Senator Murkowski: Well, the reason that has been given has been Fish and Wildlife's assessment that construction of a one-lane gravel 10-mile noncommercial use road in an area that has miles and miles and miles and miles of existing road left over from World War II, that somehow or other, the migratory waterfowl that move through are going to be disturbed by the activity on this road. I happen to believe that the Forest Service analysis was inadequate, incomplete and fully did not incorporate the best interest of the community that is out there. I don't believe that they truly did a fair assessment of the existing activity that is in the region that has allowed the black brant and the geese to keep coming year after year after year after year. So I have made this an issue that I will not back off of. When Secretary Salazar was leaving and wanted to advance his replacement, Secretary, now Secretary Jewell, to this office, I said no, we cannot move forward a nominee unless there is some understanding with regards to the King Cove Road that will allow the same respect for the human beings that exist there as you are trying to apply to the birds because right now, the birds are given the preferential treatment and the human beings are being left to fend on their own and people have died and people will continue to die if we can't address it and it's an easy fix and the fact that it has continued for 25

plus years is absolutely wrong. So I look at the King Cove, and I, I've had my colleagues pull me inside and say why do you get so animated about King Cove, it's just one little bitty road, relax on it and my point back to them is King Cove is emblematic of everything that we have to deal with here. We're dealing with a landlord that will not only not let us put a picture on the wall, they won't even let us move in and yet they're still charging us rent. So we're going to prevail on King Cove. I'm hopeful that when Sally Jewell comes out the end of the month, she is going to see that you can have this small road, you can have access, you can treat the people that live there with respect because right now that's not happening. So we're hoping that we get in and maybe we'll just have to stay there awhile.

Senator John Coghill: Thank you, Senator. Senator Begich?

Senator Begich: Same question, you want me.....

Senator John Coghill: Yes.

Senator Begich: I can't add any more. I just hope the weather is not so great. You know, part of, we bring up a lot of federal agencies' members and secretaries to Alaska and, you know, when I call out to some of the places we're going and they say oh, the weather's so nice and I'm like no, I really, we want them to have the Alaska experience and King Cove is a great example. I mean, it's possible that the weather will be marginal and, you know, the Secretary might get trapped out there and that might be an opportunity to really understand and I hate to say that but you want.....

Senator John Coghill: Right.

Senator Begich:this full experience of Alaska so I think Senator Murkowski laid it out very well of the concerns that we have and why they are making this case of denial for this simple non-intrusive road within that area.

Senator John Coghill: And for those of us, thank you very much for bringing the Secretary up here. We hope that it's a good eye-opener, that it puts the Alaska context well into her mind seeing as how the management of such a large chunk of federal lands is in Alaska.....

Senator Begich: Mm-hmm.

Senator John Coghill:and that question was from Mary Barr, by the way. I'm sorry. Also from, is Corey Mills, I'm going to read this because I don't understand everything in the question. All right? Reference, Omnibus Consolidated Appropriations Act of '97 had the no final rule regarding RS-2477's. So can Congress pass a bill that states if any state such as Alaska has enacted a law recognizing over 600 RS-2477 rights away, then all federal agencies must adopt and recognize those valid existing rights. So the, it sounds like the question is if they can make a congressional act saying there's no final rule, can they reverse that and then recognize the RS-2477's. I think I got that right. Did you understand the question, Senator?

Senator Begich: I'm not sure I totally understand it but I think.....

Senator John Coghill: Sure.

Senator Begich: Let me make sure it, what they're asking is if the rules are there in place to recognize those access points.....

Senator John Coghill: Yeah.

Senator Begich:can they reverse them by Congress also, is that.....

Senator John Coghill: Yeah. Right. It was a congressional act under 9070.....

Senator Begich: Yeah.

Senator John Coghill:Omnibus Consolidated Appropriation Act, that said there was no final rule regarding RS-2477, evidently. So if any state such as Alaska has enacted, could they then make a rule to recognize that. I suppose that's the question. What I can do also on this is.....

Senator Begich: Yeah.

Senator John Coghill:this will become part of our CACFA record and it will be sent to you so.....

Senator Begich: Yeah, because that one is a little more technical. I mean, I think the answer is yes but I don't want to say it unless I understand the exact intent there.

Senator John Coghill: All right. I should have, and, Senator?

Senator Begich: That's okay.

Senator Murkowski: Well, and the only thing that I would add is that Congress can effectively.....

Senator Begich: Reverse anything.

Senator Murkowski:do anything. They can undo anything by legislation, it's just a question of whether or not you've got the support to advance that. So I think the easy answer is that yeah, we can do and then undo whatever we've put in place but this is, when we talk about areas of overreach, again, I think this is an example where you have clear meaning of the law.....

Senator Begich: Mm-hmm.

Senator Murkowski:and it's been disregarded or ignored.

Senator Begich: Disregarded.

Senator John Coghill: And you will get a copy of these questions from CACFA and so thank you very much. Ernest, did you say that the congressman was here or do you, you're asking, you bringing another question? All right. Good. This is from Patrick O'Connor and I'm trying to read quickly. That's probably why I didn't get that one as good and he says, and now I got to read the writing. Many Alaskans have been given the runaround for years over subsistence right to use the lands that were added to the Denali Park, the Bull River or Moose Creek, for many

years. I asked for and received my lifetime permit. I had to prove that I had used the lands which I did use this permit for two years. Then I was taken , it was taken back for the next 10 to 15 years, given the runaround. You would get over the problem, then the problem, then they'd present another such as a new separate, or a new ranger. This sounds like a little more detailed.

Senator Begich: Yeah, maybe John will take a shot at it in a broad sense and then in detail if that's okay.

Senator John Coghill: All right.

Senator Begich: First off, I think one thing we, and I say we as the delegation. I think, I want to say the energy committee, correct me if I'm wrong here, Lisa, but I think in the month of September or October, there's going to be a discussion or a hearing or a work session on subsistence because there was a report done September. There was a report done about two years ago, I think, by Salazar with the federal 20-year kind of anniversary of issues around subsistence and even though this is always a tough discussion, you know, because there's views on all sides in this, it is important to look at that report, see what it says and then I also have these further discussions so, specifically, it's issues like this that we have to review and understand what are the policies that are impacting it but, on a broader sense, I think his point and I think I would, and I think the delegation would agree overall with this, one day you're working with one person. Maybe it's a permit, maybe it's a access issue and then two years later, you're back at it again for some other reason but then there's a new person who interprets the law differently and so now you're struggling through that person. One of the things we had in the arctic development was I call it the whack-a-mole of regulation. You know, you'd be working with one agency. You kind of knock it down, resolve it, then something would pop up over here, then you'd be back over here and then another one pop up over here and part of the challenge is these agencies are not always coordinated in talking to each other and they in some cases work cross purposes. I mean, CD-5 was a great example of I think everyone if you asked them separately outside of their agency role what's the right decision, they all had it but because everyone got into their own pieces, the debate was well, that agency said this, this agency said that, therefore, we can't move until they move and I think that's a continual problem within any government agency, government organization but federal government is very bad about this in the sense of this lack of coordination.

We had an issue in front of the FCC, see, we knew when Don would get here. We heard him in the hall and he's here but.....

Congressman Young: John says that they're reserved seats.

Senator Begich: I know, you get to, we, we're up here but I remember the FCC had a report which impacted our rural telecoms and when you read the report, it said that it is cheaper to build fiber and telecom in Alaska than in the Lower 48. Now, that is just inaccurate when you're working in rural Alaska and when you talk to them individually, they agreed and I said well, then reverse the report. Well, you know, blah, blah, blah, someone else did that report and it's like are you kidding me. So we got a two-year reprieve on it from a waiver we just got last week but now we got to get this permit, I mean, the, there is no one who can say that building a fiber line or a satellite system in Kwethluk is going to be cheaper than in the Lower 48. There's just no

way and yet they know the information is inaccurate based on the data they inputted. So this is like a never.....

Senator John Coghill: Yeah.

Senator Begich: So this poor gentleman, it sounds like what he's had was one person who said oh, logic, yup, makes sense, here's your permit. Then someone else comes later and says well, I interpret it a little different.....

Senator John Coghill: Yeah.

Senator Begich:and that's a struggle, I think, across agency issues.

Senator John Coghill: Sure, consistency of interpretation of regulations has been a real problem.

Senator Begich: Right.

Senator John Coghill: Senator Murkowski, anything on it?

Senator Murkowski: I don't know that I will add anything but recognize that, on the one hand, we want, we insist on flexibility within the regulations so that you don't have these crazy decisions that are coming out or the citation for Auntie's Day Care but when you have, when you clearly have a situation where the right hand doesn't know what the left hand is doing with this, this just adds to further frustration amongst people as well. So I want to make sure we don't have a one size fits all approach here. I want to make sure that people are exercising a level of common sense but I think the point that has been made that you've got differing interpretations based on who happens to be the new superintendent makes it extraordinarily frustrating for us as Alaskans.

Senator John Coghill: I'm going to ask one more question before I get to Congressman Young. A new word was brought to my attention yesterday called Beringia. This is from Steve Borell. How do you plan to insure that no part of Alaska gets included in this proposed Beringia World Heritage Biosphere International Park? It's a, it was a new concept to me so Senator Murkowski?

Senator Murkowski: Well, it, you know, John, it may be a new concept for some of us around here but the reality is there is an international community, growing interest, certainly, from the environmental community that has looked at these, formation of these areas as an opportunity to really lock up, put off limits, more areas and Beringia is a perfect example of that. You know, how do we deal with it? I think part of it is through awareness that we have initiatives and efforts under way even without most Alaskans really having it on the radar screen. So education is probably the first place to start talking about it but also recognizing that this is something that could come at us from not necessarily our own administration but our administration working with other international entities, if you will, other countries and Alaskans are kind of out of the conversation. We're not even sitting at the table. So I think from a legislative perspective, I'd make sure you all are pushing your way in.....

Senator John Coghill: Mm-hmm.

Senator Murkowski:and I, and it's not just on, in this area. When we're setting arctic policy, you all need to make sure that you are in the room, you are at the table with the folks from the state department, with the folks from DOI and after we had the panel here in late June, I guess it was, I sent off a letter suggesting that this, the arctic commission that has been appointed legislative, legislatively appointed, that you all need to be participants and have representation at these meetings because I think what happens far too often is that Alaskans are locked out of the meeting. We don't even know the meeting is going on. So it starts with awareness. Steve is very engaged, I think, and can offer a great deal of perspective on this and others but stay on top of it.

Senator John Coghill: Senator Begich?

Senator Begich: John, very quickly, and I apologize, it's probably my last one because I got to be somewhere by 9:30 across town but let me say this, this is actually not new to me. I, when I was mayor, there actually was a conference here at the museum auditorium on this specific issue and the simple way to explain this, it's an international park.....

Senator John Coghill: Mm-hmm.

Senator Begich:and there's a lot of activity that goes on outside, basically, NGO's are working on these issues and I think Senator Murkowski has it right that you, we have to spend time not only from you, as citizens, you, as legislators, and us, as elected officials in Washington, to, on a regular basis be on these issues, be engaged in these issues because sometimes the NGO's, may they be good or bad, depending on your opinion on which ones they are, are engaged in something they passionately believe in and we have to, as elected officials, always put this on the radar screen. This is one example of things that happen outside of our legislative process that, you know, we're buried every day with legislative stuff but issues like this come to us on a regular basis.

I remember when I was mayor and this issue, they had a conference, like I said, and I went over there because this was the first I've, I had been aware of this activity and, again, just being engaged in it is going to be critical but on all levels, not only from the citizens but legislative and we have a responsibility to continue to kind of monitor this and make sure we have a voice on these issues, not just some group off to the side doing what they think and, you know, no disrespect to the groups, they have passion, they believe in it and I get that but they can't forget the people who are affected and the stakeholders who have an engagement here.

Senator John Coghill: And we want to thank you. There's a lot more questions. We will forward these questions to you. They will come through the CACFA staff office. The fact that we're a state in a union, we feel very strongly that we need to work as a partnership but we also need to stand firm on boundaries with the federal government. The fact that we're an international state is not lost on many of us. The fact that NGO's have a huge impact in Alaska because of the parks, preserves, fish and game and et cetera, so your constant vigilance, thank you very much. I'm going to invite the congressman up and dismiss you so thank you very

much and I, I'm sorry that we didn't get to all the questions but we will get them to you. Thank you very much.

Congressman for all Alaska, Don Young, probably doesn't need a whole lot of introduction. We'll let him say hi to his colleagues. My apologies for not getting to all the questions. I took them kind of in the order we got them. I should have probably shuffled through them but then I would have got beat around the head and shoulders for doing that and so I did, there was no good way of doing it. They will get to all three members of the congressional delegation and Stan will see to it that the Commission sees the questions and then facilitates that answer.

Senator John Coughill: Yeah, you have the floor for 15 minutes, Congressman.

Congressman Young: Ha.

Senator John Coughill: You can sit right there or take that.

Congressman Young: I'm not a senator. It'll only take me five minutes.

Senator John Coughill: Push that button right over there and you're on.

Congressman Young: I want to thank you, Senator. I hurt his feelings when I said I'm not a senator so I have to be careful what I say. I understand that this is supposed to be about federal overreach.

Senator John Coughill: Yes.

Congressman Young: I am one that believes very strongly that we've become a nation, the United States of the Federal Government, not the United States of America. We have now a centralized government that is controlling our lives search and every moment. I give you an example. It's just not this President. I don't like this President right up front. I'll give you an example, in the last four years, the Congress passed 628 bills signed by the President. Oh, that's about average if you go back over history. A lot of them were bills that didn't mean a whole lot. Some of them were bills that affects your lives. When I say that, the same time, those four years, the federal agencies passed 13,883 regulatory laws that affect, now, think about that, 628, 13,000 regulatory laws. This is a machine that's working, it centralizes the government and we're affected here probably more than any other state in the union because we have little private land, very little. In fact, what state land we have now is being directed by and actually hindered by the federal government.

We have Pebble Mine. Whether you like it or don't like it, we have EPA coming in now making decisions on state land, state land. It'll be a precedent set that the state, in fact, we've become a territory again. The regulations imposed by the Fish and Wildlife opposing, in fact, you know, our control of predators for our people, opposing any mineral development, opposing any fossil fuel development, setting off PET-4 which is a reserve for oil development in areas that cannot be drilled where the oil is and I've always asked them this, have you asked the companies which would they like to drill and if they picked those areas out, then let the oil companies take the responsibility of finding or not finding but the other areas that are set aside,

put it in so-called wilderness. The idea that we are now a state that's going to be charged as for a national park, as you mention, is bullshit, straight up, run by interest groups across this country that didn't recognize the Constitution of the United States and the Congress that voted with the State of Alaska to become a state.

A lot of it is our fault. We have not responded adequately. Yes, we go to court. That's a court fight. Sometimes we win. Most of the times we don't. I suggest respectfully that we, as a state and the Constitutional State of Alaska, ratified by the Congress, act as a state and where they impose a regulation that overreaches us, we do what we wish to do. Why do we have a DEC and the EPA, Mr. Senator? Why are you funding the DEC which is equally as burdensome as the EPA? Why do we take and accept the fact that the EPA can take a community and change the standards in Fairbanks, the Kenai Peninsula to their wishes without any science? Their science is so weak but we don't counteract that.

Now, I've suggested to the Governor and he has not listened to me that we set up a scientific board and take and have the right science to respond to any regulation that impedes the ability of the state to function, not DEC, they're just as bad. They're a puppet. They're not part of solving the problems of this state. Everybody says well, Young has just got this terrible attitude about environmentalists. They're not environmentalists. They have no knowledge of the environment. They're trying to corral the state, the people of the state, into acting as they think it should be done, not as American citizens, not as American citizens and we have become lazy because we accept it. What does the Fish and Wildlife do in the State of Alaska, the federal Fish and Wildlife? What do they do for Alaskans? I ask any of you tell me what they do. How do they affect you. Do they benefit the citizens of this state? No. What does the EPA do? What does the commerce department do? What does the Corps of Engineers do? I can go on down the line and I respectfully say that they're just government individuals that do nothing for the benefit of Alaskans. Yes, a small group over here and I say we are at fault because we got lazy and we started developing the oil industry on the Slope and we got all this free money, free money, dividends, schools paid for. Everything in this state is being paid by one industry so we became lazy.

When I first came up here, and your dad will say the same thing or would have told you this, I never heard the word can't. We could do anything. We became a state with the idea being 103 million acres of land for economic and social well-being for the State of Alaska and the people of Alaska. That's why we became a state and we thought we would have use of the federal lands and then along came the Alaska Lands Act and if you'll look at the map very closely, they isolated our state lands, bordered it with areas of wilderness and parks and, under the regulations, you can't, in fact, do anything on state lands that affect the designation of wilderness or parks. They took our state away from us and we allowed it to happen and the only way we can get it back is, very frankly, if we decide to build a dam, drill a oil hole, mine a mineral, cut some trees down, we do it. Challenge the federal government. Challenge them. Not just in court, actual physically doing it. Wally Hickel did it when he built the Hickel Highway, now called the Dalton Highway, when he bought the Wickersham. Some of you don't remember that. Can't do that, it was a foreign-built ship and he says stick it in your ear. What did they do? They didn't dare touch us. They didn't dare touch us because if they lose one case to one state by a state acting as a state, then they'll lose the rest of them.

I go back to my concept, in four years, 13,883 regulatory laws. They can shut you down, take your business, fine you. They have their own courts now and each department and if you don't pay the fine, they can take, seize it, shut you down and put you in jail, not through the judicial process and we've allowed it to happen. So I'm suggesting respectfully to this group there is an overreach. No one in the Consti, none of those laws or regulations is vetted to the right people, has not been voted on and yet it's the law of the land and you're living with it and those that work for the federal government, ask yourselves what did I do today for the Alaskan citizenry. Did I help them or did I hurt them? Did I impose the restrictions that didn't make sense because someone wrote it back in Washington, D.C. in that little office? Ask yourself. Feel a little bit guilty because you are the government, not of the people but government for government sakes and that's not a democracy. That's not freedom. That becomes a monarchy, a totalitarian state and this is not just this president, this has been going on now for a period of time since 1935. Do a little reading, a little history. Find out what happened, how Germany collapsed and Hitler took over, how Stalin become in power. It's always because of centralization of a government power and not the people.

Now, I believe in this democracy, I believe in this republic of the United States of America, the United States of America, not the United States of the Federal Government, and I fight that battle every day and I will not defend any federal agency in imposing restrictions upon our Alaskan citizen unless it makes scientific sense. You can have a forest fire in Fairbanks. Smoke's so damn thick you can't breathe. It's natural but try to take a lighted fire in the wintertime, you're polluting the air. Nonsense. Sixty below zero.

Try drinking water on the Kenai Peninsula and they had to put in a \$27 million new plant to take the arsenic to a lower level after we put one in 30 years ago. By the way, they've been drinking that water the last 10,000 years. I want you to think about this, guys. You Alaskans are really Alaskans, not someone sitting down in the FBI Building or that big Parks and Fish and Wildlife Building. I got in trouble the other day because I think in Fairbanks, they did the right thing up there, Jerry Sattler did. He reclaimed his property in, here in a U.S. state and they want, that Fish and Wildlife wants to have another building and, again, what have they done for Alaskans? What's the Park Service done? Rolled a 74-year-old man in the mud? Protecting what after giving him a distress signal? That's what they did, our so-called United States Park Service.

Now, if you think I'm a little emotional about it, I am. I believe very strongly in this state as a state, not as an extension of the federal government. The legislative body and the Governor have to do these things I suggested. They can do it and you have to back them up. If you don't, we don't have the State of Alaska, we've gone back to the territory. Now, you've listened to my little presentation without any papers and I'll answer any question you'd like to ask, Mr. Senator. I appreciate it very much. Thank you very much.

Senator John Coghill: Thank you very much.

Congressman Young: You've got questions, I hope.

Senator John Coghill: Oh, I've got a whole bunch of them. First one, do you consider federal executive overreach to exempt Congress staff from Obamacare?

Congressman Young: Well, you know, I feel a little bad about that right up front with you because I didn't vote for it. It's the dumbest law I've ever seen in my life. They've put us in exchanges and if you don't like what the Congress did, don't blame the Congress, blame Obama and Pelosi. Let's take and repeal the damn law. It's be pretty hard to do but I sat on that floor and you check this out, this bill will not work and they're finding it out. So whether it's good or bad I don't know. I know this, if I was working for me as a congressman that hires my people, why would you work for this buddy if you're going to lose your health insurance when we don't pay him anything anyway? I'd quit in a heartbeat. That'd be dumb if you didn't but we were dumb when we elected him again, the American people, because I'll tell you this president is a true socialist, believes in it. I respect his right to believe in that but he wants everybody to be dummied down. Remember what I said about this state, entrepreneurship, no more, not, no, it isn't happening. Same thing nationally.

The driver go forth. Forty-seven percent of the people , Mitt Romney lost the election, he said it was 47 percent of the people don't contribute to the society and they don't. That's one reason I support the flat rate tax. Even those receiving a government handout should pay 10 percent or 15 percent of that which is given to them so they have a little skin in the game. We have too many people today in the United States, how do you think and where do you think that illegal immigrants are coming in? Because there are jobs that nobody will take.

In my lifetime here, 55 years in Alaska, we used to put more people through college working in the fish processing plants because it was a hard-working job but they got paid seven days a week 14 hours a day and you go into the fish processing plants right now, you know what you find? No one speaks English. Now, think about that. We got people that don't want to work in this, in the states anymore. I'm on my soapbox so.....

Senator John Coghill: All right. I, so this is from Ron Somerville on the Endangered Species Act, one of the greatest impediments to reasonable resource development. So is there any opportunity, I'm going to paraphrase this, clarifying the law and give more direction to federal courts with regard to the Endangered Species Act?

Congressman Young: Well, again, this is an example, a dangerous, and, by the way, there's only four of us left in Congress that voted for that stupid law and I did vote for it because they said we were going to peg tigers, elephants, lions and exotic species in Africa. Now we're protecting the fairy shrimp, the doodly-waddly. I don't know what a doodly-waddle is but it, believe me, it's in the book. The kangaroo rat, the bald eagle that has to have a nesting tree because they can't nest without a tree. That's ironic because I was down in Adak when they used to have the open pit down there for the Navy and the, for the garbage dump. There was 500 eagles. There wasn't a tree within 500 miles but they were nesting. You bet they were. That act is the worst act and they use it, the crazies use it to, in fact, impede the progress of any sound development, be it a road, an airport, a hospital, a school, a mine. They use it and they slow it down, slow it down, slow it down, slow it down, slow it down, slow it down, slow it down. Eventually, it's never built. Jobs are lost, income is lost. Our economy goes in the tank.

Now, can we do anything? I'll tell you an ironic thing. I had, Bruce Babbitt was Secretary of Interior when we were in the minority. He couldn't work with George Miller and he came to me and said we got to rewrite the Endangered Species Act and I said and I'll help you. I

said I'll help you, Mr. Secretary, and as soon as we got in control in 1994, I was the worst villain in the world. I was trying to rewrite the Endangered Species Act and they attacked me like I was a dog. It has to be changed but it goes back to what I said before, why should we follow the Endangered Species Act on our land when we know it's not endangered? Challenge them. As long as you don't challenge them, they're going to stick it to you every time.

Senator John Coghill: One last question addressing the Secretary of the Interior creating the Landscape Conservation Cooperative. This is from Ron Arnot. This overreach is not only within Alaska but internationally including Canada and Mexico. Would you work to defund the Department of the Interior program called the, what is it, Landscape Conservation Cooperatives?

Congressman Young: We're going to do that. Mike Simpson is very aware of this. He's on the appropriations committee. Can they do something regulatory wise? They'll try. They'll have an executive order. This President has used more executive orders than any other president in history to take and circumvent the Congress. The only way we could control it is defund them but we have to be specific, specifically say this is where you're not spending any money and if it's the law, then, in fact, they can be charged, put Congress in charge of it. That's what we have to do and I'll tell you one other thing. I'm not saying this politically. The only thing that you can be protected from from a further encroachment is to have that checkmate in the House of Representatives.

Now, we get criticized. Our, by the way, our, Congress has got eight percent favorable rating, dangerous when you say that because what's the President's rating, 42 percent, but he has executive power. So when you knock Congress, you're giving more power to the President and we, as a stupid body, my party took way so-called earmarks. Nowhere in the Constitution it says the President has the right to raise money and spend money. When he says I'm going to give so and so \$300 million or \$3 billion or \$5 billion, he does not have that authority and yet you, the American people, allowed that to happen and we, as the Congress, have failed in not defunding it. You've given him the power. Under the Constitution, it says only the Congress can raise and spend money, not the President of the United States, yet I see it on television all the time, the President's going to do this, the President is going to do that and we accept that. We have created a king, not a three-branch government. Then we extend a little bit more of the executive branch to the justice department. I know a little bit about the justice department, by the way. Try five years investigations. That's fun. There wasn't a goddamn thing there, never was. Try that. That's the government. Try NSA. Every one of you in this room right now, your phones are being watched. Why? What gives them the authority to do that? Why are they keeping it? Ask yourselves that. We, as the American public, we've become complacent and allowed the government to overreach and overstep and to stand on us and we're, you know, to give you an idea, the State of Alaska is really, we picked land and rightly so over what we thought the resources were and then we come along with a note that we're surrounded, like I said before.

To give you an idea, I don't think you really realize that you take Alaska, you take all the land east of the Mississippi to the Atlantic Ocean from Maine to Florida, that's part of Alaska and they have 252 congressmen and 52 senators. We're surrounded by the federal government. Oh, it's good for you. Don't question us. We know what's best for you, just be quiet and you've allowed that to happen. We have allowed it to happen as the American people. We have encouraged the overreaching of the federal government by allowing it to occur and, in doing so,

have you lost the democracy the forefathers thought of, the republic of which we are established on, you've lost it. Shame on all of us. Let's recover it.

Senator John Coghill: Yes.

Congressman Young: Let's not have the Roman Empire again. It is, I'm going to tell one more story and I know I'm running out of time but you think about it, just think about it the, read The Fall of the Roman Empire. The smartest, most advanced nation in the world, aqueducts, waterways. I mean, you name it, very smart people. They got so damned smart, they had the greatest army in the world, that they decided no one needed to do any more work anymore, they'd import the workers. The government gave them, remember this now, free grain and olive oil for everybody, no discrimination. The young didn't need to work, they wanted to become scholars. The military they had was so great they decided to hire mercenaries but the public got a little bit restless. They were bored so they built coliseums. The emperor killed a thousand animals in one day in the coliseum for the sport of it. They had gladiator fights. They had some Christians crucified. Does that remind you of anything? My fishing plants are operated by foreigners. You get someone to mow a lawn, he's wearing, never mind. I can go down that mine and we're bored so we build coliseums and we pay a guy \$80 million to hit a ball and our Army, bless their hearts, is no longer the army of the people, it's the army of the extension of the executive any department.

When I was in, drafted to go to Korea, I ended up 90 guys out of a hundred-man company were all draftees. We had 10 professionals. It was a good army for one reason, we were all bitches. We complained all the time. It was an army of the people. Today it's the Army of the United States, when I say Army, all the forces, that is controlled by one man, decides where we're going to go, how we're going to do it. The Congress reneged on that power of declaring war. You think we would have had the war in Iraq and Afghanistan for 12 years if we had an army of the people? No damn way and you see what's happening over there because it's no longer the army of the people. Good people. Don't get me wrong. I support them but they no longer are the army of the people and you respond to the people. You respond to the President.

Now, I know my time is up and I've been lecturing a little bit. I just came back from Whittier yesterday and had a great fishing trip. The weather was beautiful. Had a whole group of people up here and it was worthwhile. I didn't catch a fish. I kept my record. This has been eight years I never got a fish and I don't want anybody on my boat because I usually bring a git, they did catch fish on my boat but God bless you all, Senator.

Senator John Coghill: Thank you.

Congressman Young: Thank you very much.

Senator John Coghill: Thank you, Congressman. Really appreciate it.

Congressman Young: I used to bound down those steps. Now I can't even.....

Senator John Coghill: Thank you, Congressman.

Congressman Young: You bet.

Senator John Coghill: A good reminder. We be citizens and very encouraging. I'm going to double up my efforts. Bill, we ran your time out.

Mr. Bill Horn: Take the break and then I'll....

Senator John Coghill: Why don't we do that? Why don't we take a break and I'll give you probably the first 15 minutes. All right?

Mr. Bill Horn: Thank you.

Senator John Coghill: All right. I think it's going to be awful hard for us to follow the Congressman anyway so let's take a 10, 15-minute break.

9:50 a.m. - Break

10:00 a.m. Fish and Wildlife Management Issues

Senator John Coghill: Okay. Wayne Heimer, Brad, Ted, get yourself ready to come on up here and we'll start shuffling everything into place. So Wayne Heimer, Brad Palach, Ted Spraker. Yeah. Probably one other announcement, just to let you know, we're not letting Bill Horn off the hook. We're going to give him a half an hour probably within the 11:00 o'clock hour so half an hour or 20 minutes. So for those of you who were disappointed that I ran Bill Horn off the stage for the senate members and the congressional delegation, so my apologies to Bill for that, my apologies to you but we will have him up so that he can give his presentation.

One of the discussions that I've remembered with some emotion has been the Fish and Wildlife management issues, the agreement between the state and the feds. I don't understand all the details but we do have some people here that are going to be able to give us the, some of the information. So Wayne Heimer's going to talk about impacts to the public use of fish and wildlife. Brad and, Brad, I don't know that I'm saying your name right.

Brad Palach: It's Palach.

Senator John Coghill: It's Palach. Okay. All right. Thank you. My apologies for messing that up. Current fish and wildlife management conflicts we're going to get and then from the Board of Game, we're going to have Ted Spraker. So thank you very much and I'm going to do a little timekeeping from right there so that I can view the Power Points. If you get out of hand, you'll see me running up here but I'm going to be the time keeper. It looks like about 20 minutes each with some flexibility. All right? All right. Mr. Heimer, thank you for coming to be with us and greatly appreciate your time.

Mr. Wayne Heimer: Thank you, Senator. It's great to be here. My name's Wayne Heimer. I'm here primarily as an affected user. When I look at all of, and watch the presentations of all of you that were there when it happened and had a part in it, I feel like I'm crashing somebody's class reunion that isn't mine.

I got swept up into the ANILCA vortex because I was working at the Alaska Department of Fish and Game where my career was for a little more than 25 years. I was the dall sheep guy when this all began to happen. The D-2 wars were beginning to heat up and whatever and the question came down from Juneau all the time when the mapping was going on and there were lines being drawn, lines being drawn and lands being selected. The question always was how many can we kill if we draw the line here and that's not because we're nasty people and just killers, it's because the state has an economic interest in the resource management that we have. You know, we are directed, as Department of Fish and Game, to maximize use for the benefit of the economy and the well-being of the state and we have an economic interest in that and when the dust all settled, about a quarter of the dall sheep that we used to use for hunting and used to have management control over ended up in federal areas where they're no longer available to us.

The, along the way while all this D-2 fighting was going on, I wrote a few contemporary history papers about how the process was going and what was happening to the sheep, this, that and the other thing. So I guess it was logical, I thought it was punitive at the time but perhaps it was logical by the supervisors at Fish and Game when Governor Hickel brought his suit against the feds for overreach, the original one there. They needed somebody from Wildlife to go over there and at on our behalf. I drew the short straw and as much as it may be an embarrassment to Tina Cuning, I did work in her shop for five years and was immersed every day in that business and that was 15 or 16 years ago and I've been an outside observer and a watcher ever since.

The job I had with the ANILCA team was, first of all, to show that we had been harmed so we could get into court and we managed that with relative ease. It wasn't, it was not our best work. Our best work came after that on the *Lujan* and *Babbitt* suits and we got into court. The case was rolled into a group of things that a judge here, federal judge here in Anchorage, a fellow named Holland, I believe, gathered all to himself and he made rulings that were not in the best interests in the state, as we saw it and, of course, something as fundamental as the constitutional arrangement between states and the federal government was given at the outset for that to be resolved by the Supreme Court. So we lost with Judge Holland. It went on up to the Ninth Circuit Court of Appeal. We had an election going on about that time. A gentleman named Tony Knowles was campaigning. One of his campaign promises was to Alaska Native interests that he would pull that suit if he was elected and he was and he pulled the suit two days before it was to be argued in front of the Ninth Circuit. We might have won, we might not have won. It would have gone to the Supreme Court and that was the way it was always figured it was going to be which goes to a fundamental assumption that I think we need to evaluate and that is the courts, I don't think, are really going to settle this for us. We found that when, excuse me, when you go to court because you don't think the law is being adequately or correctly followed, the court doesn't give you what you think is just, you change the law and I believe it's time that we need to look at changing the law which is the, basically, the subsistence title of ANILCA.

The companion suit that went with the *Lujan* and *Babbitt* suite up before Judge Holland and eventually to the Ninth Circuit was *Katie John* and we generally figure it's, Katie John got what she wanted. She got to go fishing again at Batzulnetas. The feds had told her she couldn't do that and we think, you know, the general consensus is that Katie won. Well, there were about four or five counts in Katie John's suit and she prevailed on one of the them. Some of them abut, the one that interests me most upon which she did not prevail was the assertion that navigable water is federal public land. That's what the feds were arguing. They didn't win that one. What

Katie won on was kind of, was called, something called reserve federal water rights. Now, what that is, in my understanding, and you need to understand that, you know, when you're like me and you blunder into this huge elephant that many of the old-timers created for us, you're kind of like a blind committee assessing what an elephant is like. We go in, we run into this monster and we feel around on it, we try and figure out what it means to us and try and put it altogether at the end. So, you know, my feeling around on the elephant defines my perspective that, you know, what Katie won was reserve federal water rights. That's really irrigation law. That's irrigation law which declares that, defines that a downstream user gets enough water, gets as much water as he was promised and reserve federal water rights assure the federal government of enough water for the purposes of any federal installation that might be created.

It gets really kind of fascinating when you think that the Park Service, for example, owns the upland and because of reserve water rights, they have to guarantee themselves of enough water to flush the toilets at park headquarters downstream and that's the count on which Katie John prevailed and she got to go back to fishing. The reserve water rights become important to us with respect to federal overreach because the federal management system parlayed the assurance of a downstream flow of water into management of the upstream flow of salmon. Now, salmon are mostly water. I understand that part. That's biological fact but something's wrong when you end up doing it that way.

I'd like you to fast forward now, you know, figuring that Katie John and the interest in salmon got the commercial fisheries people a little more interested so that the profile is elevated a bit to force solution of something that was going to, had to be done here and take you to something Mr. Somerville mentioned yesterday and that is amending the Alaska Constitution. As Don Mitchell explained to you yesterday, he wrote Title 8 of the subsistence law into ANILCA. As it comes to me when the, and, of course, this all began with House Resolution 39. As it comes to me, when House Resolution showed up over in the Senate, there was a provision for subsistence which was based on race and the Senate looked at it. I'm told Ted Stevens looked at it and said this is 1979, we don't do race anymore and he did what today we would call a global replacement in the document of race preference with rural Alaskan preference, thinking that he had probably solved the problem. The difficulty is that our Constitution in Alaska does not allow us, according to our Supreme Court which, you know, Don Mitchell said it'd gone off the rails. I wasn't quite sure, you know, you can like it or you can not like it but the Supreme Court's the Supreme Court where I come from and whether or not it went off the rails, it said our Constitution does not allow you to discriminate against people based on where they live or provide preference as the flip sides of the same coin. So there was a huge pressure at that time to change our constitution, as Ron Somerville explained to you yesterday, so that we could establish a rural preference and have discrimination to, so that the feds would not take over management. An interesting irony because if we changed our constitution so that they didn't take over, we'd get exactly what they said they wanted to do anyway. Well, the pressure on our legislature was intense. You know, by then I had mercifully left Tina's employ and was in Juneau when that negotiating was going on and the pressure was just intense. The Governor was pounding on, you know, Gary Wilken particularly from Fairbanks, said yeah, I'll be reasonable and I think he was up in the Governor's office for, well, we sat around waiting for things to happen for several hours, three, I believe, and, you know, eventually, said well, no, I don't believe I am going to be reasonable in moving to amend the Constitution to allow discrimination. When that happened, the feds reluctantly said they were, they had to take over management of

subsistence allocation. This I find pretty interesting as well because that ain't ANILCA. It ain't there. I can't find it. Where it comes in is in his earlier ruling on the *Babbitt* case, I believe, Judge Holland said Congress surely must have intended for some enforcement hammer to be above the state so that it would have to provide for subsistence preference and that was the reason the feds felt they had to take over. When the feds felt they had to take over, we had this odd forced marriage called dual management.

Dual management is a, doesn't sound like such a bad deal but it was significant, I think, because of a term that Attorney General Geraghty introduced yesterday that was one I hadn't heard. I knew there was a traditional productive relationship between states and the federal government when it came to managing wildlife. I just didn't know what it was called but the way it has always been and was until we got into this dual management marriage was the state, as Senator Murkowski just explained to us, has sole right to wildlife and when wildlife happened to be standing on federal ground, the traditional relationship called cooperative federalism was that the state would manage the wildlife and the feds would manage the habitat. That all began to go away with dual management. If you're going to be a partner in management, it seemed like you ought to be trying to accomplish the same thing. The federal idea of management does not match the state idea of management. If you think of it in any enterprise, whether it be business or human resources or finance, management means that you tinker with or intervene in an established system to produce a predefined result.

Now, the federal, or the state's predefined result is in Title 16.05.020, duties of the Commissioner or functions of the Commissioner, and that is to manage, maintain, expand, enhance and protect the wildlife in this case, resources of the state in the interest of the economy and well-being of the state. That's our predefined result. The predefined result as I can figure out, you know, I infer it from the feds is they wanted to establish opportunity for subsistence for rural residents. That's a vague predefined result and it has led to, actually, nothing beneficial that I can see. In my job when I was employed on the ANILCA team, it was to write management case histories and review federal regulations against the corresponding state regulations.

I think what you have with dual management and the federal feeling of an obligation they must provide an opportunity is that the predefined result is an abstract opportunity to do something that you always used to do. The kicker is you have to ask if you can do what you always used to do. It's, this has been an uncoerced, or has been a coerced, unproductive business. If you really don't, the state wants to manage, it must manage, it is imperative that the state manages. The feds don't want to manage on federal lands, they don't want to intervene, they don't want to do something to provide a predefined benefit and they don't even want you to do it on your land which is adjacent.

You know, the Unimak Island, you know, situation is a fantastic case history to look at and that, you know, if you really think that the feds are into providing for subsistence use rather than land control which many of us said was their original objective years ago, you really ought to look at that one. Examples are legion. There are too many to talk about and maybe Ted will bring up some of them but the social costs of dual management, you know, Senator Begich mentioned a lot of money comes into Alaska. There are a lot of Alaskans in the federal management industry. It brings in a lot of money. It also brings huge social problems. Those

problems are simply division of rural versus urban, you know, Native versus non-Native. You know, you've got disharmony, a rural urban divide. You've got a whole bunch of stuff which is the result of the consummate double shuffle that the feds gave us.

You know, when Natives went, our Native friends went to Don Mitchell and said, you know, get us some subsistence provision here in ANILCA, I suggest that, really, that was an essential component of recognition of sovereignty, of specialness in that relationship that Alaska Natives and Alaska non-Natives have with land. They didn't get that. They, what they got was the farthest thing from respect. There's no management, you know, to provide for an actual harvest of anything in the federal program. The federal program is against state management and what the Natives actually got was the opportunity to beseech the federal subsistence board for largesse, you know, to give them a paper opportunity that looked like a preference. The way the federal system usually works is it takes the state's bag limit, seasons, methods and means and just makes them bigger and excludes everybody except their qualified rural residents.

That is if the methods and means are consistent with park and refuge values, they will do that. Now, if your methods and means happen to involve, you know, den hunting with a spear for a bear, you know, you can still do that but you can't use a flashlight because the federal people don't like flashlights involved in bear hunting. You know, that activity's going to do absolutely nothing to any resource except maybe the bear involved and maybe the person involved. It's going to have no impact on the, on, really on anything.

So the thing I suggest to Native leadership and to our friends is that you might consider the idea that the feds are not your friends. They have not come through with the promise that they made. The path to dignity and food sufficiency probably lies with the state and state management because of our predefined benefits which is well being for everyone.

I have some suggestions for everyone. I'm kind of a, going to go into a barnstorming mode here and we'll just share, throw a bunch of stuff up on the wall and you can deal with it as seems best to you. Can I have the first slide first? I have suggestions for Governor Parnell. The first one is to exercise your privilege as Alaska's governor to take this constitutional issue of the 14th Amendment directly to the U.S. Supreme Court. I know we have been advised the last day, yesterday by lawyers that we need to build a system and a big file of case law to do that and I, I'm no lawyer but I infer the reason you do a big bunch of case law is so you could get at a principle. I think the principle is the 14th Amendment which never granted wildlife management to the feds as a power. It never withdrew it from the states as a power so I figure that's still where it must be. I think that I'd encourage the Governor to get that settled. Next slide, please.

Now, to the Alaska legislature, boy, have I got a list for you. You know, first, and, you know, this, I believe Ron Somerville mentioned this one yesterday. I think you need to reclaim and reassert your policy making authority. That would mean dumping most of the memoranda of understanding and cooperative agreements that have been negotiated by the administration with the federal government. Our constitution defines what our policy is with respect to resources. It says the legislature is the sole arbiter of that policy. When we have commissioners of this, that or the other making agreement with the feds, that's improper. So I would like you, to see you do, get your authority back.

I don't know whether you can instruct our congressional delegation to do anything but I reason that if they're there to represent us, if they knew what we wanted, maybe they'd have a better chance. So I think we should instruct them or, to reestablish cooperative federalism as it used to be when it was productive. Senator Murkowski spoke about how well we had done reclaiming resources. That was because we had constructive federalism. We did not have this bizarre dual management federal overreach business to deal with. So I hope we can make some progress there.

The next one, number four, is kind of a big one. This is a, an idea that is for free and that is that we need to look into co-equal management on Native lands with Alaska Native tribes or corporations or whatever. I think, originally, the subsistence deal, being an element of sovereignty, is one of those things that just didn't turn out with the feds. I think we need to look at the opportunity to do that, you know, with the Native corporations and the tribes, who's ever involved, and that would be a great thing for the Alaska Natives but if we're going to have a, make a deal, somebody's got to give up something on both sides. I suggest to you that, you know, co-equal management on Native lands should be, essentially, swapped for the papers, rural resident preference that's in ANILCA. Let's trade one for the other. We can work together. We can solve this issue as Alaskans where we share sovereignty between the state and the Native entities because the way it is now, nobody's going to have any. So if we, we got to get the feds out of this business. Could I have the next one, please?

The other one is readjust the mission of the Division of Subsistence and Department of Fish and Game to where it fits contemporary reality. The division was created by the legislature, you know, as an advocacy. Basically, it's fall-out because we passed the state subsistence law so the feds wouldn't pass theirs. Didn't work. That's, it's a vestigial organ as it stands now and needs to be, needs some looking after.

Finally, as long as I'm just throwing stuff out there, why don't you consider suing the feds for all the money that we've lost because of what we can't hunt or fish anymore. You know, a quarter of the dall sheep that we used to have are now in national parks where we can't get at them. By current dollars, that's a \$20 million a year industry. Twenty-five percent of that since ANILCA, ah, it's no Pebble Mine but it's something. Next, please.

Alaska Native interests. Please realize that you hold the veto power over getting feds out of wildlife management. You know, if you want this to happen, it may happen. If you do not want it to happen, it certainly will not and I'd like you to consider the possibility the feds are not your friends. I'd like us to look together at what we can do for co-equal management and see if we can't work something out there. Can we go on, please?

Alaska Department of Fish and Game. Stop cooperating with the feds. These folks are nice people. They have families, they love their wives, they treat their children well, they do not beat their dogs, more than likely, but when they come to a meeting with you, they're not your friend. Stop cooperating with them. It's getting us nowhere. Tell the Federal Subsistence Board thanks but no thanks. Next slide, please.

To our friends in the equality business, AOC, territorial sportsmen, let's open our minds to something a little different. Next slide, please. To CACFA, stop being so polite to these

federal people. I've attended your meetings and I just can't imagine why you put up with those folks coming in there and blowing smoke at you and you're always unfailingly polite and I don't think it helps a lot. Continue listening to Alaska, promote our sovereignty and let's look at some new things. What we've been doing isn't working. Next?

Finally, as I sheepishly leave, having gone, apparently, a few minutes over my time, thank you for brainstorming.

Senator John Coghill: Thank you, Wayne. Thank you. So thank you very much. It looks like ADF&G gets to answer to some of that so, Brad, you're up. Thank you very much for coming to this CACFA meeting.

Brad Palach: Okay. I'm Brad Palach with the Department of Fish and Game and I supervise the Department's ANILCA program and the access and the fence program. I took those programs over from Tina Cuning after she ran them for close to 30 years and, hopefully, we're continuing on with her good work. Can I go, have the next slide?

What I wanted to talk about today was a little bit about, you know, try to be productive, hoping to give a little bit of background on fish and wildlife management, how it was supposed to work at statehood, how things have changed over the years with the advent of some of the new federal policies and law that have come about and then some examples of how it's not working very well and I'll try and come up with some solutions and thoughts for future consideration. So at the time of statehood, as Ron Somerville said, things weren't very good. Fisheries, in particular, weren't in very good shape. The folks that wanted statehood wanted to have control over our fish and wildlife management. In the Alaska Constitution, that was enshrined in a number of sections and folks have gone over this but, essentially, what we got to was that the state is supposed to manage fish and wildlife resources for the sustained, for the benefit on the sustained yield practice for everyone. Get the next slide?

So the state came into being. We worked to develop Department of Fish and Game, Department of Natural Resources, Department of Fish and Game, in particular, worked hard to bring our fish and wildlife resources back into good condition and, you know, for quite awhile, it went on in fairly good shape without a lot of bumps in the road. What we had though through the sixties and the seventies was kind of the advent of a lot of environmental interest in how natural resources, lands, waters, would be controlled. What we, what came about was a lot of different policies through Washington, D.C. We had the development of the Wilderness Act, the Clean Water Act and Clean Air Act, NEPA, National Environmental Policy Act, Endangered Species Act and a lot of these gave direction on how not only the states but the federal agencies would coordinate and manage fish and wildlife and one of the culminating things throughout all these policies was ANILCA which was enacted in 1980. Through the development of all of these policies was an interest in how would the states participate in these and what came about in a number of these were what are known as the savings clauses and here's a couple of examples out of federal regulations, 43 C.F.R. Part 24, that talks about how the states are supposed to be involved in management and how the states are, you know, the primary authority and responsibility for the conservation of fish and wildlife. So pretty clear there. Another example down below talks about unless there's specific overriding federal law, the states are supposed to have management of fish and wildlife. So there are some federal laws that override our states'

authorities because Congress has specifically said they're supposed to, things like the Migratory Bird Treaty Act. ANILCA itself, go to the next slide, has a savings clause. It talks about how nothing in the act's intended to enlarge or diminish the responsibility and authority of the State of Alaska.

And the next slide? This came a little later. This is from the Refuge Improvement Act from 1997 but it also has a savings clause. It talks about how nothing in this act, and this is the Refuge Improvement Act was an organic act for the U.S. Fish and Wildlife Service to give them direction on how they were supposed to manage refuges but we have a savings clause that talks about how the states are supposed to manage fish and wildlife with a couple of exceptions but that the service will also manage the refuges to be consistent with state fish and wildlife laws, regulations and management plans. And the next slide?

And so you got that far. Now, also within some of these laws are the intent that we would coordinate and cooperate between the states and the federal agencies. So we have some direction within all, within, you know, many of these laws. Again, 43 C.F.R. Part 24, state and federal relations talks about how in order to be, for the state and the federal agencies to be effective, they would cooperate. A couple of examples here.

And on the next slide, again, in the Refuge Improvement Act, we have effective coordination, interaction and timely and effective coordination and collaboration. So those things were all supposed to happen. In Alaska, and the next slide, please, when ANILCA was signed, one of the things that happened, and I know that Wayne's alluded to it and Ron mentioned it too, were MOU's. The MOU's were developed and signed between the individual land managers in Alaska, BLM, Fish and Wildlife Service, National Park Service, that gave direction on how the agencies would cooperate and how we'd coordinate and for two of these, Fish and Wildlife Service, National Park Service, we agreed to coordinate planning for management of fish and wildlife so that conflicts when they arose would be mitigated. That's the way it was supposed to be.

Can we go to the next slide? So here are the eighties into the nineties. You know, there were hiccups along the road but that's the way it was supposed to be. We were supposed to, the state was supposed to be the primary manager of fish and wildlife on all lands in Alaska and we were supposed to coordinate and cooperate with the federal agencies. That's how, it worked without some hiccup, or with some hiccups along the way.

In the late nineties, some things started changing. Particularly on the federal side, we had the development of different policies and some of those policies change how that cooperation and coordination would occur between the states and federal agencies and I'm going to pick out a couple examples and discuss how those happened and some background. Within the Refuge Improvement Act which I talked about, we have some discussion about Congress gave the Fish and Wildlife Service direction that they were supposed to insure the biological integrity, diversity, environmental health of the system. They're supposed to be maintained for present future generations. So the Fish and Wildlife Service in 2001 developed a policy and it integrated that policy into their biological integrity, diversity and environmental health policy and that would be the next slide, please. So, and within that policy is a Section 3.70 that says we favor management that restores or mimics natural ecosystem processes or functions to achieve refuge

purposes and that leads into saying that, essentially, the Service prefers a method where they don't actually do anything. They use natural, they believe that natural processes are how things are supposed to work.

So that brings us up to Unimak Island and a couple of folks have talked about Unimak Island. Wayne mentioned it just a few moments ago. It's part of the Alaska National Maritime Refuge. It's designated wilderness, for the most part. It's the easternmost island in the Aleutian Islands and it has a caribou herd, Unimak Caribou Herd, and in 2009, the Department, you know, we do regular surveys, inventory of the resources of the state and they found that this herd was collapsing, basically. You can see we've got some drastic declines in numbers and in 2009, after hunting had been closed for subsistence and other uses, the herd was continuing to decline. We had very low calf recruitment. Our staff decided that the best thing to do would be conduct a predator control program. We knew we had to cooperate with the federal agencies so we approached the Fish and Wildlife Service and we had a meeting with them and we presented this information to them. We closed hunting. There doesn't appear to be any habitat issues. There don't appear to be any other problems that are causing this. The one thing that we can identify to reverse the problem would be to conduct a predator control program on wolves on the calving grounds where we think most of the predation is occurring.

When we told that to the Fish and Wildlife Service, their response was that it wasn't consistent with the biological integrity policy. They thought that it was a natural process and that it should be allowed to carry out to its end point, whatever that is, and we were told that that, it was okay if that herd blinked out, that if it was extirpated from the landscape even though it's the purpose of that specific refuge under federal law. Well, we objected and you can carry forward. When, obviously, we disagreed with the Fish and Wildlife Service. We eventually let them know that we were going to conduct a program out there. We were taken to court over that and we were told that we would not conduct a program for predator control on the island. We did enter into a couple of planning processes subsequently with the Fish and Wildlife Service, none of which resolved any of the issues and to this date, we still haven't been able to conduct a program on the island. We've been threatened by legal action by the Fish and Wildlife Service and, as you can see, the herd continues to decline. We've gone from, in 2009, 2010 from 400 to 200 animals and that herd continues to decline and it doesn't show any signs of bottoming out at this time.

So you can see where the conflict occurred. We were supposed to be able to coordinate and cooperate. Management was supposed to occur and it hasn't and so, you know, we're stuck right now where we are. Can I have the next slide?

My second example, not to pick on Fish and Wildlife Service but Skilak Loop. If you're familiar with the Kenai Peninsula, you drive down past Jim's Landing, there's a road off to the left as you're headed south and that's Skilak Loop. In the, to give a little bit of background, within the Refuge Improvement Act, they determined that there were six priority public uses and those, two of those priority public uses were hunting and wildlife observation. Those uses are considered compatible with all refuges and where they are allowed, they should be made compatible with each other. So, for instance, wildlife viewing should be compatible with hunting. In other words, you should be able to make them hunting by doing things like time and area restrictions.

In the early eighties, the Fish and Wildlife Service conducted a management plan for the Kenai Refuge and they determined that they would like to implement a wildlife viewing area with Skilak Loop and the Department of Fish and Game didn't agree. The terrain, the habitat, there were a lack of viewing sheds where you could just actually see anything and we said it really won't work here, it won't do any good and all you're going to do is lose hunting opportunity. The Service disagreed. They said they had a management plan, they needed to follow it and that they needed to do this and they threatened to unilaterally close through federal regulations hunting within the area if we didn't agree to do it through the Board of Game and at the time, the decision was made to enter into the, enter into a planning process with them and to limit hunting to some degree in the area so that there would be some hunting. A vast majority of hunting would be closed but that that may be worthwhile because the Service said that they would implement a large number of planning, of enhancements in the area that would make it a viewing, you know, mecca. You'd be able to, they'd have viewing points, they'd have interpretive centers, the road would be upgraded. They'd do crushing in the area so that you could actually get out and see moose and other critters.

So in I think it was '86 or '87 the Board agreed. Hunting was generally closed within the area with some limitations and the Service had their viewing area. Well, if you go forward to 2006, the Board of Game got some proposals to allow additional hunting in the area and one of the main reasons that hunting maybe, they wanted to consider additional hunting opportunities in the area is because the Fish and Wildlife Service didn't do anything to increase hunting opportunities within the area. Viewing areas weren't made. Interpretive centers weren't done. You know, there's a really nice boat launch at Hidden Lake but that really doesn't do much for wildlife viewing. Again, the Fish and Wildlife Service said if you go through with this, we'll unilaterally take action, we'll go through the federal register process and we'll close hunting within the area.

We entered into another planning process with the Fish and Wildlife Service to see if we could meet some resolutions, meet their needs and ours. The end result was that some additional hunting was allowed. There was a youth hunt that was developed in the area and it's been a successful youth and the Fish and Wildlife Service determined that they would enhance opportunities for viewing in the area and it seemed like a reasonable solution at the time. If you go to 2013, the Board again got proposals to increase hunting opportunities in the area. They looked at the situation. Service hadn't improved any opportunities for viewing in the area. The Board of Game allowed hunting within the area but they took a look at what did the Fish and Wildlife Service have and, hopefully, I'm not treading too much on what Ted, as the chair, did but they tried to make the hunt compatible with what the Service did. So within the area, the hunt only occurs generally in the winter when the road's not maintained. There's very few other people within the area and the seasons are limited.

So, and there are also closures around the developed areas which is what the Service also has. So, basically, the Board made that hunt generally compatible with what the Service has. Service says well, that wasn't good enough, if you don't, if you go forward with these proposals and pass them and allow that hunt, we're going to seek unilateral action and close the area to all hunting through federal regulations and they're in the middle of that process right now. We intend to oppose that but that's the way that they see the system and how they're going to go forward with it.

Again, we're supposed to cooperate and coordinate, we're supposed to make management a cooperative effort and we're supposed to respect each other's authorities and we'll see how it plays out. So get the next slide, please?

So I've got some other examples. We could go on quite a bit about this but National Park Service has been using superintendent's compendium to supercede state authorities for hunting. That's an ongoing issue that we've been dealing with for several years now. Others have alluded to it and it's a significant issue for the Department. I could have used up an hour talking about it easily.

Use of access restrictions that limit the ability of access into areas for legal hunting and fishing. If you can't get somewhere, you can't hunt and fish. If you can't land at a lake that has no other types of access, it's essentially closed to hunting. The Kenai National Wildlife Refuge has a number of closures for, to protect swan nesting and brooding areas on lakes. Many of those lakes aren't even used by swans. We've had some commitments by the Service to review those but they haven't done it. It's been about four or five years since they finished their last planning process. So if you can't get somewhere and the federal agencies use access restrictions, it's essentially a closure for hunting or fishing.

We do have some good examples that, we have had some successes. U.S. Fish and Wildlife Service has been generally pretty good to work with recently. We had a project down in , on Etolin Island where we needed to take a look at some elk herd, the elk herd down there. It's a wilderness area. We did have some issues at first. It took awhile, took a couple of years but we were able to work with the Forest Service, mitigate their concerns and be able to conduct our project sufficiently that we were able to get the information that we need from management of that elk herd. That's an ongoing project. The next slide, please?

Resolutions. You know, how do we fix this mess? You can seek judicial relief, go to court and sue them. You don't always get what you want doing that. It's kind of risky so I don't know that that's a good answer. Budgetary solutions. Within, well, in Yukon Charlie after the Wild incident, Congressman Young put a rider in a bill and prohibited the Park Service from spending any money on enforcement actions on the Yukon River. So that's one action but that's limited. I don't know how successful that can be. It takes someone like the congressman to figure that one out.

You can have congressional action. The big, that's what we call the big fix. You can have Congress specifically declare that it's the intent that state fish and wildlife management agencies manage fish and wildlife on all lands unless the Congress takes that away and so you'd have a situation like perhaps with Migratory Bird Act where federal agencies manage wildlife and the states manage everything else. Or we could try coordination and cooperation some more and see how that works and that's, there's a lot of intent for that but, you know, it hasn't been very successful lately with some of the agencies.

So that's pretty much my wrap-up.

Senator John Coghill: Thank you very much.

Brad Palach: I'll let you go. Thanks.

Senator John Coghill: Thank you, Brad. We got some really good examples and we're going to get Ted up here right away. I'm going to let him wander a little over the 11:00 o'clock hour so just to let you know so that we don't cut him totally short. All right? Thank you very much.

Ted Spraker: Okay. Thank you. Of course, I should caution you should be careful about offering additional time to me when I start talking about wildlife management and especially some of these issues we've been dealing with. Sometimes it's hard to get shut down but good morning, ladies and gentlemen. As the Senator mentioned, my name is Ted Spraker. I'm here this morning representing the Alaska Department of Fish and Game. I'd also like to mention we have at least one other board member present. Mr. Bob Mumford is in the audience who also sits on the Board of Game with me.

But first I'd like to express my appreciation to the members of the Commission for the opportunity to be here and for inviting the Board. I've had the honor and pleasure to serve on the Board of Game for four terms and I'm currently the chairman and although I'm here to present board issues concerning federal intrusion on our state's authority to manage wildlife, I'm equally concerned about the opportunities lost to the public and especially the confusion caused under the dual management system and not only to the hunting public but all, to all individuals that support wildlife and habitat management to sustain healthy fish and wildlife populations.

You know, when I was first appointed to the Board, then Governor Murkowski called me at home. It was quite a humbling event for me and he, when I answered the phone, he said this is Governor Murkowski, you want a job. Well, I had just retired and I was enjoying retirement and, to be honest with you, my first thought was that coming from the Governor, this is probably a good paying job, I wonder if I could get on the phone, maybe my wife would like to have this job but, all joking aside, when he explained what the job was, I became very serious about the offer and even after he explained that it was going to be a huge time commitment, a lot of time away from home and he said oh, by the way, I'm not going to pay you for this, I readily accepted the job.

The Governor explained he was replacing five of seven Board of Game members that were appointed during the Knowles administration. In fact, Mr. Somerville was part of the five that were put on the Board at that time. He outlined the challenges that we would face under his administration and of the several topics that we discussed, he was adamant that the Board always used sound science and another issue that came up in our discussion was that he wanted us, he wanted the Board of Game to make regulations less confusing for the public. These words of encouragement and direction did not change under the, Governor Palin's administration and it certainly has not changed under the current administration with Governor Parnell.

Well, using good science was the easy part since the Department of Fish and Game does an excellent job in their research and presenting data both to the public and to the Board. So that was fairly easy and straightforward for us to deal with. However, simplifying state regulations now that we have so many federal regulations has been the real challenge for the Board of Game and, just for curiosity, I pulled the state regulation book and the federal regulation book and for the first time, the federal regulation book is even larger than the state regulation book. Congressman Young made a statement concerning that on a higher level this morning. But I'd

like to talk about some of these confusing regulations that the Board of Game has to deal with and I'm going to use quite a few examples this morning.

Wayne talked a little bit about using a flashlight to take black bears in dens and so forth and I want to explain all the details of that and how the Board had to deal with it. A couple years ago, the Board listened to public testimony from several Alaska Natives including two elders from Huslia supporting a proposal to allow the state to use artificial, to allow the use of artificial light when hunting black bears during winter while they were in their den. They explained by using a light, they could determine if the bear had cubs to avoid sows with cubs and if it was a single bear that they wanted to harvest, they explained that, by using a light, they could accomplish better shot placement, a clean and ethical kill rather than just trying to shoot into the den and hope you hit the bear. After a thorough public process, the Board passed this proposal for several reasons. First, it was clearly not a conservation concern. Second, it was a long time and traditional method used by subsistence hunters to harvest black bear during the winter and, as they explained, during the winter, they were primarily looking for animals that had a lot of fat because that was something that was lacking in their diet and, as most of you probably know, if bears go into the den in really good shape, even during the winter, they still have a lot of fat and that's what was really important to these folks. And the third part was a very pivotal part to the board process is we had public support, we had advisory committee support and we also the federal regional advisory council support. However, since the Board realized that this provision was going to cover seven game management units and subunits including portions of national park preserve and refuge lands, board members knew that the federal agencies would probably not support this as we thought was a very common sense sort of decision and, sure enough, the federal agencies began their compendium process soon after this was passed to prohibit methods of take on federal lands because it set a precedent for using an artificial light when taking game.

Here's the confusing part and this was confusing to the Board. The federal subsistence management regulations already allow for hunters to take coyotes in two subunits with the use of artificial lights and that provision has been on their books for years so we didn't understand where this precedent setting event was going to be. Brad has already talked a little bit about the Unimak caribou but I want to use another example when we talk about sound science and there's a lot of numbers in here and a lot of good information so just kind of stay with me here on all the numbers but the herd just north of Unimak is called the Southern Alaska Peninsula Herd. It's found in subunit 9-D on the very tip, or close to the end of the Alaska Peninsula. All right. This herd numbered just over 4,000 animals in 2002, then started declining due to low calf survival reaching 600 caribou by 2007. Calf survival to one month of age was estimated to be less than one percent in 2007 based on 23 radio collared cows that the Department was following and here's an important point. There were no calves observed in a post-calving survey when about 85 percent of the caribou or 510 of the 600 were found in a survey later on during the summer.

Calf survival increased following the removal of 28 wolves in 2008 and this was comprised of 14 adults and these 14 adult wolves had 14 pups. In 2009, there were eight additional wolves removed and two removed in 2010 and all of these were found and were operating directly on the calving grounds of this caribou herd. No wolves were removed by the Department following 2010 and wolves taken by the Department, staff, local hunters, trappers, averaged 19 to 25 percent of the estimated wolf population in the control area and, as many of you probably know, a wolf population or wolf pack can normally sustain about 30 to 35 percent

annual mortality and recover from that the following year. So this removal authorized by the Board, carried out by the Department was well within sustainable levels.

Calf survival to one month of age increased to 57 percent in 2008, 71 percent in 2009 and 65 percent in 2010. The herd currently is estimated now at over 1,000 animals and growing. This herd has a history of providing both federal and state hunting opportunities but has been closed for quite a few years because of low numbers. Because the herd is increasing and growing, there is now a fall and a winter season for federally-qualified subsistence hunters and a short winter season for state subsistence hunters that will start this winter and, just as important, with the suspension of the Department's removal program, wolves have reestablished in the area.

Okay. Here's the point I want to make from the Board's standpoint. Fortunately, most of these caribou calved off of the Alaska Peninsula National Wildlife Refuge where the Department has the ability to implement predator reduction programs. If this herd was calving like Unimak or like the Northern Alaska Peninsula herd on federal lands, the Department would not have the opportunity to implement these programs, turn these declining situations around and we'd be looking at another situation similar to Unimak and, as Brad explained, they're willing to let that one blink out and that's what would have happened to the Southern Alaska had these caribou not been calving off of their calving grounds.

You know, like probably most of you, unlike most of you probably in this room, I was not born in Alaska. I moved to Alaska when I was about 24 after completing my studies at the University of Wyoming in wildlife management and I've been here in Alaska for a little over 40 years now and I'll be the first one to say I'm still learning every day but during that time, I worked for the Department of Fish and Game for about 28 years and the rest of the time has been involved with being on the Board of Game but most of my career with Fish and Game, I served as a area wildlife biologist on the Kenai Peninsula and I worked closely with the Kenai National Wildlife Refuge for many years starting back in 1978 and I have a whole list of examples. I'm just going to do a few here but examples of some of the issues that the Board of Game deals with on just the Kenai National Wildlife Refuge and some of the differences.

First I'd like to talk about the access. Refuge visitors are not allowed to use any type of wheeled vehicle and this, here's an example of say on the Forest Service, if you want to take a mountain bike on one of their trails, you're allowed to do that whereas on the refuge, you can't and there's quite a few issues when it comes to access restrictions on the refuge that are not the same either off the refuge or on federal Forest Service lands.

Another issue that's quite a contentious one is the use of snow machines. Snow machines are allowed on the refuge on or after December 1st but only if there's adequate cover of snow and it's determined by the refuge manager. It's about a foot and here's what happens on the Kenai. In the mountains, you may have three or four or five feet of snow on the refuge in the mountainous portion on the Kenai but down on the flats, you may have eight or 10 inches of snow. So it may be late January, you can use snow machines everywhere, people are using them everywhere except the refuge but they won't open the lands and it's been a tough issue with the refuge for years.

Let's talk about hunting black bears for just a minute. To hunt black bears using bait, a hunter must register with the refuge and participate in a drawing to win an area. Hunting using this method is limited to a portion of the refuge and further limited by the distance from the road and let me explain that. Each hunter gets one block if you happen to win one of these areas to hunt and there's only two areas on the refuge that are open, west of the Swanson River Road and north of the Swan Lake Road. It only amounts to about 30 people that actually take place, or take part in this hunting opportunity but if you don't win one of these blocks, it's right on the road whereas in state law, you have to be a quarter mile off the road. Then you're obligated to go a full mile off the road and I can tell you it's pretty much eliminated anyone to hunt black bears using this type of hunting method if they don't draw one of these areas right on the road.

Other changes, the black bear baiting season starts on the refuge May the 1st, on the Department, or the non-refuge lands, it starts April the 15th. When the Board extended the season for baiting a black bear on the Kenai from June 15 to June 30, the refuge refused to adopt the Board's regulation and keep in mind, there's about 30 people that participate and I called them personally and asked them why they wouldn't recognize the Board of Game's decision and they said they had already printed their permits for that year and they were going to have to wait until the next year when they printed their new permits, then they would recognize the Board's authority.

In March of 2013, the Board authorized hunters to take brown bear at a permitted black bear bait site on the Kenai Peninsula. The refuge manager stated at this same meeting in Kenai that the refuge would not allow this type of opportunity.

Let's talk about trapping for just a minute. Am I getting close?

Senator John Coghill: Yup, you're getting close.

Ted Spraker: Okay. Let me just say that the trapping issues are very restrictive on the Kenai and I'm going to skip and move on to other issues but one of the things that the Board did authorize, we authorized the Department of Fish and Game because they have a predator control program that's slated for a portion of the Kenai Peninsula. We authorized the Department to hire trappers to go in and take some of these wolves and reduce the impact on the declining moose population and, again, the refuge said publicly that they will not issue a permit to allow these trappers to operate under this program on the refuge.

One minute?

Senator John Coghill: One minute.

Ted Spraker: One minute. But, in summary, I'm going to close really quickly. In my past working with the refuge, we worked on a lot of projects cooperatively and we shared expenses, we shared the staff, we shared between both equipment, everything and when I first started working on the Kenai with the Department, I really enjoyed working with the refuge and we did a lot of great things together but I'll tell you this wilderness cooperate, especially when it comes to habitat enhancement for moose and the viability of sustaining wildlife populations has really changed and I just don't see this conservation ideology any more with the refuge and I see the refuge, and I'm going to plainly say it, I see them moving way completely away from

conservation and into the realms of preservationist and it's a difficult thing to realize because we had so much good cooperation in the past but it's a very clear picture to me on which way the refuge is going. The Board implemented five new hunting opportunities on the refuge during this last meeting. The refuge vetoed four of them and that's what we're dealing with and I don't think those things are going to change.

Senator, excuse me for going so long. Thank you very much.

Senator John Coghill: Thank you very much. So for Ted and Brad and Wayne, thank you very much. I'll go ahead and dismiss you at this point and I'm going to ask Meera and Jim Clark just to come scooting in here so, Jim, and I'm going to give Bill Horn the last 20 minutes so, Bill, be on notice. So much information and so little time and I'm sorry to have to be the bad guy with the time clock. I did, because of the Senate delegation and the, Congressman, just grab a seat by a microphone there, and we can work one of two ways. You can go ahead and speak from there if you wish or you can come up here. Meera Kohler is from the Alaska Power Association and she has to deal with issues that cover vast territories but so does Jim Clark. Jim Clark has been deeply involved in U.S. Forest Service roadless issues, the Tongass issues. Probably you have, you've got, Jim, probably one of the historical landmarks. You'll, probably going to have your name engraved on some stone there somewhere but.....

11:00 a.m. Access and Infrastructure

Jim Clark, Alaska and U.S. Forest Service Roadless Rule: That's just from getting old.

Senator John Coghill: From getting old. Meera, I'm going to give you the first probably 18 minutes or so.

Meera Kohler, Alaska Power Association: Eighteen minutes.

Senator John Coghill: Eighteen minutes and I know that sounds like tight but it is tight, I'm sorry to say, but go ahead, you have the floor.

Meera Kohler: All right. If I could get my slide show up, I can get rolling. Good morning. Thank you for all being here so patiently and being here for me and for all the rest of the speakers here. It's been quite a riveting morning. I very much enjoyed it. I do sometimes feel like we're all speaking to the choir but only by speaking together are we going to get our thoughts together and an action plan going forward. So if we can go to the first slide, please? Let me tell you just a little bit about Alaska Power Association. That is the statewide trade association that represents almost all the utilities of any size in Alaska. We have 25 active members. We include in our membership, actually, not just the cooperatives which is what I am and the public power utilities which is what Jim Posey is but also the investor-owned utilities. We actually have a handful of those in this state and the majority of them are members of the Alaska Power Association.

We also run an insurance exchange so we provide our own business insurance. It's very much like the Alaska Municipal League insurance program which actually was modeled after the Alaska Power Association's insurance program back when that one first started. So if you can go to the next slide? We are a unique state and it is our geography, primarily, that makes us unique. We are, of course, the only state in the nation that's an arctic state. We also encompass

20 percent of the state's land mass. I'll show you that on the next slide but, despite this enormous size, we only represent 0.2 percent of the electricity sold in the United States. So the total sales of electricity in this state encompass less than half of what is sold in Sacramento, California. That gives you an idea of how energy starved we are.

We have more than 200 power plants to serve the state. If you were in a comparable sized community of 700,000 in the Lower 48, you would have one or two power plants or only a portion of one power plant. We have almost no roads. We have almost no transmission and we are almost entirely public power which is a nonprofit power operation. So we are owned by the rate payers, not by distant stockholders. Even the investor-owned utilities are owned by one or two individuals, typically employee owned.

Next slide. This was pointed to by Senator Begich this morning. It is something that we need to drive home time and time again that we do represent a very large portion of the United States but us, Alaska Village Electric Coop, I'm the CEO of Alaska Village Electric Coop, we're based in Anchorage but we serve 55 villages across the state. If you rolled all of our population together, it would total less than 23,000 people and would actually constitute the fourth largest city in the state. So our smallest village is well under a hundred people. In fact, we have several villages that are less than a hundred people and our largest village is about 1,100. So you compare that with Anchorage, we're just a tiny, tiny fraction of Anchorage yet, next slide, we have 48 power plants to serve these 55 villages and more than 165 diesel generators. We burn a lot of diesel fuel every year. We have been at the forefront of developing wind in this state. In fact, at this particular point in time, we happen to own the largest wind fleet in the state so, they're not very big. They're a hundred kilowatts, typically, but, nonetheless, we have them in 12 villages. We've built lines to connect other villages so we actually serve about 15 villages with wind in the state. Even though our footprint for the wind is so small, six percent of our generation last year came from wind so we're pretty proud of that.

We also own two tug and barges, two tug and barge sets, because we decided we weren't going to be held hostage by an industry with no competition so we bought our own, we had our own tugs and barges built and they're now delivering our own fuel and we've actually brought competition to that market so we're pretty proud of that too.

Our cost of electricity is very high. It's, on average, 58 cents a kilowatt hour. If you look at what we're paying in Anchorage and even in Fairbanks which has fairly high cost of power but our cost of power in our communities is 4-1/2 times that of Anchorage and it's five times that of Juneau and it's 2-1/2 times that in Fairbanks. Next slide?

So what I'm going to talk about is not so much federal overreach as the perverse effect of federal regulations that sometimes tend to actually achieve almost the opposite result of what they were set out to achieve. Next slide? Let's talk about ultra low sulphur diesel fuel. I don't know how many of you are familiar with this but this has been something that has been in the making for many years now and we have been fighting it because until the market fully develops and it becomes ubiquitous across the state, it's going to be extremely difficult and expensive to import ultra low sulphur diesel fuel. One of the anomalies with ultra low sulphur diesel fuel, better known as ULSD, that's a little bit easier, smaller mouthful, it costs more than regular diesel fuel and that's because it is such an expensive process to extract the sulphur out of the

diesel fuel and is a very expensive capital investment that's made by the refineries in order to produce this diesel. So there's additional cost for transportation and for storage and the big anomaly is that the heat content of the fuel is dramatically lower just because of the processes that you undergo to achieve the low sulphur diesel content. So you actually have to burn more fuel to generate the same number of kilowatt hours. So you're actually producing more emissions with ultra low sulphur diesel fuel, just not more sulphur but more nitrous oxides, more carbon dioxide which are the greenhouse gases. So this is what we call a perverse effect. It is very clear that that is what transpires. It contributes significantly to the cost of electricity. It actually adds, overall, about a penny a kilowatt hour if you are burning ultra low sulphur diesel fuel.

Next slide. And then we have air quality regulations. We, of course, have to comply with air quality regulations that have grown like topsy since the mid-seventies and what, unfortunately, this is a one size fits all syndrome where it doesn't matter what size plant you have, if it's more than 850 kilowatts, which is very small, by the way, then you're governed under this particular statute and the, it is extremely complex to comply with. It's a very lengthy and expensive process to produce a permit application and I will tell you that there are a number of consultants that are getting quite wealthy because of the requirement that Title 5 has to be complied with. It requires modeling of air sheds that are really quite pristine so there's really no modeling necessary but, nonetheless, it has to be done. You have to retrofit engines for emission controls. Those retrofits can cost, for the smallest engines, they're around \$50,000 to implement and they cost, the additional cost on an annual basis to operate them is about two cents a kilowatt hour. So those are very significant impacts of these regulations that actually achieve very little.

Next slide. This is just, you know, a smattering of the federal agencies that are, increasingly have regulatory impact on our electric utility industry. Obviously, you've got the EPA, we've got the Occupational Safety and Health Administration, FAA. It is, it's becoming ever more difficult to erect wind towers. Although we have developed a very good relationship with the FAA, the problem in remote Alaska is that you cannot put anything anywhere near where a community is because you are going to impact the approach path of the air industry and so, as a result, wind generation is very difficult to permit and, unfortunately, once you start that process, you have any number of federal agencies that want to jump in and play ball with you.

Obviously, USDOT is a big player, new hazardous, new and more improved hazardous material regulations tend to rule our lives. We have labor laws. You know, I'm not saying that the state doesn't have these as well but the federal government dictates the standard that the state then has to comply with. So it really comes down from the federal government.

A big one, if we're looking at any type of hydro power, is FERC which is the Federal Energy Regulatory Commission. Case in point, I just wanted to point out we are in the process of permitting a very small hydro, 300 to 500 kilowatts, on Kodiak Island for, to serve Old Harbor. We have been going through the permitting process. We are in a, we have submitted a preliminary permit application and are now looking at a final permit application. We've already been working on it for almost four years. I hesitate to say how many hundreds of thousands of dollars we have invested in the permitting process and this is to serve a community of about 140 people. So, as you can well imagine, the capital cost of projects like these is magnified not just because of the processes that you have to go through but because of the construction delays that

you undergo. For each year that a permit is delayed, you are losing the benefit of that particular project and it could cost hundreds of thousands of dollars in diesel that's not displaced.

Homeland Security is playing an ever greater role in our lives because they're the ones that are engaged with things like cyber security to some extent and many of the regulations that intertwine with the other regulatory agencies that we deal with such as the Rural Utility Service and others of that ilk.

U.S. Coast Guard, they are one of our primary interferors/players for our utility because, obviously, we receive our fuel by barge during the open water season and so the Coast Guard regulates from the barge to the first header on land and, unfortunately, what happens is that all of the individuals that work for the Coast Guard don't stay very long in one location so we are re-educating the inspection team on virtually an annual basis and it's, it becomes ever increasingly more challenging for us to deal with.

And then, of course, there's the Affordable Care Act that we're still puzzled as to how that's going to impact us but we're pretty sure that we're going to find out lots about it next year. Next slide.

So, as these regulations increase and become more complex, we would suggest that there should be a realistic threshold above which they apply and we think that a threshold, a reasonable threshold is if you have employees, more than a hundred employees, it could be a lot higher than that, we're considered micro businesses in this state, every one of us is a micro business, at least in the utility industry. In the Lower 48, a utility that has sales of less than four million megawatt hours is not considered to be a utility that's subject to many of the regulations. That does not apply in our state.

Next slide. We do have a lot of issues with, since there are so many agencies that we have to deal with in the utility business. We have contradictory requirements or contradictory desires from different agencies so, for example, as we were looking at a tank farm replacement in Western Alaska, we were getting pulled in different directions. For one thing, we were, they were trying to curtail our fuel barge operations to avoid the migratory bird season which, of course, is the entire open water season. So in order to improve this tank farm, we had to consider whether it was going to be possible to even bring fuel in by barge and have to fly the fuel in instead which I pose to you is probably a much greater environmental risk than moving the fuel by barge.

And then we have aesthetic issues that are imposed upon us. For example, we're supposed to build new facilities that blend into the environment whereas we also have requirements from Fish and Wildlife Service that we have to have enhanced visibility so as to avoid bird contacts and that is an inherently conflicting requirement and we deal with this more and more regularly in terms of these conflicts that need to be addressed.

So our finding is, our belief is, we have heard it from a number of other folks over here, animal and other species appear to have priority over human beings. A case in point, as we were doing permitting for hydro projects, you look at what, Copper Valley in the Valdez/Glennallen area is doing. They are having to deal with a very small local population of Dolly Varden and

are expected to provide mitigating measures because they're going to impact this little tiny population of Dolly Varden. They're not an anadromous fish. They're not a protected species. Nonetheless, they happen to exist in the watershed where this construction is going on. Therefore, they have to be dealt with. It defeats the purpose of why we exist and where it, it's growing. It's growing beyond endangered species that are being looked at. We're now looking at endangered plants and endangered flowers and endangered insects. So the question is what about endangered human populations. That's what we deal with. That's what my coop deals with is populations that are on the brink of survival just because their needs are not being paid attention to because other species take priority.

I have another example of, for example, the common prairie dog in the Lower 48 of which there are some 20 plus million creatures was actually considered being placed on a protected list because it was the primary fodder for the endangered black-footed ferret and so control of these rodents was actually being challenged and I think that's backed off now but it's still one of those debates that emerges on a regular basis.

Next slide. Something that could be done is a requirement that agencies that are involved with permitting processes for us, and there are a number of those, that there be a more transparent tracking process for what's happening with these permit applications. We literally are kept in the dark as to what is transpiring and you lose construction season after construction season after construction season because there are so many stumbling blocks along the way and anticipation of those and dealing with those in advance would perhaps make the process a lot easier. Losing these short construction seasons is absolutely devastating for the population that's being served and for the project that's being built because you can see an escalation of 10 percent a year in the actual capital costs of a project when you lose a construction season.

Next slide. This is one of the things that is very bedeviling for all of us in the utility industry and that's the issue of Native allotments and it's been touched on by several others this morning but it should be pointed out that 75 years ago when the Rural Utility Service which used to be known as the Rural Electrification Administration, 75 years ago when that agency was formed, it was expressly to provide electric service to areas that were not served by a utility because it was not profitable for the investor-owned utilities to serve farms and other outlying populations and there was a very proactive effort on the part of the federal government to make that feasible and make that happen. So we were all granted easements and rights-of-way. There was mention this morning of RS-2477. It's very important. Those were the rights-of-way on which our lines were built and then in the eighties when ANILCA and other laws were enacted, those rights-of-way all of a sudden became nullified and I was actually in Naknek 20 years ago and was the manager of the electric utility over there and our crossing, our transmission line crossing the Naknek River to serve the community of South Naknek and a population of about 150 was challenged by a Native allotment, inheritor of a Native allotment who, essentially, was going to cut down our poles with a chainsaw and there was nothing we could do to stop him and so because our rights-of-way were, essentially, nullified, we actually had to go to court and take out a restraining order against this individual but, ultimately, they have the right over their own lands. So we have had a real challenge dealing with the Bureau of Affairs and BLM and others in trying to manage our own access. It's a very key issue for not just the electric utilities but many others as well that we have to have that access.

And the next slide? This is, I know Jim Clark is going to be talking about this but I wanted to mention the roadless rule. The roadless rule in the national forest, the Tongass and the Chugach and others is crippling the ability to provide electric service to communities that are in and around national forests. It is truly an abomination. I hope that we are going to be able to do something about it. There are essential services that must be provided and the roadless rule is hampering that. I do have one, the next slide. This shows you in Southeast Alaska what the, the Tongass National Forest area and all the red on this map shows you roadless areas. Those are areas where development is not allowed of any kind. The word that we get is if you want to build a transmission line, you can do it with helicopters. You can maintain them with helicopters. Well, for a population of three or 400, that becomes a little impractical. This is 91 percent of the land mass in Southeast that is precluded from access by the roadless rule. It really needs to be looked at. We have the same issue in other national forests and it's not something that can last over the long term. We have to proactively look at solutions to that. And that wraps up my presentation and I have somebody lurking over my left shoulder so I shall....

Senator John Coghill: Yes, I'll start breathing on you.

Meera Kohler: I shall yield.

Senator John Coghill: Well said. Well said. Thank you very much. I know, heavy breathing over the shoulder. Sorry about that. We do have two people that I wanted to get before you today so I want to give Jim Clark as much time as I can. Bill said that he could do it in 15 minutes so as we get into the noon hour, I might kind of brush it over the noon hour just by five minutes or so. I don't know that I'd be able to make up that time in the afternoon so, Jim, without further adieu, please come and thanks for coming up to meet with us here at CACFA. Appreciate it.

Mr. Clark: Well, thank you and it's good to see a few of the veterans of the Tongass debates like Bill Horn finally has some gray hair and I think that Rick Harris got a few more gray hairs this week.

The, let me just start with what the federal overreach is on the Tongass and Meera just displayed it very well with that map. We have between, we have 9.6 million acres of roadless and 5.6 million acres of wilderness in the Tongass. Our count was just slightly higher than hers. Ninety-two percent of the forest is off limits, really, to development although there are various shadings, as you might expect.

In terms of the way we see the overreach, we had, when that rule was applied in 2001, the state sued. In 2003, we settled the suit with the understanding that the Tongass would be exempt from the roadless rule. It remained exempt until March of 2011 when the environmental community sued and Judge Sedwick found that the exemption, the rule exempting the Tongass was arbitrary and capricious. So it's been reapplied.

In the meantime, the Forest Service decided in 2009 that all decisions involving roadless would be made by the Secretary. That was re-upped in 2010. 2010, he put together a transition plan to second growth and Rick Harris is the expert on that so talk to him about that but the transition to second growth, essentially, meant no timber harvest in roadless areas of the

Tongass. All harvests would be on the roads was the essence of that. And why is this federal overreach? And the reason it is is it breaks the grand bargain that we achieved in ANILCA. At that time, Congress made a specific finding in Section 101(d) of ANILCA that it had finalized the work. It had set aside the areas that needed to be set aside including the Tongass Forest and that, in exchange for that, we would be able to harvest timber, we'd be able to mine in the non-wilderness areas, the non-LUD-2 areas of the Tongass and so that grand bargain is now completely shattered.

In the process, the Forest Service killed its own forest plan that had been put together in 2008. That plan called for something called the transition, or, excuse me, the adaptive management strategy by which a certain number of roadless areas could be harvested and, as timber harvests increased, as the Forest Service at that time said it was meeting its objective of creating an integrated industry that needed about 267 million board feet of timber a year, the, that, that's all changed now. The, it's now changed that on second growth, at least the paper that they put out on second growth in 2010 says that they will be able to achieve somewhere between 30 and 50 million board feet per year.

So that is the overreach that I'll be talking to you about today. The rule making on the Tongass is kind of interesting. When they put the draft environmental impact statement together, the Tongass was exempt and this was in the, when you read the draft environmental impact statement, it's interesting because they talk in terms of the fact that there's so much roadless already, that communications are needed between communities, that transmission lines are needed, more hydro power is needed and that's all in the draft EIS.

In the final environmental impact statement, they said that the Tongass would be exempt. The Tongass plan then in effect was the 1999 plan. They said we'll give it five years and then we'll apply the roadless rule to the Tongass in order to give time for a reasonable transition. When they got to the record of decision, they said the Tongass will be put immediately into the roadless, the roadless rule will apply immediately and notwithstanding loss of jobs. Now, interestingly, neither the, none of these talked about such things as the mine, the impact on mining, the impact on communities, rural communities, in Southeast Alaska which, like the ones Meera referred to, are paying 60 cents a kilowatt hour and need, and have abundant hydro power all around with the opportunity to put those lines in if we could put in interties and transmission lines. Again, not doing it by helicopter but using roads to put those lines in.

The state sued. Governor Knowles sued in 2001 when the roadless rule was first applied. As I said, it was settled during the Murkowski administration in 2003. After Judge Sedwick reimposed the roadless rule, the state immediately did two things. Number one, they filed suit against the 2001 roadless rule in the D.C. Circuit Court and they appealed the decision that Judge Sedwick reached of not exempting the Tongass anymore and, interestingly, the Forest Service did not participate in the appeal to the Ninth Circuit. That case has been fully briefed. It's on appeal to the Ninth Circuit right now. The, but it's interesting that three governors have acted to prevent application of the roadless rule to the Tongass Forest. The congressional delegation has opposed the roadless rule and has introduced legislation attempting to repeal it and have spoken strongly against it. Nineteen organizations throughout Southeast including communities filed as interveners in support of the state against the roadless rule. It includes the City of Ketchikan, the Alaska Miners Association, the Alaska Forest Association, a primarily Native-run electric coop

called Inside Passage Electric Coop and, following that, we've just had an opportunity to comment on the five-year plan that the Forest Service has put out and organizations, the same organizations and others including RDC, Tlingit-Haida Corporation in Southeast, State Chamber, have all urged that the Forest Service do what it said it was going to do in 2003 and that is come up with an adequate rule again re-exempting the Tongass.

What does the roadless rule do? The, first off, with respect to hydro projects, and I'm talking about renewable energy, of course, and it, at page 3256 of the roadless rule, and I give you that, write it down because you'll get involved with it in arguments with environmentalists about whether or not hydro is excluded but it talks only in terms of renewing permits for access of existing hydro facilities and, by that, they're talking about facilities and all electric facilities, not just hydro, that were in existence on January 12, 2001 when the roadless rule was promulgated. There's no mention of new facilities.

We've already talked about the impact on transmission lines. One thing that people don't consider is that you can't bring in 30-ton generators by helicopter to put into a remote hydro site. You need a road to get you from the beach to the site and those roads can be interdicted. We had an interesting situation with the Whitman Lake project in Ketchikan where there was almost like two or 300 yards of roadless that, where they couldn't bring in generators. They figured another way to resolve the problem but it is instructive to see how it works.

Geothermal is absolutely prohibited by the roadless rule. It's one of the resources regulated by the Mineral Leasing Act of 1920 and it's dis, and it's not discussed as geothermal but the Mineral Leasing Act is discussed and specifically prohibited. With respect to mining, of course, reasonable access is provided by the 1872 Mining Act for mineral exploration and development of claims. However, the Forest Service must decide what is reasonable access and a great example of this occurred in the 1970's with the Borax claim. We at that time had only one wilderness nominated thing in the whole Tongass Forest, 25,000 acres, Misty Fjords wilderness study area, but because the Borax claim was close to it, the Forest Service decided that reasonable access meant helicopter removal for bulk sampling and that lawsuit which SEACC brought to enforce that took eight years. They finally got a road to get the bulk sample out but that was the way it worked.

The, obviously, that there's a need for drilling multiple holes for exploration and development of a site and there's really no ability to cut that amount of timber to be able to develop mining sites or sites for mining. So it, that's another place where it creates a very, very specific problem.

Timber, of course, no timber sales in roadless areas. The, I mentioned before that the 2008 forest plan called for an integrated industry and, by integrated industry, that means an industry that could take care of the non-saw log component, the pulp logs, the, and, of course, we lost the pulp mills in the 1990's but we've been trying to figure other things to do with the wood that's not used for sawmills or exported and that was the goal of the Forest Service in 2008 when they put that plan together and it's just really interesting to see how things have changed from one administration to the next administration because now that plan has been amended as a de facto matter. I mean, they haven't recognized the fact that they've amended the plan but there's no way that the plan that was put together in 2008 can be implemented.

The policy issues, we have a tremendous contradiction between what the current administration is saying about renewable energy on the one hand and what they're doing on the Tongass in terms of renewable energy and I have included hydro power when I talk about renewable energy and it's just amazing that that has been restricted on the Tongass.

The very, very interesting thing to me that's being litigated, we'll get a chance to find out the answer some day but there really is a withdrawal of 9.6 million acres that I think is in violation of the no more clause of ANILCA, the Section 1326(a) and (b), and I think that the, we'll have a chance to see how that works. I don't know how you can say that there's no leasing under the Mineral Leasing Act without that being considered a withdrawal and, again, you, the requirement was that if you're going to do that for more than one year, you need to get a joint resolution of Congress to do it. So we'll find out the substance of that.

The other key act that I think has been violated is the Tongass Timber Reform Act. That required that the Forest Service seek to meet market demand. Now, obviously, the Forest Service has discretion about how much timber it can put up but I don't think the Forest Service can deal away its ability to exercise that discretion to meet market demand without really nullifying an act of Congress. So we'll get a chance to see how things stand with respect to that.

So what we are doing right now is working through the Southeast Conference which will meet in mid-September to make a campaign of this and see what we can do to get the Forest Service to give us relief from the roadless rule. As a result of Senator Murkowski bringing the chief of the Forest Service to Southeast Alaska this last week, Rick and I both had a chance to speak to him at length. I think Rick came out better than I did in terms of any kind of persuasiveness with the chief. I don't see us going anywhere with this administration, quite frankly. I think we have a long trail ahead. I'm afraid that we will lose the timber industry, what remains of the timber industry that operates on federal lands in the process, and I'm very concerned about the impact on mining exploration and the development of renewable energy in the Forest, Tongass Forest, all of which is desperately needed and I've managed to do this without you giving me the hook and saved some time for my brother Horn.

Senator John Coghill: Thank you.

Jim Clark: Thank you.

Senator John Coghill: Thank you very much. So your comments, will we be able to have some of those for the, our Power Points that we can put on the on-line?

Jim Clark: Yes, you have a 34-page exposition from me that....

Senator John Coghill: All right.

Jim Clark:I've decided not to read this morning.

Senator John Coghill: All right. And linking up what the Southeast Conference is something that we'll need to do. We wanted to give Bill Horn a chance to come back up. We used him as kind of our time buffer and here's, I asked if I could make this executive decision so I'm over doing the executive director but we'll go to about 10 after noon, we'll come back at quarter after

noon to start so for those of you with lunch plans and we'll move the roundtable discussion to 2:00 o'clock and that way we can re-set our clock and the time pressure comes onto us to settle some of the roundtable discussion that goes from 2:00 to 5:00. All right? All right. Mr. Horn, thank you very much.

Mr. Bill Horn: Thank you, sir. Let's see, when the morning episode was finishing, the lovely State of Alaska was tied to the tracks and the federal locomotive was coming around the bend. So let's see where we can pick up the episode now.

Let me finish with one comment on the agency culture that I discussed which is, of course, that that culture is fundamentally antithetical to the various provisions and exceptions in ANILCA designed to protect state sovereignty and traditional uses. Over the last few years, I've come up with a quick term. I think the culture and ethos within all the land management agencies today is to treat federal public lands as biospheres under glass and we all get to stand on the outside with our noses pressed up against looking in. There's a special little priesthood that's allowed to go inside because they have the right motives or the right thinking or because they have a federal uniform and they're permitted but the rest of us great unwashed, we don't appreciate those lands, we don't understand and we get to stand outside and heaven forbid that someone try to put federal public lands to some form of productive use. By gosh, somebody might make a profit, what an evil, dirty word.

I think if you approach the agencies and understand that that's the ethos, that's the culture that these guys carry these days and it's driven from the very top of this administration, it sets you up to deal with them in a reasonable fashion so you know what you're expecting when you go in there. If you understand that, I think you won't be disappointed in your dealings with these folks. I think to counteract part of that, the problem which has gotten much greater over the last 30 years, I can remember in 1981, we announced that the policy of implementing ANILCA was not only to fulfill all the promises, to fulfill both the spirit and the letter of the provisions in ANILCA, I remember we said point blank all of the early policies and regulations and implementation serve one fundamental goal, we were not going to impose a permit lifestyle on the State of Alaska and if Jim Watt said that once, he said it a hundred times. We had it echoed throughout the documents that we put together in that era and as you sit here, and I thought your presentation was excellent and very informative, I mean, I remember thinking can we achieve the decision not to impose a permit lifestyle on Alaska and, boy, from the presentations this morning and right now, I think the answer, unfortunately, is no.

Now, the other problem that I alluded to was that we can sit here and beat the tar out of the feds and they probably are deserving it, unfortunately, state inaction has been a contributing factor to this problem of federal overreach. The state's been fairly haphazard in its responses. John Sturgeon talked about the situation on the Yukon River, the navigation rules. The Park Service promulgated that navigation rule in the first term of the Clinton administration and I think anybody who knows ANILCA will tell you point blank it plainly violates Section 103(c) of the law which says that the state lands inside the units are not subject to federal agency control and jurisdiction and authority. Notwithstanding lots of objections, I remember the state legislature raising hell about it. The state administration at that era took no action to challenge it. The statute of limitations has expired and unless a private litigant like John can do it through the back door, the ability to challenge that reg is long gone.

Similarly, ANILCA contained a variety of provisions designed to enable fisheries management, stocking and other activities on federal lands, conservation system units and wilderness areas and, consistent with those provisions, the state had continued a sockeye enhancement program down on Tustumena Lake inside the Kenai National Wildlife Refuge. That program had started in the seventies. Congress expanded, did some wilderness designations in ANILCA, made it clear that they wanted that program to continue and, of course, Fish and Wildlife continued to authorize the state's enhancement program into the nineties. However, wilderness activists filed suit to stop it, arguing that the stocking program was inconsistent with wilderness. The state failed to participate in the ensuing litigation and with the state on the sidelines and unwilling to defend its own fisheries program, the Ninth Circuit struck it down creating a terrible legal precedent that adversely impacts fish and wildlife management in Alaska and in the Lower 48 to boot.

Part, as I said, part of the problem has been this haphazard response. Some Alaska administrations, I think the current one does, cares deeply about protecting the state's authority. I know that Governors Murkowski and Hickel did while others have, frankly, in my opinion, taken a hike, abdicating their responsibility to protect the state and meekly allowing the feds to run rampant. I'm hoping that the outcome of an event like this will bring a little bit more consistency and backbone to the state's response because I think it's absolutely needed.

Now, the lack of state consistency and the loss of opportunities in terms of standing on more equal footing with the feds, I think, is demonstrated by what's happened to a now rather obscure part of ANILCA and I'm sure some students of the statute and some of the congressional staffers we deal with like talk, from Don Mitchell's comments yesterday, frankly, were born after this thing got signed into law and does that make us, you know, like old guys.

Title 12 is denominated federal-state cooperation. I mean, there's a whole title in the statute entitled federal-state cooperation. Unfortunately, it's become a vestigial artifact which, no doubt, pains the late Jay Hammond because Governor Hammond was really the prime sponsor of that. The title, among other things, creates the Alaska Land Use Council, a unique federal-state body to facilitate federal-state cooperation and, in my personal opinion, it was used quite effectively in the early years of ANILCA implementation. It was a great place to get the state people together with the federal folks under the aegis of senior leadership to work things out to make things go. Unfortunately, the cooperative efforts began to fall apart in the late eighties, the mid-nineties, and by the Clinton administration, with state complicity, in my opinion, the Land Use Council died and has never been resurrected and I would say it's one of the specifics we might think about is, it might be too late but it's still on the books, it's still authorized and it may make damned good sense to try to revive an entity, a unique entity, committed by law to the whole notion of federal-state cooperation. What a shock, you know, what we've discussed in the last day and a half.

Now, my intention in recounting these events and some of this history is to shed some light on the problems like many of the others but I think the perfect, the real purpose, of course, is so that we can begin to focus on prescribing solutions and to that end, I'm going to suggest five particular actions that I think the state and the traditional using community could engage in. I think, first, we need to insure that there are no more self-inflicted wounds arising from state and group inaction. When something transpires, when somebody transgresses, somebody's got

to respond in some appropriate manner. They can't get any more free passes because those free passes have come back to cost us. John Sturgeon has to bear the costs of effectively litigating the violation of 103(c) and I think that's just a hell of a way to run a railroad.

Second, I think all of us need to be diligent and watch like hawks. Recently, the federal agencies have become extremely, Brad was talking about this, at burying important changes in things like compendia, policy memoranda, policies, other documents that never reached the federal register or ever reached the public at large and yet when you go to ask them to do something, you run smack into it. When the State Fish and Game wanted a deal with the, you know, the Unimak Caribou Herd, what'd they run up against? Director Jamie Clark who now runs the Defenders of Wildlife. She was Fish and Wildlife director in the Clinton administration, put together this biological integrity policy which has become the bedrock for fighting the state's effort to engage in reasonable fish and wildlife management. These things, they're adept at tucking this stuff into nooks and crannies and if you think you see it all in the federal register, you are dead wrong. That's only the tip of the proverbial regulatory iceberg that Congressman Young referred to this morning. So when these things get sniffed out, the response needs to be quick.

Third, I think that the state and the community need to press their case. I can tell you that in ANILCA's first 12 years of implementation, the issues surrounding the law were always very high on the list when the Governor met with the Secretary. I was in a whole bunch of those meetings and was privy to some others in subsequent administrations and these issues were generally addressed at very, very high levels. I think that in recent years, that does not appear to be the case and I think it's appropriate to resurrect some of these issues given the stakes that we face, given the encroachments on state authority. It's time to put this stuff back up on the top of the list and I was glad to hear that Senator Murkowski, you know, put the hold on Sally Jewell's confirmation and extracted the promise for a redo of the King Cove Road decision. That's the kind of stuff that gets agency personnel's attention and I think when you bring the high level personnel attention to it, I think you end up getting some results. Otherwise I think if you just try to deal with some of the appointed personnel who want to have this whole place a big biosphere under glass, all you're going to end up with is, you know, stonewalling and the inexorable erosion of traditional user and the state's sovereign rights.

I think, fourth, you got to take advantage of all the forums, administrative, judicial, legislative, and political, to advance the state's case and I suspect that, and I would recommend that we press the congressional delegation for more aggressive oversight. When Don Young was chairman of the House Resources Committee, I think Don was very aggressive in terms of his oversight of the agencies, used the committee, used committee investigative staff to shine a light in the dark places, as someone said yesterday, and sent a lot of the bureaucratic cockroaches scurrying for cover so that you can get things fixed. I think that Senator Murkowski who's now the ranking on the energy committee and ranking member on the Interior Appropriations, should there be a change and we get to call her madam chairman, I suspect that she could make very effective use of aggressive oversight which you don't ignore an authorizing and appropriating committee chairman. If the Republicans took the Senate, Lisa would have both of those jobs. She'd be the first senator with that level of clout since Jim McClure held both of those positions 30 years ago.

Fifth, I strongly recommend it's time to prepare a list of highly specific corrective measures to prepare a play book for playing offense, to identify with precision specific changes needed in regulations, policies, handbooks, compendia and ANILCA itself, if necessary. I'll just tell you one war story. During the transition from the Carter to the Reagan administration and just about the time ANILCA was signed, well, there was a group of us who put together that play book and that notebook. Somerville was part of that exercise and some others were too. We walked into office the day after Ronald Reagan was nominated. We had a notebook of all the stuff, a laundry list that we wanted to do. The result was in March, we had a thing called Alaska Day. Governor Hammond came down, met with the Secretary, Stevens, Frank Murkowski, Don Young. On that day, we had Jim Watts sign eight policy directives that day affecting Alaska. Some of them are still in effect. We went and quickly did interim regulations and Sally Gilbert talked about it yesterday, and I know Tina probably has this on her list, we explained in great detail in those interim regulations in the preambles about what we were intending to do. We had a play book and, by gosh, we went through that play book quickly, specifically. We knew we had a limited window to take action and we didn't want to squander the turn. It's like, as Jim Watt used to say, when you get your turn in the batter's box, you're not up there to take strikes and offer sacrifice bunts, you're swinging for the fences and I think it's appropriate that we start preparing that book because the day may arrive when the political stars align and those opportunities present themselves and you don't want to be at that point and then suddenly say ah, what are we going to do because guess what, by the time you figure it out, the window has closed. Don't squander the opportunity.

Bottom line is these are all political and policy issues. They're going to get resolved in the political arena and I think education and communication, this is part of it. You know, the outcomes are going to depend in large measure on who holds these jobs, what principles these people have, who gets appointed. I often think that people make these things and I just, for those of you who have been around this a long time, think about the difference, if the first few years of ANILCA administration had been under the, a reelected Carter administration instead of Reagan. We probably would have had this conference in about 1985 and so I think we just got to keep that in mind.

Now, let me finish with the, the tenor, I think, has kind of been, yeah, what's the difference between the optimist, the world's half full, the pessimist, the world's, you know, the cup is half empty. Obviously, I think the tenor of our discussions in the last day and a half has been on the half empty side. I think, one, we have to demonstrate the fundamental nature of the problem, the extent of the problem and to demonstrate to a lot of other folks who weren't sort of steeped in all of this that there is, in fact, a problem worthy of high level attention and corrective actions.

I think it is worth stepping back to say though in a broader sense I think we can tell ourselves that the glass is half full. We are hardly where we want to be but it's been 30 years since the statute was passed and, you know, there's a lot of activists and other folks out there who their objective in 1977 was to basically run us off the land, close things down, stop things dead in their tracks and the fact that here we are 30 years later and there's a lot of traditional uses still going on, we're capable of having this conference, we can discuss these topics, I think it tells us that the diligence and vigilance that has been exercised over the last 30 years, albeit sometimes haphazardly, has borne fruit and puts us in a position where I think we can make the

necessary corrections and pushes back to more of a shall we say three-quarters full type of an approach. I think that the problems that we have identified are largely problems that are imposed by the discretionary exercise of authority by federal agencies. With changes in personnel, changes in attitude and potential changes in law, those same policies and attitudes are capable of being changed and if we can affect those types of changes, get the right people in the right spots, I think we'll be able to allow our opponents to have a conference about what the hell happened to us. That's a good thought for the future. Senator, thank you very much. Representative Keller too.

Senator John Coghill: Thanks a lot. Thank you for, thank you, thank you, and thank you. Thank you, Bill. Thank you, Jim. Thank you, Meera. Very good. Now, you know, and, Jim, I don't think you were here to hear this but when we have the roundtable discussion, all presenters will be sitting at the table with commissioners. We'll have the way arranged, the building arranged so that all you, as participants, will be close enough to that table to hear what's going on. We'll have that miked and everything. So while you're going off to lunch, we're going to rearrange the tables kind of in the center of the room, make it so that we can, I think, get 28 seats around that for a roundtable discussion but before we have the roundtable discussion, Tina will come and give us somewhat of a summary and my hat's off to her. I'm looking forward to that.

We will go ahead and take off until 1:15, like I said, and enjoy your lunch and we'll rearrange the room. Thank you, all participants and especially since I had to rush you all, thank you very much. Appreciate it.

12:00 p.m. Lunch

1:00 p.m. Summary

Senator John Coghill: Okay. Welcome back. We're going to have Tina Cunning go through a review. She has a segment that she's going to play that I think everybody here is going to enjoy, a little video segment from one of her ANILCA training segments, and thank you for coming back. Tina, you get right here on the corner and if you need to move me out of here, you can move me. In fact, when, once you start presenting, if you want to present from here?

Ms. Tina Cunning: I did, probably need a mike. So what I've asked, are we ready to go?

Senator John Coghill: Yup.

Ms. Tina Cunning: I've asked the technical people to put up two one-minute video clips of someone we all know at, that's from a recording done at the 20-year, basically, the 20-year anniversary of ANILCA when there was a big meeting of people who were involved in passage of ANILCA. So I'm going to let them go.

Senator John Coghill: All right. For those of you sitting to my right here, going to have to turn around, unfortunately. Sorry about that.

(Audio clip played as follows:)

Senator Stevens: One of the things that sticks in my mind was when I was going up the Kuskokwim one summer and found that there was a village that was in a quandary. They'd had

one group of federal people come along and tell them that they had to move their trash dump which was right adjacent to the river and they were proceeding to do that, to move it farther back from the river and another group of federal agents came along and said well, you can't do that because that land is subject to the provision in ANILCA that says you have to manage your lands subject to the restrictions of the Mat, supervising agency of federal lands that surround it and that happened to be a wildlife refuge and they were saying you can't have a dump in this refuge. Now, common sense really is needed in terms of dealing with people who live completely surrounded by federal lands and that one provision, I think, and that's still my feeling, is unconstitutional that imposes upon the people who live there and have lived there for years the obligation to live by regulations that are subsequently made by managers of the land that surround them and they must live according to those regulations.

It takes common sense to deal with this situation and I'm hopeful that one of these days we can really come to an agreement as to how to allow particularly the Native people who have the in-holdings within those kind of space and areas to live their own lives and to have the opportunity to develop their, the resources for their future. There is one area that has potential oil and gas that there is, that the restriction is currently being applied to and I think that is wrong.

(End of audio clip)

Ms. Tina Cunning: He's going to play one more one-minute clip.

(Audio clip played as follows:)

Senator Stevens: I do have a great feeling about the Department and I do have a great feeling that people who are in the Department really ought to study Alaska. After all, more than half of the lands that you have jurisdiction over, those in the Interior, are in our state and we are looking at you as representatives of the absentee landowner or landowners, however you want to put it. But, as a practical matter, there is a trust responsibility for anyone that has enormous ownership of land in one area. If you, if the Interior Department were a private corporation, I can tell you that the traditional doctrines of our law would guarantee some of the access that we have a hard time securing because you represent the federal sovereign. The federal sovereign acting as, in the capacity as landowner has a special relationship, in my opinion, to an area such as ours where their ownership is so predominant.

Even after all the selection is completed, and there's still some to be completed, the federal government will still own 66 percent of Alaska's land and you try to figure out that situation as to how anyone can live with a landowner with that kind of dominance of the land mass unless there is a relationship of understanding and a commitment to help those people who own lands outside of the federal dominion.

(End of audio clip)

Senator John Coghill: Thank you, Tina. Good clips.

Ms. Tina Cunning: Good. So I was asked to provide a summary of all of the problems, issues that were raised today and yesterday as well as a summary of solutions and recommendations that have been provided. I had to come in late yesterday because I was coming back from my

son's wedding in, flew back from Chicago so before I left, I printed everything that the presenters had submitted on line for people to have as background information and so this is all I took with me that was just from through Wedn, last Wednesday of last week. So there's a lot more on there now that I've pulled off and reviewed. It's far more in terms of stories and issues and problems and far more wide-ranging recommendations for fixes than what we can cover in, you know, 30 minutes here.

I have offered my assistance in continuing to package it because I actually put a lot of energy into trying to package it in a way that would be useful for the Commission so I'd like to continue to work on that. So right now I'm going to do kind of a 40,000-foot view of what we've heard for the last two days and hope that it kind of captures some of the key pieces to help you in your discussions this afternoon. And I've tried really hard to keep my own opinion out of it. Even though I'm retired now and I get to represent myself instead of the state, I, I'm trying to just capture stuff.

So for the last day and a half, a number of federal laws were identified that are causing problems or grief for the state, state managers, for the Native corporations, for the public, for the organizations, communities out there and those, right off the top, set, tend to focus, so far what you guys have focused on, ESA, the Endangered Species Act, EP, the EPA's administration of a number of acts, the Nav Waters and the implementation of the Submerged Lands Act and Equal Footing Doctrine, the Refuge Improvement Act, ANILCA and several others that are related to that.

The thing that one, several presenters brought clearly home to us is that these are federal laws and federal laws are subject to the interpretation and implementation by the federal agencies in how they adopt their regulations and policies. ANILCA, we believe, was unique and I think Stevens captured that when he expressed his concern that there be common sense and there be a recognition that we have a relationship with the adjoining landowners and other managers whose responsibilities overlay the federal lands.

So I wanted to re, go back to where some of the presenters did first thing yesterday and talk about pre-statehood. In the fight for statehood, most residents of the state, not all but many, many, many residents of the state had three fundamental interests that came out in their work on the statehood act. One was that the residents wanted control of their fish and wildlife. Fish was largely being regulated through the pressures of outside industry owners, particularly in the commercial fishing world. Fish traps were seen as absolutely decimating fish stocks and the federal agencies were very slow to regulate to protect those fish stocks.

In wildlife, what a lot of people don't know and realize is that the federal government had engaged in decades of poisoning, just indiscriminate poisoning of predators across all the federal lands of Alaska. This impacted many populations and it's still dealing, it's still causing problems for the state today. The state is still trying to bring those populations back into some sort of sustained yield and balanced basis but some populations, some species, take longer than others to recover. They go in loops and cycles and balance with each other and one of the reasons I raise this issue is because I had a young lady sitting in front of me part of the day today and every time there was a discussion by a presenter about uses of fish and wildlife, trapping, hunting, management concerns, she was strongly shaking her head as, in opposition of hunting

and trapping and that is the kind of issue we thought was resolved with ANILCA, that there were lands that were set aside as closed to consumptive uses and there were lands that were to be open for consumptive uses under the management of the state. But we still, obviously, have an education problem.

The Territorial Game Commission that was established before statehood and then became the foundation for what became at that time the joint boards of fish and game, they did have some authorities. They did adopt some direct laws and one of the things a lot of people don't realize is that the Territorial Game Commission was providing subsistence for its residents long before statehood and so those laws moved right into, were adopted at the time of statehood. Subsistence was something that was being provided by the state.

The second primary issue that was, caused us to push towards statehood was that we were very frustrated with our lack of representation in D.C. There were a lot of land ownership issues. There's no infrastructure. There are just a lot of problems for trying to make a living in the land in Alaska. One of the organizations, I grew up in Southeast Alaska. One of the organizations I was familiar with down there pre-statehood was the Alaska Native Brotherhood, the ANB hall and all the activities that were associated with the ANB activities in Ketchikan where I grew up. The young people that were being trained in that, in their capacity understood the fishing and hunting laws. They were leaders. They knew how to run meetings. We elected them as officers in high school. It's, they had all that understanding and training of what was going on out there and became the future leaders that became involved with the Native Claims Settlement Act. As we talk about training and need to understand uses on the lands and particularly opportunities for the Native corporations to develop their lands, would hope that those kinds of opportunities would be pursued and supported by organizations like this.

And, of course, the third primary thing of concern pushing towards statehood was the economic viability of the state. There was a lot of concern at the Washington, D.C. level that the state wasn't going to be able to support itself and that resulted in a lot of the negotiations that resulted in how monies are traded, revenues off the resources as they're drawn.

So with the statehood act passing, some of those issues were addressed in the statehood act, one of which, fundamentally, was the state management of fish and wildlife, to manage fish and wildlife for sustainable uses. This is a common use and the first thing the boards did in that process was set up 80, approximately 80 local fish and game advisory committees. The state has the most extensive public involvement in the management of its fish and wildlife of any state in the nation.

It also continued to provide for subsistence and went through a series of laws over the next decade to try to continue to provide subsistence for its residents. Under the statehood act, the state was able to select 104 million acres, approximately. You had an excellent presentation, I'm sure, by Dick Mylius yesterday that went through all of those trustee lands and how the, all that changed.

The state was very slow and conservative in its selections. Egan was very, very conservative. He didn't want to make any mistakes so a very slow selection process. Then we

had the land freeze after only seven years after statehood, it, just so quick that the whole selection process stopped but that needed to be done to resolve the Native claims.

With the passage of the Native Claims Settlement Act in 1971, there was, it extinguished aboriginal rights but it recognized that there was still a need to address subsistence under future state and federal law. There were 44 million acres given for selection which, depending upon how you count it and how you survey it, it actually is work, going to work out to about 46 million acres.

The Native Claims Settlement Act also had a section which required the Joint Federal-State Land Use planning Commission to study and evaluate how lands should be set aside under 17(d)(2) and I went back and pulled up the Federal-State Land Use Planning Commission's report that was submitted after five years. They were created in 1971 so this report is approximately 1977. It was December, '71 when they were created.

So I just want to read you these because otherwise you won't see them. They're hard to get ahold of unless you have copies of the legislative history to ANILCA. The Native Claims Settlement Act and action by the Alaska legislature created the Joint Federal-State Land Use Planning Commission as an advisory body to both governments and set out as one of our duties the making of, quote, recommendations concerning areas planned and best suited for permanent reservation of federal ownership as parks, refuges and other public uses.

Three major land use and management issues have recurred through the Commission's deliberations. The first issue centered on wildlife management particularly with respect to meeting with, the subsistence needs of rural Alaskans and the federal-state relationship with respect to the management of fish and game species in the D-2 areas.

Then there's three other issues that I'm just going to mention here that talks about the fact that there's virtually no ground transportation and there's future transportation needs that are uncertain. That needs to be handled in ANILCA. The third land issue is the locatable mineral expiration and development under the existing location patent system of the mining law of 1872. It talks about the exclusions, the need to be able to get to those and use them and, lastly, how were the state, Native and other lands that were surrounding and within many of the units that were going to be set up going to be handled. They say the legal and regulatory relationships of federal and state governments will often be overlapping. The determination of navigability of inland streams and lakes which will determine the subsurface title of inland waters in Alaska has yet to be made. The federal government alone cannot assure the protection of natural values of national importance on federal lands nor can it assure that present or future national or international needs for energy resources, locatable minerals, wood fiber food, are met totally from federal lands. If major Alaska land use decisions are to be made in a comprehensive context, the involvement of all major landowners and full ongoing involvement of the public will be critical. We are convinced that the future development of the mutual, national and state interests in Alaska can only be carried forward through a strong formalized cooperative planning process.

Senator John Coghill: Tina is that going to be part of the documentation?

Ms. Tina Cunning: I, yes. Yes.

Senator John Coghill: Okay.

Ms. Tina Cunning: You're going to get a full packet from me. So with then passage of ANILCA in 1980, there's a number of issues that were raised in the last two days and one is the definitions, definitions of water when it includes interest. We heard about this in the Sturgeons case as well when the application of regs apply to waters adjacent to the units in 103(c). There is the issue in Title 1 of boundaries. There's very good language in there that the boundaries of these conservation system units are supposed to evolve, that as the agencies move forward with surveying the land boundaries, they expected that the federal-state government and the Native corporations would work on exchanges. So there's an authorization for exchanges in there to pursue trying to adjust the boundaries and the directions given by Congress were to try to follow hydrographic divides, make it easier for the user on the ground to locate those boundaries.

I am aware that there are survey efforts going on now to complete some of the conservation system unit boundaries that I know of, and I've been retired for 2-1/2 years, that I know of. I don't believe there's been any coordination with the state or the Native corporations in a concerted manner to be sure to try to get the surveys to make the recommendations to make them easier to find on the ground or make some of these adjustments that Congress authorized in the existing of the outside boundaries of these units.

ANILCA also had those number of special exceptions that we've heard over and over again, that the lands were supposed to be open for public uses until closed and under certain closure criteria, motorized access for traditional activities, traditional access for subsistence, access for in-holders and valid occupants of the land for their residential use and for their economic opportunity and one of the biggest ones was the ability to have transportation and utility systems. We had an excellent presentation by Meera this morning regarding transportation and utility systems. If you look at that map, there is no way you're going to get utilities or transportation through, to most of the communities or the residences including just basic utility lines unless there's a willingness to try to work through the Title 11 process.

You set aside, they set aside lands where there's no hunting and trapping and all other lands are open to those uses. They confirm the state's management of fish and wildlife and water except as specifically provided in Title 8 and they created the Alaska Land Council. This was the piece that, in Title 12 that came out of those recommendations from the State-Federal Land Use Planning Commission.

One of the responsibilities of the Alaska Land Use Council was to monitor all of the land management plans. As each agency under the conservation system units was to adopt management plans in those, in that first decade, they were to recognize these special exceptions and bring them to the council for concurrence. The council functioned in a way that it put the federal-state Native corporation leadership all at a table like this. We had to look each other in the eye and talk about these issues and try to come up with ways to solve problems. Those first 10 years of implementation, the land use council was very effective. It worked hard. They had a staff that worked hard but a thing I noticed that's different now than was then is that each federal agency had at least one person who was an ANILCA expert in relationship to their laws. So the

Forest Service had Walt who knew forest service law inside and backwards and also knew ANILCA, had been involved in ANILCA passage. So when we were trying to equate across access regulations on Forest Service land for activities, he knew how to make them cross over, how to make them work. Same with the other federal land management agencies.

Each state agency had a representative that was really knowledgeable on ANILCA. Where do you find that today? Do we have an ANILCA team on the state side? There is no coordinated body between the Native corporations, the state and the federal government to try to work on these issues.

The state developed its ANILCA team to review those land management plans and one of the first things that happened was the Park Service pursued the Lake Clark plan because, of course, Hammond was governor and he came from Lake Clark so they were trying to do him a favor and get his plan out of the way first and there were so many errors in that plan, not recognizing the differences under ANILCA, that they had to go back. There was some political pressure. The council rejected it. They had to go back and redo it. One of the things we discovered in that process is that the state is exempt from the Federal Advisory Committee Act and this is an important understanding for state and federal agency people to know, that because the state has management authority, fish, wildlife and water and other responsibilities that overlay the federal land, they can be included at the table in the discussion of management plans and regulations, that you can't, if you're a member of an NGO, an outside an organization.

As, being FAC exempt, the state people who were involved worked very, very hard with the federal agency people drafting the plans to try to avoid unnecessary conflicts, try to resolve issues. It didn't mean they agreed on everything but at least the blatant errors that would have not recognized things like Title 11. We had management plans that said in wilderness areas, you can't build roads and we'd go uh-uh, Title 11 lets you build roads. Very restrictive. Has to go back to Congress for approval but it still is not prohibited. So those are the kind of things that that process allowed to be fixed.

Under those first 10 years, there's a number of things that were actually able to do. We got recognition in those plans that the federal authority did not apply off the federal land onto the state and private lands and I actually have a little piece from the committee report, the final Senate committee report when ANILCA passed that's pretty interesting and it says, this is in regards to passing of HR 39, those private lands and those public lands owned by the State of Alaska or a subordinate political entity are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to or surrounds the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands such as the Clean Air Act, Water Pollution Control Act, the U.S. Army Corps of Engineers, wetlands regulations and other federal statutes and regulations of general applicability would be applicable to private or non-federal public land and holdings within conservation system units and to such lands adjacent to conservation system units and are, thus, unaffected by the passage of this bill. It's very clear language that the regulations for the prom, promulgated for the management of the conservation units only apply to the federal public lands in those units.

One of the things we were successful at working with the Park Service on was in their defining of their units at the tide line. Initially, there, those smoke-filled rooms at grease lines went around waterways. The Park Service when they adopted their final metes and bounds legal descriptions of their parks, the boundaries are at mean high tide and there were other places where they were really careful to try to protect access areas.

We developed in those, that first 10 years, coordinated management of wild and scenic rivers to recognize that, for example, Gulkana was the first one where Ahtna Corporation owned a third of the uplands, the state owned a third of the uplands and the federal government owned a third of the uplands. The language in Title 6 of ANILCA is very clear that the regulations for the wild and scenic rivers applies only to the federal public lands, not to the waters, not to the corporation lands. We worked out an agreement that was approved by the Solicitor and the state AG's office on how to do coordinated management. That's still held up. Even though the Gulkana plan has been redone a couple times, that coordinated management still holds up and those guidelines are still useful to any of the agencies who are involved with management of wild and scenic rivers.

There was a recognition of the transportation and utility systems. There was a recognition of the need for traditional access studies so before everybody dies and goes away and can't remember who accessed what by what method for what activity in the units but the only one that was done was the joint study done between the state, which the state funded, by the way, between the state and the National Park Service for Wrangell. It's a very comprehensive study of all the traditional access activities, methods, in the Wrangell-Saint Elias. That still needs to be done. All of the commissions, park commissions, have requested it. Most of them have requested that those studies be done. It's, we're getting on with time. It's been almost 40 years and we probably need to continue to pursue that.

More recently than that first 10 years after ANILCA, actually, even after the Land Use Council went away, because there are some excellent, excellent people in all the federal agencies, we may crab about the federal agencies as a whole but they're wonderful people who work in those agencies and there are some people who understand ANILCA and they understand the cooperation that was intended in it. We have had two real success stories with the National Park Service as a result of that right attitude and intent to coordinate between the landowners and the state and federal agencies and one of those was the National Park Service developed the in-holders access guide. This recognizes the 1110(b) access for in-holders for economic and other purposes, particularly those residents, and they initiated this in the Wrangells area, it's excellent language. Susan Smith on your commission can attest to the value of this so that it's not having to be permitted, they're not having to pay an annual fee. It's in , it goes with their land. They have that access guarantee now.

The other one was a problem we had with some of the federal agencies not recognizing that off-road vehicles are allowed for access for subsistence even though the regulations that were adopted right after passage of ANILCA clearly say under both Park Service and Fish and Wildlife Service that off-road vehicles are allowed for subsistence uses but at Cantwell, we had a park superintendent who understood the need to have that recognition for that traditional access method out there to resolve issues and they moved forward, did their study, completed the

process and now that, there is a set process for using off-road vehicles for subsistence at Cantwell in part of Denali National Park.

Since the demise of the Land Use Council in 1990, public and the Native corporation involvement in these issues has significantly diminished. As an observer, I, I've watched that just continue to diminish and diminish. Funding is part of the issue, lack of understanding of ANILCA and what's at stake. The public and the Native corporations, the federal and state staff have a very poor understanding of ANILCA. They're, they make various runs at eliminating access or hunting and trapping or other things that are provided and guaranteed under ANILCA. The federal agencies increasingly are making autonomous decisions. Again, this is attitude. There seems to be as, what I heard and read in a lot of the papers, there are a lot of horror stories in those papers, there appears to be an attitude of notification is the same as consultation or cooperation and, in fact, there is one federal person who recently said to me that I needed to recognize that it's a federal law, that the federal agency's responsible for management of federal land. Now, you heard Senator Stevens in his presentation talk about the importance of common sense and the importance of working together.

What we're seeing more and more at the regional office is making fewer and fewer of the decisions. It's being deferred to the national offices of these regional age, of the regional off, the regional offices are deferring to the national offices to make decisions and don't feel like they have the latitude to be more consistent with ANILCA.

There are numerous recommendations for additional wild and scenic rivers like the wildlands under BLM, more national trails, being identified by the Forest Service and CSU's. These are what many of you in your papers that you submitted view as violations of the no more clause and the no more piece under ANILCA. Both NPS and Fish and Wildlife Service are taking steps to diminish the state's fish and wildlife management authority through either applying their land management values or their policies and several people commented about the federal subsistence board applying Title 8 far more expansively than is specifically stated in the statute with a complete regulatory process. They're even making decisions now to trump the state's concerns for conservation. So when the state comes in and says we don't want this authorized or this is too much, it's inconsistent with conservation of this critter, they are saying we don't think it's inconsistent with conservation. So they're now using their judgment to trump the state as a manager authorizing harvests that are not sustainable.

I would point out the difference between the regional advisory councils that are developed by the subsistence, federal subsistence board. Those racks are federal appointed whereas the state's local advisory committees are locally elected. The public does not participate in the federal subsistence process like it does with the state board's process. You see lots of people at the board meetings. They're there to testify. They're there to testify on subsistence, on commercial uses, on guiding, whatever it may be. There are very, very few people that provide any input into the federal subsistence process.

Senator Murkowski illuminated the problem of overreach in her auntie story. I would suggest that the lack of respect, communication, genuine consultation may be a problem of under-reach. The lack of commitment to coordinate results in increasing frustration by the public, the landowners and the state. There can be more communication. There needs to be

more coordination. There needs to be an effort by everyone at every level to communicate better.

When I was looking, thinking about this under-reach thing, I was thinking, you know, we had a manager at one of the federal areas. Well, you're familiar with the Situk River. It has this great steelhead run. It's very, very popular. It's been very sustainable, supported under the management. Great steelhead fishery. We had a Forest Service district manager that came in and somebody convinced her right off the bat that there's mortality in catch and release. It's mostly a catch and release fishery there, that steelhead fishery, there's mortality associated with catch and release. So she put up signs around town and was going to hold a public hearing on prohibiting catch and release of steelhead fishing at Yakutat. Well, Yakutat, the fishery there is core to the economy of that town. It's so important to it. So one of the other people in town took a Forest Service document and posted it alongside of it and said that the State of Alaska was going to authorize a blowdown for sale next door which is owned by the Forest Service. A little humor brought everybody back to the table and worked it out.

Senator Murkowski used the example of the King Cove Road at Izembek for some of the problems with attitude where Title 11 should be, under ANILCA, should be allowing that road to get constructed without the significant amount of land that the state has had to put up to provide for that exchange. The, that's not the only issue that's going on at Izembek, just to make you aware of some of these with regards to access. The refuge managers over the last several decades have been slowly blocking the roads, the, there's miles and miles and miles of roads at Izembek that the military built during World War II. The, they've slowly been rolling in boulders to block them, parking areas where the young people there I've talked to used to go out with their folks and camp you can't get onto now because of the boulders. They, then in 1960, I found the 1960 Izembek refuge plan when the refuge was first created and it committed to keeping all current roads open to all uses by the local residents and others and they were even going to develop a visitor oversight over, there's a big lookout way up Frosty Mountain that looks down over the Bering and, of course, you can't hardly drive that road anymore either.

Their boundaries for the Izembek Refuge do not follow hydrographic divides like 102 calls for. In fact, the boundaries, when they did those final boundaries there at Izembek, they incorporate one of the old, only in-holders. It just kind of snakes out across the road and incorporates an in-holder and then crosses the mouth of Trial Creek, just takes this little tiny fork piece off the mouth, no really good reason for that. As they survey those lands, those should be fixed.

A couple of years ago, the Fish and Wildlife Service then, through the Secretary's office, embarked on fixing some of the boundaries for the Western Alaska refuges where their boundaries with the grease pencils were way out in the waters. Those boundaries need to go back to mean high tide. Those need to be done correctly.

This same refuge told a trapper that was trapping they, off that refuge also actually manages Unimak even though it's part of the Alaska Maritime Refuge. There's a trapper that used to trap wolves on Unimak and False Pass residents trapped wolves for a long time pretty actively. They're, a lot of those people are getting older. We don't see young people engaged in trapping activities like they used to. This one trapper went to the refuge manager and asked if he

could build a small shelter which is allowed under ANILCA on Unimak so that when he flew in there or took his boat in there, that he could trap out of the cabin. It was pretty harsh winters on Unimak Island. The service told him that cabins could not be built in a wilderness area. Of course, if you look at the Fish and Wildlife Service regulations, it's right in their regulations that you can for trapping purposes build a cabin in wilderness areas. So I don't know, you know, Fish and Game gives you the reg book and the federal agencies don't hand you off the reg book. I think that's always been a little bit of a problem.

I'm just going to summarize with a couple key points here now of things that people have brought up. How can the federal government make some changes besides being committed to this cooperation. Sometimes Stevens used the budget hammer. Compendia was a really serious issue for awhile where they were trying to regulate much like they are now and Stevens threatened to put language in, much like he did on the, like Young did on the Yukon, where they couldn't use, they couldn't have any funds to use for compendia in Alaska and that put everybody back at the table and worked out the process which actually worked for about 10 years really, really well to be sure they stayed out of the restrictions on hunting and fishing and things that they shouldn't be using compendia for.

I would think that the federal agencies need to assign federal staff to become ANILCA experts. They need to not use values to trump statutory provisions. They need to go back to the table and talk, not writing letters. The letter wars right now that I have been witnessing are awful. They're not going to resolve the issues. People need to talk.

What changes does the state need to make? The ANILCA teams that the state has currently represents all interests of the state agencies. It doesn't really represent the public. It tries to represent the uses that are important for the public but it doesn't represent the public. That's what Citizens' Advisory Commission does and that's what the advisory committee to the Alaska Land Use Council did, it had hearings, it took input, it provided those things back to the, both the federal and state agencies but the state is crippled by limited numbers of staff and very limited legal support and as long as you're limited in legal support, it's very hard to go, as some of the participants here, the presenters said, you got to punch. When it's right to sue, you got to sue. When you, you know, but it isn't just the suing. You have to lay that groundwork out ahead of time. You have to try to coordinate. Got to try to communicate and then if you have a case and you're not resolving it, then you had the documentation to go forward into litigation.

The federal courts give deference to the federal agencies. So litigation is not a very successful route. It's far better off we can resolve things in the spirit of ANILCA as it was passed, that it is a cooperative process between the corporations, the state and the federal government, with the involvement of the public.

CACFA provides some of that public involvement. It also helps the public navigate some of the red tape. We watched as people were trying to participate in commercial services activities who if they objected to restrictions that were being put on them, then a federal manager would exert a vendetta and perhaps not issue their next renewal of their permit. That's something CACFA's been very good about, being the in between person. I hope CACFA doesn't lose the ability even though it's very under-staffed, is the ability to be that public representative and help with that process.

Native corporations have so much at stake, the ability to use those lands and develop those lands for their economic opportunities. They have so much at stake and when decisions are made on federal land. We've had some of the Native corporations' land managers attend some of the ANILCA trainings. I participate as a trainee for Department of Interior as well as Institute of the North. We've had some participate but I would think that we would try to encourage them to have more and more of their employees trained in ANILCA.

So what were the final recommendations a lot of people made other than ones I just touched on? I would suggest that there needs to be some real improvement on the websites. People go to the, young people go to the websites for information now. There is one website out there which if you're Googling federal subsistence in Alaska and want the basics of it, it's the first thing that hits you. It's a site that I believe is being maintained by UFA and the information about the federal subsistence program is wrong. It says that the state manages fish and wildlife on state and private lands and the feds manage fish and wildlife on federal lands. I mean, how blatant? So there needs to be some effort made to fix the information that's out there on the state's website and with others who are involved with these issues.

I think that probably one thing that would serve you well as a commission would be to do a title review. Go through ANILCA section by section and just evaluate how is it being implemented and are there things that need amending, we've heard about amendments, that need clarifying action, requests, correspondence to clarify what's allowed or not allowed. Do they need litigation? Do they need to be curtailed through budget threat, perhaps, while trying to resolve it? Does there need to be better information out? But go through a title review of ANILCA and kind of assess where you are and then, last but not least, I do really believe that there needs to be a great amount of effort put into increased ANILCA training for the federal agencies, the state agencies, the Native corporations, Congressional staff, legislators, the public and not just the two-day overview that Institute of the North does but really specific sections that go through how is wilderness implemented, how do we do these wilderness reviews, how is fish and game management incorporated on these lands, what was meant by Congress in our cooperative management and the Land Use Council and what are, most importantly, the access provisions in the no more clauses and that's all I have.

Senator John Coghill: Thank you. I just have one short question for you. First of all, I know you're retired and thank you for the years of service. Behind, yeah. And it could be said by a lot of people but one of the purposes, I think, of the Citizens' Advisory Commission is to kind of notice those who have the expertise and bring them in. Who is coming in behind you with the kind of expertise that we can tag? Have you, I know you've done a lot of training but, and maybe we should know this intuitively but is there people that are catching the, kind of the vision? Am I under-stating or over-stating it? But we're looking for people who are those people. Part of the, I think the purpose of what we're doing here these last two days is to kind of light the fire a little bit but I'm also interested in if we are missing somebody, I need to know, we need to know.

Ms. Tina Cuning: The state's ANILCA team is, has replaced people like Sally and me. You heard from Brad. He's handling a lot of that stuff for the Department of Fish and Game. Sue McGee is handling it for the state coordination effort through her location in, currently in DNR. There's people in DNR that are part of that team. I don't think the state has necessarily got, done

a good job on that and I think that's one of the things that Bill Horn talked about is in some cases, the state has dropped the ball.

The ability to work with the federal agencies is improved when you're in their face and their work with the state is improved when they're in our face, when you can sit down and talk about stuff and when your staff is very thin and you're reviewing the thousands of management plans that the, certainly, the public can't keep up with, the Native corporations aren't keeping up with, the state agencies are barely keeping up with, there isn't the outreach and there isn't the training. I think it's a serious deficiency.

Senator John Coghill: And one of the issues that I was thinking about and we'd talked with briefly here is an outreach to Native corporations and that would be both regional, village corporations and some of the tribal groups as they try to do land management and, really, boundary issues, whether it's water use or land use. So I think that's going to be, I see that servicing as one of the issues but, as a legislator, I'm going to take to heart the state request.

Mr. Chairman, Mr. Executive Director, anything?

Stan Leaphart, Executive Director:sure where to go from here. Senator Coghill. The, we've heard a lot of good ideas, a lot of history over the last couple of days, a lot of problems identified. We've heard a lot of recommendations for problems and I think just maybe to reiterate for the audience that we're not expecting to come out of this session with final recommendations or final solutions to any of the problems. I mean, it's, I think the big thing was to identify problems and issues and start the process of developing some kind of recommendations. I've heard, probably one that I was surprised to hear as much about as any of them and that's the Alaska Land Use Council. I mean, the Commission was initially kind of viewed by the federal co-chairman as a rival group to the land use council because it had its own advisory, citizens' advisory group but we came to work pretty well together. We had several joint meetings with the land use advisors' committee and they were very effective. We tried to involve the Land Use Council meetings and I think it's, would be difficult to over-emphasize the good work that came out of the staff committee for that council. I mean, there are some policies that, and guidelines that came out of the council that are, as far as I know, no one's ever rescinded them but nobody uses them either. I mean, we're, I'm pretty good about pulling them out and dusting them off and reminding an agency well, you know, we had this agreement way back when and no one said it no longer stands. So I think there's a lot of merit into, in looking into recreating something along the lines of the Alaska Land Use Council where there, it would be constructed the same way as it was. I don't know, there were more federal members than state members. There were two members of, representing the Native community. I think that probably would benefit from being increased. So that's something I think that's worth talking about and, obviously, that's going to take congressional action and it'll certainly take full support of the state to back that and that's one of those things that kind of dropped by the wayside. There was a report done, recommended that the council be continued and the support didn't come from the state to do that and there wasn't a lot of enthusiasm on the part of the federal agencies to do it either because it had been so politicized. How you avoid that I don't know. That's, I mean, land issues in Alaska are political by nature so.....

So that was kind of an eye opener for me. I mean, I've advocated for awhile. I know the lieutenant governor's been interested in it so that's something I think we should explore a little more thoroughly. I think what we're kind of looking for sometimes is the right kind of hammer to use. I mean, Tina pointed out and it's, and Bill, I think, said it, litigation is kind of dicey. I mean, I don't know, my perception is we don't fare real well in federal court as a state. We seem to get slapped down pretty hard sometimes and so that's, and you can't litigate everything. I mean, things take years and years. So the delegation's authority has, obviously, come and gone over the years in terms of their effectiveness. Senator Stevens, you know, and his seniority and his long history in the Senate are no longer with us. Senator Murkowski is certainly in a good position. If there are changes that happen in the Senate, Congressman Young, he's an Alaska institution, what can you say? But there's still a limit to what they can do as well so, and, with that, I'll just shut up. We have a lot of members here and a lot of people with a lot of good ideas but.....

Representative Keller: Yeah, if I could. Thank you, Senator Coghill. As we move into this next section in the roundtable, I just want to make a couple comments. One is I want to assure you that if it came up in the last couple days, it's captured. I have been in awesome of the staff, Karrie, Tina, Rynnieva, Ernest and Stan, what I'm saying is they haven't gotten away from you but if we take the time remaining and we divide it up into the number of people we have here, we got roughly five to seven minutes apiece and we're going to run it through. John, don't speak unless Senator Coghill says yes, i.e., if you don't, she gave me permission so I took first bite of the apple. So, anyway, it's high, it's all recorded and we've got high quality people listening. I invite you to re-emphasize a point. Just because it's been brought up doesn't mean that you can't bring it up again. That's great but also make sure you get a new one in if something has come up. I have several, Senator Coghill, that I want to point out but, more importantly, as I look out here in the audience and I think of the people listening to this, I don't want anybody to have the impression that this is the end. To kind of repeat what Executive Director Stan has just said is that this is an ongoing thing. This is a draft situation.

Our assistant attorney general, Jim Cantor, is here. He hasn't said a word but I know where he's coming from a little bit and I'm sure he might have some input, you know. So this is an open-ended deal and so we want to be flexible in this last time and I'm sure that Senator Coghill will give us some guidelines too, a question and answer process and whatever but the point I'm trying to make is make your points, be succinct and keep in mind that the clock's ticking and if nobody has anything to say, we're out of here early. That's fine too, you know, whatever happens. Senator Coghill.

Senator John Coghill: Well, first of all, this is the Citizens' Advisory Committee and for those who are here, we have green cards on the table over there and the comments will come to the Commission and be worked through and, just to, for one explanation because I got one here from Joan Frankovich, we didn't have federal people here but there was a purpose for that. Part of it was to have this discussion and then to complete that discussion by having another discussion with both federal people and some of the Native landholders, quite frankly. So I think that's going to be interesting.

This was not designed necessarily for the public input that normally happens at the citizens' advisory commission. Normally we have the public testimony to the citizens' advisory

commission. This was really meant to kind of highlight the issue and I thought the presenters did very well and so if you're here and you want to give some public comment right now, the green cards is probably the best way to do it and as pointed and concise as you can be, that will be nice.

It is also true that the commissioners have been here, the commissioners on the citizens' advisory commission, listening to this and they have been throttled back significantly. They have not had a chance to say so you're sitting at the table now, commissioners, and this is going to be your opportunity. I think probably the two things you want to think about are did we miss something that you would like to see like this comment made, is there something that you want to highlight to the people like Stan who are going to have to, you know, assemble all this information and is there a priority that needs to be done. Oh, the Chairman just reminded me October is a three-day Citizens' Advisory Council on Federal Affairs meeting. It will be a public hearing. You can go to the Citizens' Advisory Commission website for date, time, place and your time for input.

So at this point, we have a roving mike. Where is it? Okay. And the first thing we'll do is offer commission members an opportunity for their comment. If you're a commission member and you want to comment, stick your hand up in the air and get that microphone and just identify yourself. All right. Starting right down here with Mark it was and if you don't raise your hand and I don't see you, then.....

Commissioner Mark Fish: Good. Okay. I've sat and listened to this the last couple days and I've been on the Commission since its reconstitution, I think it was 2007, and I've got a little ways to go yet but I've heard some things in the last two days that have stimulated some old, knocked the dust off some old brain cells and are reinvigorated but just a couple of points that I'd like to point out is I think Don Young's idea of physically challenging is an excellent idea that the state should look at. You know, the court systems, we're dealing with federal regulations and federal courts, with federal agencies. It's really, in my opinion, getting more and more futile to play with that stacked deck. You don't have rights unless you assert them and I think, as individuals, we should assert our rights and, certainly, the state should be, make themselves in a position to support that. So exclusively on state land, not exclusively but, in particular, on state land, I think the state can go ahead and start developing its own resources on its own land, not necessarily at the will of, you know, the federal regulators.

I also think that, you know, our, for our congressional delegation to assist us in some of these battles while specifically de-funding certain areas of the regulatory agencies as a way of reining in and restricting and at least them to get the wax out of their ears and start listening to our concerns is also a good tactic and, frankly, I've heard the criticism from environment, those in environmental communities and some that oppose some of the standings that we do and I do think that there's, in certain cases, the state ought to look at severing some economic ties that we have with the federal government. We are taking money in some instances that are, that is not good for, you know, our sustained rights of the state. It works against our own interest. So I think we ought to look at what type of federal money that we are taking and perhaps there are areas that we shouldn't be involved with because of the ties involved with it.

And I, I've really paid attention to this one because I think I've often heard through my term that, you know, that, the lack of knowledge that the federal regulators and the next

generation coming up have of the history and the knowledge of the law is really harmful. You got people implementing regulations that have no background in, or knowledge in what is, those regulations are intended to support.

So I think the state should take a leading role on that and, through, perhaps through our universities system, start a course in land management exclusively tailored to building that base of knowledge and perhaps, you know, the federal system can change when we get highly qualified Alaskan young people into that system and become those federal managers on federal lands in Alaska. Certainly, when you have somebody that's writing a compendium that is, basically has got the weight of law, it would be nice if they were an Alaskan and had a very strong sense of the history and the purpose of ANILCA.

So I think that's something that we could probably start on right away, I'd like to recommend is a land management course in the university system that is accredited and that encourages a, somehow encourages Alaskans to get involved in managing their own resources. And I do, there's one more, I think that one of the biggest impacts that I've had in the last two days here is the representatives, the President of Iliamna Native Corporation. I really took her presentation, an emotional presentation, to heart because it strikes me as something that was really important that often goes missed. We talk about developing our resources. We talk about the regulation. We talk about the environment but in all of this, what really gets missed sometimes is the effect it has on an individual person on the ground. It's, you know, one person can be really devastated by an arbitrary decision that really has no consequence to anybody else and I think it's important for us to keep in mind when we go through this thing what are we doing to people and the idea struck me that covering human populations under an Endangered Species Act, I certainly think that there are some villages out there right now that could be considered a, at least endangered in their culture and their environment. So if we just had them on equal footing with the rest of the resources, give the individual out there a bit of a break, I think that would be, just to keep them in mind when we're doing these policies I think is a real significant step forward and, with that, I'll turn it over.

Senator John Coghill: Thanks, Mark. We're going to go to Ron Somerville and then over to Susan Smith.

Commissioner Ron Somerville: Thank you, Mr. Chairman. I've already made my presentation so I won't duplicate that but I do have a question. We've all been kind of addressing a common subject. I would like to know the people in the room, not just at this table, how many think that the state has a real federal overreach problem.

Senator John Coghill: Ron? You need to get that up close. There you go. There you go.

Commissioner Ron Somerville: Oh, I'm sorry. I'd like to know how many people would raise their hand that feel we have a major federal overreach problem in Alaska. How many feel that we do not have a federal overreach problem?

Senator John Coghill: You do have a taker on that, yes.

Commissioner Ron Somerville: Well, my reason for doing that is at least to illustrate and I think that's partly what the Commission's responsibility is here and that's the stimulation, a

recognition we have a problem and then where do we go from there in trying to address it. Bill Horn and I made a similar comment and that was we need to produce a plan. In other words, some idea of where we're going, what are the problems and how they might be addressed. We're not going to produce that but if we can stimulate the production of that to identify whether it's a roadless rule in Southeastern which is a big problem of the people in Southeastern along with all the other things we've identified here and produce that plan, get it stimulated to address it, we've done our job. Then there's a whole host of proposals that we can consider as how to make that happen but it is going to take, I'm going to say it here again, I'll be saying it many times in the commission meetings, it's going to take a commitment from the Governor and their staff and it's going to take a commitment. As the senator pointed out, this is going to affect us in the legislature as well. It damned well is going to because there's going to have to be a commitment there and it's going to take a real commitment on the part of people in the agencies to get out and align themselves with people, similar agencies in other states. We have to collaborate with the other states to get some of these things done and so that's my pitch. I'm going to keep pushing for us to produce something that identifies that and shows a way that we can go from there to actually get some results. I, and with all due to things like Tina and Sally have said, and I respect them tremendously, pouring more money into teaching federal people about wilderness management isn't going to produce anything. I hate to say that because it hasn't. Look at the D-2 two-part book. It was produced 10 years ago and what have we seen since then? Has there been an improvement? No, there hasn't. Yes, they have produced a few people who abided by the rules and the moral obligations of ANILCA but have they really tried to work with the state? It's gotten worse rather than better.

Senator John Coghill: Thanks, Ron. We're going to go over to Susan Smith and then, okay. And the Chairman, Wes Keller, put himself on the list so we'll have Charlie and, okay. All right. Right over here and then, Susan, you're.....

Commissioner Susan Smith: Okay. Thank you. Actually, I'm following up on something that you mentioned too, Ron. Last fall, we had a presentation from an attorney from Utah, a federalist attorney, I believe, from Utah and she gave a powerful presentation about the steps that they're taking in their state to try to combat the federal overreach and just shortly before we came to this meeting a few days ago, we all received a copy of a letter from the State of Utah inviting us to join them in their, you know, in a united front to basically try to combat some of the federal problems together and constitutional defense councils are being set up in these states and federalist attorneys are being hired specifically to combat these issues and I just wanted to make a comment that I personally think that if we join with them in a united front, that we may actually accomplish more than we can by ourselves. So that's my comment.

Senator John Coghill: Thank you. That microphone next will go to Wes Keller. Actually, you can pick that one up and take that microphone over to Charlie Lean.

Representative Keller: Yeah, I want to jump in because I want to add two proposals, both of which come from somebody other than myself. The first one I'm going to, is from Lieutenant Governor Mead Treadwell and I have to admit that I, oversight on my part, he did not get invited to participate as a presenter. He has actually three and he told me last night as I was driving home and I was rather fatigued and I caught one of them so this is a fair warning to the staff and whatever that there's more coming from Lieutenant Governor Treadwell but the one that I do

remember is that he suggested that we have to somehow put together, this kind of goes with the land use commission but a commission that is tasked with responsibility of expanding the amount of acreage that's available in the, that is Alaska owned and just to spell it right out, say let's expand the acreage that the state owns and build a commission that addresses just that.

Another one that I want to bring up is a piece of legislation that was introduced by Representative Millett, Charisse Millett. I have to admit I have a vested interest in this. I am a co-sponsor but I want to real quickly, and, by the way, Randy worked extensively with us on this and I just wanted you to know that it's in the hopper for next year and something to watch out for but one of the resolves in it is to, that the, that there is a joint committee established in the House and the Senate standing committee that's there forever, you know, until it gets changed but, I mean, it would be a standing, ongoing entity to deal with federal overreach and you can look it up. That's HCR-3 and there's two parts. One is it, it's pretty extensive, would, tells exactly what the, or, you know, pretty good guidelines there on what the committee would do and the second thing is that it encourages the Governor to put together an office to focus on federal overreach.

So that is a very over-simplification perhaps but that's the general idea, two key points in HCR-3. So that's the two I just wanted to get on the table. Thank you.

Senator John Coghill: Thank you, Mr. Chairman, and I think, based on some of the things that we assemble out of this and maybe that would be a good vehicle to talk about what the state can do and do better.

Charlie, you're up.

Commissioner Charlie Lean: Charlie Lean. I'm, I was struck by Representative Young's talk and I, although he seemed a little bit over the top in some respects to me, I too grew up in Alaska and remember statehood at least from a child's view and also you might know that I live in Nome and I think Nome was the only community that went to the Alaska Constitutional Convention and voted against statehood but, anyway.....

Senator John Coghill: Charlie, if you would, speak real close to the mike, I think.

Commissioner Charlie Lean: Yeah. Okay. I'm not used to these but the, my point is that we are stepping back towards the territorial situation where large interests control our fish and wildlife. Although it's no longer the commercial fishing industry, it is national big organizations that don't really have any home base here in the state and it's very frustrating and I have a number of acquaintances and friends that believe that the situation is reaching a head and something needs to happen.

I, I'm intrigued with the Land Use Council idea and the fact that it would place federal and state decision makers in the same looking at each other. It's a lot harder to dismiss someone when they're across the table from you, when they're looking you in the eye and you can see their, how far they're bought into their position. It makes things move along at a better pace and so I don't really wish more meetings on anyone as a, it's not a vengeful act on my part but I do think that it's necessary that we put state decision makers in the same room with federal decision makers and I like that idea so thank you.

Senator John Coghill: Thank you, Charlie. We'll go to Kathleen Liska and then Frank Wood after that.

Commissioner Kathleen Liska: Thank you. I am very appreciative of this summit being pulled together. I am a third generation Alaskan who grew up in a household with half Democrats and half Republicans on both sides of my grandparents. These battles for D-2 and the memory of statehood, the fights for statehood growing up were very passionate and opinionated and because of that, I tuned a lot of that out because it wasn't pretty at times. I was just reminded of another story of my grandfather rather, going to fisticuffs over some of these issues in the day, as a very staunch Democrat protecting Alaska, but I have appreciated John, as you've said, that this is a generational conversation that needs to happen. Because I lost a lot of the details by having my fingers in my ear, I missed a lot of what needs to be carried forward but the biggest thing is the why, why does it need to be carried forward. It's not because we're looking for a battle. It, it's because in the original start for statehood and even in the defending of what we were trying to protect in ANILCA in that generation was because people were looking for, to provide for their families and that was being hampered on so many different levels and so this is a very personal, personal issue to the State of Alaska and to Alaskans and I still don't understand all the details but I have been incredibly awakened to hear all the testimonies and I am grateful for Chuck Hawley being here and being engaged in the battle and willing to pass that information and wisdom on.

There were mistakes that were made by the state on many levels but there was mistakes on the other side and I think learning from those mistakes when, I don't remember, maybe it was Don Mitchell who said yesterday that Bartlett and Gruening voted for the Wilderness Act because they care for Alaska and the wilderness. That ended up biting us later on. Alaskans care about our environment. I know the Native people do and I do and I know we have a history and a track record in Alaska of caring for our environment generally across the board and I think it's time for a new generation to take what's being handed to us and work together. I'm being educated but I know that there's another generation that still needs to be educated coming up and I think one of the things that Governor Hickel talked about and, Tina, what you said or, Mark, what you said about land use, you know, classes at the university but even in the elementary schools and in the high schools in ANILCA, just educating Alaskans if that's all we did, I know two years ago my brother, Ian, and I took the ANILCA course and I walked away with a little bit more understanding than I had before which wasn't much but I want to take it again because I realize it's not just the federal agencies and the state agencies that need to take it but every attorney needs to take it, every judge needs to take the ANILCA training. So I'm just excited to, I, Bill, I really love what you said about a play book. I think if we're going to have the congressional delegation, the state will if it's there. From the administration and the legislators I know that that's increasing in this last year, two years, that there be some coordination between the multi pronged approach so the public stays informed of what each is doing and not just that federal and state agencies sit across the table but those who are planning pieces of what needs to be done continue to come to the table like what's been done here at this summit and I know even what Senator Murkowski said, there are states watching what we're doing here and they're going to continue to watch and partner with what comes out of the many facets of what we're going to do or recommend what happens from here. So I just am very appreciative to Representative Keller and I know Senator Dyson in state, Senate State Affairs made state's rights an issue and

Senator Coghill and to the Commission, this, thank you to all the presenters for coming back when you have retired, many of you. I, I'm so appreciate of that so thank you.

Senator John Coghill: Thank you, Kathleen. Frank should get the microphone next, Frank Wood. Any other commission members? I haven't seen the hand go up. All right.

Commissioner Frank Woods: You sure you're going to let me talk? I'm, I'd like to thank the presenters and thank you, Senator Coghill, for kind of coordinating the last couple days. I sat here and listened for two days just sitting here in this room today and the roundtable you look at the age composition of this table. Tina, you're retired and Brad's going to replace you and he's doing a replacement job in educating the public right now. How do we go from here from, you know, there's a generational, some, you just mentioned a generational gap that we have. As more, as I get older, I'm getting less and younger and younger in the meetings I attend but the next generation coming up, there's a lot of knowledge and experience sitting around this table and in this room that's going to be gone in 20 years.

The hard part for me when I first got on CACFA was Rick Schronka pointed right at me and looked at me and said we are not to address subsistence, it's too hot of an issue, it's too big of a potato and I looked right back and I said, you know, when I review a federal management plan that says that, I'm here to be representing that part of the state that kind of lives off that resource and that, it kind of opened my eyes to exactly what we're faced with today. When you sat there and listened to Murkowski and Begich, you know, the young speaks a little bit different but they said their job is to educate the rest of America what Alaska looks like and how we do things Alaska.

When I come to Anchorage, my job is to educate the rest of Alaska how we live and how it looks in Alaska and when I get here, there's a big kind of a, it's not a cultural gap and I think we all share, a culture's defined as a group of shared activities, or it's a group of shared activities that a group or body live off of, basically. The heritage I come from is passed on from generation to generation that's Native and it's a different heritage from Rod might, everybody else in here because that's what we, you know, so I'm going to point out that when he's, in the last couple days, I've heard Native and I'm the only Native sitting in this table and it's embarrassing for me to sit here and try to represent the rest of the Native population of the State of Alaska. I say that because I, I'm not doing them justice when the State of Alaska has come around full fold and they're asking for sovereign rights in the State of Alaska against the federal government and it's hard for the state to recognize Native sovereign rights in the State of Alaska. So, and on the same, in the same token, I will sit here and I, I've enjoyed sitting on the CACFA committee for that purpose is that we're all at the table and no matter what our differences are, we can sit down and talk and we still joke and we still , and we move forward and we move forward with positive, you know, affirmations and positive solutions and we all live here in Alaska. And the hard part is to get people to the table and like Charlie Lean, I'll agree with you, Charlie, when they're sitting across the room and someone won't even look, when they're looking in the eye and flatten out just would not listen to you, that's a whole different ballgame but I could sit around in this room and this table today and I feel, you know, I feel like an Alaskan. I may be Alaska Native but I'm an Alaskan. You move that up to the next level to the federal subsistence board, the board of game, the board of fish and different arenas, some of them meetings get so contentious you got to call the State Troopers, for God sakes.

So, you know, when we're sitting here in this table, I, my number one thing I wanted to pass on today is establishing a land council that includes the Native population, not just one Native sitting on a board that's going to sit here and try to represent that whole population.

The second is delegates all stated the same, you know, we got 365 million acres of land. All that land has been spoken for and from here on out, it's the distribution of wealth and how we manage that land. The three, we're missing one component. The Native, on private land, owners is the Native population and that conflict of values I mentioned earlier and I'll shut up because I think this should be a ongoing meeting and ongoing summit and progress isn't measured in how many bills you pass or how much, I don't know what you want to, how you want to measure the progress in this but it, you know, it's going to be generational progress. It isn't going to happen overnight and I've listened to all the people before us in the last couple days say the same thing. You know, they can't believe they've gotten this far and it's gotten this bad and here we are. So, with that, I'll shut up and pass it on. Thanks.

Senator John Coghill: Thank you, Frank. Microphone comes on over here. Warren Olson, please, and, Rod, did you have your hand up? All right. Mr. Arnot's next.

Commissioner Warren Olson: Test. Been a long time on this trail. I think I'm the unique person on serving on the '81 committee and back again for a second dose. So either I don't know better or I'm kind of stubborn. No comment, Somerville.

There's one person in the state that's, has to be educated and Tina and other folks have talked about this education and that's the attorney general. We got to make sure that the AG is up to speed both with knowledge and ability and we've had so many AG's in the last 10 years, I can't remember half of their names and I don't know, really, what kind of mission they were on but usually they were not on any mission that I was involved in or use of fish, water and wildlife and the out of doors of Alaska. So that's the guy that's got to get the education and one thing that I've really missed in this meeting and that is that I've heard some managers and representatives of boards and commissions and so forth but I think we have to relate in a stronger way to the user, the public. There's some people, about 99 to nine-tenths of them out there that get maybe two weeks off a year if they're lucky and maybe if they're a government employee, maybe twice that many but they got every weekend open and they want some very fundamental basic things; namely, access, water, lands and they want to get to it in a reasonable way and when they get on the public lands, whatever lands and private lands as well, they want some quantity and quality. It's not good enough just to sell them a license, take their money, give them season's bag limits. There's got to quantity and quality. They should have some expectations when they get there and I think Mr. Heimer came closer than anybody when he said hey, this ain't working and we have to face up to that fact.

This thing is shot and if, I personally believe after reading as much history as anybody the public trust doctrine book which Tina and I have talked about several times, I've never found a basis in any common law, whatever you want to call it law in the history of the United States that supports many facets of ANILCA and state operation when it comes to fish, water and wildlife. It's just not there.

So the worst political decision that was ever made in the history, I believe, in Alaska was combining the National Park Service with the Alaska way of life and that all came about when Governor, or Secretary of Interior Hickel decided that he wanted some economy money out in the rural areas and, of course, Mr. Stevens, for whatever reasons he had and maybe Jay Hammond and so they stroked it, moved it forward and created this economy at the cost of all of us, I think, in the unsatisfactory past years and forever forward in the future years. The Park Service is not compatible, folks. All you got to do is read the most recent work out of Colorado. It's suggested reading. It's not a mandate to the Park Service but it was created by the Parkies and they're saying because of the Organic Act, a 2006 act, and the fact that the parks in Alaska are like parks throughout the entire America, that they're going to run them like one big large unit. Well, that's the cards we're dealt. So I go back to the attorney general. For those that you know, know me the best, I'm a courthouse guy. The only thing I've ever accomplished is being associated with people that go to court and establish a point and then usually I associate with people strong enough that if they didn't make the point, they'll go back 24 hours later and start another court session and keep going.

So I guess my comment is that if we expect to joint western states predominantly, and if I'm not mistaken, I'm getting clues and hints that Alabama and Arkansas, maybe some states east of the Mississippi are ready to get on board and if we expect to join those people in any way, then we better get the plan together and we better stake out what state sovereignty is about and go after our fair share with our managers.

And I guess the final point is after I had the experience about eight or nine months ago of seeing Mr. Bill Horn on Gavel to Gavel one day talking to a resource committee in D.C. and the sequester point was being bounced around and would the federal government entertain thoughts of sharing responsibilities of federal lands or management or direction of management of enclaves and Mr. Horn said well, if I'm quoting him correct, not certainly accurately but his idea was yeah, as a matter of fact, throughout the west, we have competent managers, skilled managers, highly familiar with the fish, water and wildlife they manage and I would suggest to you that you look strongly where you can't pay for your own services of taking advantage of that. So, with that, I'll wait for answers. Thank you.

Senator John Coghill: Thanks, Warren. Let's get the microphone down to Rod Arnot and I think once the commissioners have had a chance to speak, a 10-minute break would be in order and then we'll get back here. So once we hit the commissioners' last statement, then we'll take a short break for some of us that need it. All right?

Commissioner Rod Arno: Okay. All right. First, I want to really thank all of the presenters for coming to us and what it did, it reaffirmed what I thought based on my 45 years of experience as a wilderness guide and 35 years as either the president or the executive director of the Alaska Outdoor Council and that is is that Alaskans are the victims of a bad piece of federal legislation and it's divided people with similar interests and the only solution that I see is going to come out of Congress and it's up to our congressional delegation to fix this bad piece of legislation but they're not going to fix it until, as the Ninth Circuit Court told us in the *McDowell* case, until the state is in perverse. So as soon as the state knows what it wants to do and has a united front and can go to our congressional delegation, I think that all of the people in Alaska sitting across the table from each other could fix this.

So, once again, you know, thanks to all the presenters that brought the years of knowledge that you have, you know, to this and also to the CACFA staff there to put this together. Thank you.

Senator John Coghill: Thank you, Rod, and it really is a citizens' advisory commission and the idea was to raise this at a very , much high level so for those of you who presented, we appreciate the knowledge but it also is a way of kind of throwing the doors open saying okay, here are kind of the history lessons and the technical issues. The idea to have citizen input is still paramount. So this was pretty much not the forum to do that and so for those citizens, the apology but the access to this citizens' advisory commission was, it was meant to highlight it so that you would come here and so the input today is through green cards. The next meeting we have that will be public testimony, you can call in, you can write in, you can show up and it is the intention of the Commission to take what we have lifted up as a, at a higher level conversation and to draw you into this discussion. So that's kind of the whole intent of this particular meeting as best I understand it as well as looking for okay, where are we at and what are good solutions and I, I've heard several today. Let's take about a 10-minute break. We'll get back here. Well, let's take a little longer than that. We'll get right back here at 3:00 o'clock and that'll give everybody a chance to kind of visit a little bit and if you're a citizen and you want access to somebody who is one of the decision makes, this is the time, 15 minutes.

1:40 p.m. Break

Senator John Coghill: Yeah, might not be a bad idea. Why don't, go ahead and step out, step in from the outside. Sorry. We do have one more member that, from the Commission that wanted to speak and for those of you who presented, first of all, thank you and for those who presented, we'll give one opportunity to make any additions if you think that a point was lost. In talking to the executive director and the chairman, one of the things, if we do our timing right, if we have somebody here that's not from a state or federal agency and want to make some comment, I think we're actually going to be able to make that time. I, I'm pleased with where we're at on our timing so we can actually allow for some citizen comment and so you might want to kind of get your head prepared for that because I had left it up to the green cards but we've actually managed our time very well and brought the issues to us very well. I'm stalling while the last couple of people come in but we als, we did have a commission member , now, where are you at? Oh, right down here. Do we have the roving microphone? Take it on down here. Oh, there we go. I will shut up and I give you the floor. Just introduce yourself and then we'll get the microphone over here.

Commissioner Teresa Hanson: Okay. I'm CACFA's newest member. I was just appointed a couple weeks ago. My name is Theresa Hanson. I live in Fairbanks. We are mom and pop miners on state land so I have a lot of experience dealing with landowners. I also work for a tribe and have worked for them for many years, 13, I think, and in the different projects that I've done for the tribes, I have run into land issues everywhere and so I kind of come a little bit well versed with that and one of the things that I want to thank you for is putting on the summit for me to educate me just thoroughly and completely on all the topics. It was wonderful timing.

And the next part I wanted to say, that I, what I heard is that I understand from stopping in the Fairbanks office and talking to Stan, that this committee stood for many years and then it

was not standing for nine years and then it has begun again and the thought occurs to me is with the way funding goes, with the way the demeanor of governors go, the way that politics goes, how is it that we can create a committee within the State of Alaska that can withstand the political storms. And funding, is there a way to make like a standing committee within the legislature that can't be shut down like there's other standing committees? I really don't know the answer to that but it's something that I think we need to think about because this is an important issue and it, the conversation needs to continue no matter who's in charge.

Senator John Coghill: Point well taken. We have Ted Spraker wanted to chime in so let's get over here and we'll just kick it open to those who have presented and Ted did kind of get the short end of the stick. We had a couple of our presenters, we got squeezed down to very short moments but just for what it's worth, Ted, I don't want it to become another half an hour program so, and that's not just for you, that's for the, all presenters. You had your chance but something that needs to be brought up so thanks. Ted.

Ted Spraker: Thank you, Senator. The first thing I need to say is as soon as I sat down after doing my presentation, my wife gave.....

Senator John Coghill: Speak real close to the mike.

Ted Spraker: Can you hear me now? But, anyway, when I finished the presentation, my wife informed me that I stood up there and said I'm here representing Alaska Department of Fish and Game. I guess if you work for the Department that many years, you know, it's just ingrained in your mind and not the Board of Game so, anyway, that's the first thing I need to correct on the record.

But the other thing is something that's very, very important to me and that is sitting on the board and being with the Department of Fish and Game for many years, I've had the opportunity to watch the staff and especially being on the board, I watched the staff present very carefully and it's very troublesome to me knowing that in the next five or eight years, we're going to have a lot of our upper level staff retiring from the department, the real pillars, the guys that have been in the trenches, came up from their bootstraps and so forth and I'm going to be real clear about this, in watching some of the new folks that they're hiring, I don't see that dedication, I don't see that experience, I don't see a lot of young guys that if you put them out in the woods, they'd survive and, honestly, we're worried about federal overreach and the trends that we're seeing there and that's certainly problematic but I think another thing that, hopefully, this group will look at is seeing where the Department of Fish and Game goes in hiring some new people and hiring people with good Alaskan experience.

The unfortunate thing, as well, is that the federal system currently pays about a third more in salary compared to the state system. So when really sharp folks come out of college, they generally go to a federal program because they get lot better wages working in the federal system. So, anyway, I won't talk for 30 minutes but those are some very serious issues, things that I see, trends that I see that we all need to be aware of.

Senator John Coghill: Thanks, Ted. Right over here, we have Ed Fogels with the, and maybe he's going to talk about pay. I don't know. No. Thanks, Ed. Appreciate it.

Deputy Commissioner Ed Fogels: You bet. Thank you very much for the opportunity to be here. It's been a great summit. I just wanted to point out one thing that I emphasized, that I pointed out in my presentation yesterday. There's been a lot of talk here today and yesterday about reestablishing some kind of a Alaska land use council and, as I mentioned yesterday, the federal government is already doing that right now. They're building something right now as we speak and it's part of this integrated arctic management proposal they're pushing but they're going to be talking about this tomorrow, as I mentioned, as part of the Week of the Arctic. White House officials are in town to talk specifically about this but they do want to build something new. They've essentially told us that and we've been pushing hard to make sure we have good state involvement. If they're going to build something, we want to be part of it and we don't want it to be a new regulatory system, regulatory layer. We're very supportive of the concept of improved communication. That's key. I think that's kind of what we're all talking about but it is happening and so just so you're all aware that the federal government is trying to build some kind of new communications mechanism for the arctic which to them, that boundary kind of moves a lot and to us, the arctic is really the whole state.

I'd just chime in on the experience too. I mean, I kind of agree with the problems we're going to see in the future with staff. We're real fortunate right now that Sally Gilbert was our ANILCA coordinator for a long, long time and Sue McGee was working for her for many years and is now our ANILCA coordinator. She's a real treasure. As long as we have her, it's great. Brad's a real treasure. I worry about what's going to come after that and if, are we going to be able to cultivate that expertise into the future and then the last thing I'll just say is, you know, we talk a lot, we've talked a lot about the issues on, with ANILCA and the conservation system units but don't forget a real big issue is also what the federal regulatory system is doing to our own lands and how almost daily, our ability to use our own lands is getting whittled down bit by bit and the Bristol Bay Watershed Assessment is an extreme example of that on one side but I see it all the time in the work that we do. The Point Thompson project, I mean, it's amazing, you go through the EIS and then the permits for that and see the stipulations that the federal government have piled upon a activity on our lands. So that's the other issue, that you just don't lose sight of that. Thank you very much.

Senator John Coghill: Thank you, Ed. I appreciate it. Any other presenters? All right. We got two over here.

MALE: An oversight I made was I wanted to alert you to the land shape, landscape conservation cooperative's program. This is one that is, has the allure of federal money to do landscape conservation and it's, may have some place in places where they have fractured ecosystems and great jurisdictional problems across, you know, fish stock runs, whatever. Alaska's the last place, I think, that we need to see this. The Department of Fish and Game is currently flirting with it, I think is involved with it in the habitat division and if you don't think this is a wonderful idea, then you want to be aware of that.

Senator John Coghill: Thank you, Wayne and Kyle Moselle?

Kyle Moselle: Thank you. I just want to take the opportunity once again to thank the Commission for inviting me to participate. I think that I am in that new generation category that we've heard so much about and this event has given me tremendous perspective on the stories

behind these regulations which I've read on paper but they come off the paper by hearing these stories I've heard over the last two days. So I really appreciate that. All the presenters and the Commission, thank you.

And I think, just as an observation, in my own mind, what I've filtered out of a lot of this is that, and maybe this is where CACFA can play a role too is the human element in why we or how we manage natural resources in Alaska and I think that if I were to just break it into two categories, a lot of what I heard as far as what needs to be fixed lacks that human element in the examples or the regulations being applied and everything I've heard or most everything I've heard about what is good or should be expanded on includes that human element. So that's what I, is kind of my take away from the two days was that human element that's rolled into ANILCA and ANCSA and these other, you know, landmark land laws. Thank you.

Senator John Coghill: Yeah, I think the people that have to occupy the land and share it with, really, the rest of the nation, the impact on the people who occupy the land as well as the management that the rest of the nation is looking for really is the intention here. Meera Kohler and then Jim Clark.

Meera Kohler: I mentioned in my presentation about the nullification of rights-of-way that had previously been granted under RS-2477 and other precedents. I also mentioned the roadless rule and the issue with transmission corridors and maintenance of lines in that environment but the issues is even bigger. Alaska, as a state, is horrifically under-served in terms of the energy that's available to it, not just its residents but its businesses and industry particularly and you, of course, are very, very familiar with that. That is one of the issues that needs to be addressed in that there need to be transmission line corridors that are established throughout the state because without them, we are going to be forever hamstrung.

It was mentioned during one of the early presentations today about the hardships, social ills and so forth in many of our rural communities. You have to also understand that a lot of that is precipitated by the stress that's brought on by the economy or the complete lack thereof. When you have homes that are struggling with, as an, in Fairbanks, heating bills that rival their mortgages, in rural Alaska when it's 50 to 80 percent of your disposable income being spent on home energy, when you have industry that's extracting out precious resources and shipping them elsewhere to be processed and refined, our fish, our timber, our oil, our minerals are all processed elsewhere because we have a dirth of energy in this state and so, you know, those are, that's, those are overarching issues that I think need to be on the table that we address.

Senator John Coghill: Thank you, Meera. Absolutely correct. Absolutely correct and I think Jim Clark, bring the, up to her. I think Tina brought up a good point under the title review and especially Title 11. I think there are some kind of things in Title 11 that we can glean for corridors for transportation and for these things so I'm excited about that. I'll, I'm going to do some studying on that myself so, Mr. Clark.

Jim Clark: In fact, that's the very thing I wanted to talk about was Title 11 because after my presentation, Sally Gilbert came up and asked what I thought was an excellent question. She said well, why don't you just use the TUS LUD (ph) overlay and take care of those problems that way and I showed her a letter that the Forest Service had written with respect to the Soleil River

project in July of 2009 in which they said, you know, our plan criteria, in other words, the 2008 amended plan criterion for application of the TUS is that it has to be the only feasible alternative and the letter goes on to say very honestly, our staff took a look at this criterion of the only feasible alternative and we don't know how we could show that anything is the only feasible alternative either economically or environmentally and, therefore, we can't proceed to use the TUS LUD in places like remote recreation areas and we're going to have to do a plan amendment to fix this and what they, their proposal was, we would fix it by going to what the CQ regs say which is look at the reasonable alternatives, not the only feasible alternative and they have not yet made an effort to make that change. So we can't, as of this moment with the Forest Service, you can't use the special, you need a special use permit, obviously, to, in many cases, do the construction. You can't get the TUS LUD overlay so they told the folks from, that were trying to do the Soleil River project sorry, your project, we can't go forward with your project.

Senator John Coghill: That.....

Jim Clark: So that was the answer to Sally's question and I, and Tina and Sally caught up together out there and I was just asking if they had any great ideas on what to do about all that but.....

Senator John Coghill: That's incredible.

Jim Clark:since you're going to study Title 11, Mr. Chairman, I think I will just turn it over to you.

Senator John Coghill: That's in, that's an incredible, but it is, it's also true that we have the principle of law and then the differences in philosophy and those things clash as we meet so I think what Ron said earlier on educating seems to be useless. That may be when you bump up against the philosophy but it's absolutely important when you just bump up against I don't know. So you can't leave the vacuum and so, as we discuss these things, I'll be pondering that. Scott Ogan is up next so let's get him the microphone.

Scott Ogan: Thank you. I want to tell you it's a great honor for me to be here at this table with such a distinguished group of Alaskans and it ain't one of, it's just, it's really, it does my heart good.

You know, I'd like us to all look around the table. Most of us have some gray hair and, you know, that brain trust is going to walk out the door. Some of you have, already have, oops. Some of you already have walked out the door in retirement and thank you for coming back and being an Alaskan and caring enough to do this and because of that, I think we need to take a look and do like a forensic legal analysis of where we've been with all these court cases from the statehood act, ANCSA, ANILCA. Recently, the executive director dug up the *Morton* and *Regan* cases that dealt with statehood entitlements and we haven't found all the pleadings on all that. We've certainly found some of the rulings of the court and some of the MOU's and some of the stipulations but I don't have time to really digest that. It's not really my job description although I deal with land entitlements so I have an interest. There's a lot of, a lot of those things that somebody needs to tell the story, put it together in a book to tell the story like the book that

DNR produced a few years ago called *Promise Land* and it was very instructive to me to wow, this is, somebody really put it together in a way that the people that replace us that have darker hair can just open the book because, and that's why I was really glad we all got together to do this because, you know, Mr. Horn, I'm just thrilled to be sitting next to him. You know, he, when I was a young legislator, he took me to dinner in D.C. I still remember the lobster bisque. It was a memorial, a memorable dinner and he left an incredible impression and worked with him over the years and so we're lucky to put this together. So that's one of my suggestions.

The federal plans, one of the things that we look at is the federal plans and I want to tell you the staff, the ANILCA staff, does a tremendous job and our staff looks at the access issues but those plans, it's amazing how much time they have to make those plans. They just keep coming and coming and coming and every single one of them makes a little cut and the no more clause and the intention of statehood, the statehood act and the intention of ANILCA and we continually just seem to get reduced in stature with every one of those plans. I think someone mentioned funding. That's not in my job description. I'm going to, but I want to agree with Commissioner Smith and maybe I could relate my experience with Utah. We went to Utah. I think I talked a little bit about them. I talked that it was incredibly helpful for us to go to Utah and learn what other states are doing. I think that's something that maybe this Commission should look at and, because when one state's doing it, it's an idea. When more than one state's doing it, it's a movement. So, and Bill Horn talked about a, producing a plan. They had a plan ready to go and so I think this meeting is really the point on the chart where okay, we need to know where we're at. So whatever course we plot, whatever that reading is on a compass, we're going to end up where we want to be and if we don't start doing that chart work now, we're going to be out there wandering around in that fog and our ship's going to come in and leave and we're going to miss the channel and be fetched up hard to ground somewhere. So, anyway, thank you for this opportunity.

Senator John Coghill: Thank you, Scott. We, actually, many of us have been contacted by those in Utah. We have also visited with some of those in the Western Governors' Association so that conversation has been happening. It's not been formalized though so good suggestion.

We have Chuck. Where, Chuck Hawley. Oh, right there. Let's get the microphone over to Chuck.

Chuck Hawley: Yeah, I also appreciate the chances but something that occurs to me is I haven't, I don't think I've heard the owner state at this meeting and it, I think I'm kind of glad of that but something that needs to be looked at seriously to see to what extent does that really apply. If it does, it's just a mat, it's not just a matter of using to extract a certain amount of additional dollars out of the oil companies, it carries some responsibility. I mean, if it is an owner state, why can't we say, devote some money to educate our students? Why can't they cut the tuition charges? Why can't we do a whole bunch of things to the state that hasn't been done if it's really an owner state? I guess I would remind you in case you've forgotten that the first point of the communist manifesto is ownership of natural resources. I mean, we haven't gone that far but it's, you know, that led them down all kinds of trails. They had to access mines that weren't economic and so they used slave labor to do that. They mined things that never should have been touched. They did environmental damage that we can't do because we have this tension between the government and a private sector that keeps both of them relatively honest, not completely honest.

But, anyway, I would like to just step back and examine that concept and to what extent does it apply. I mean, it could really be helpful but we don't want the Soviet type.

Senator John Coghill: Thank you. That's both an encouragement and a warning. Owning the real estate and owning the people is two very different things but one does follow the other if you don't watch out.

Anybody else?

Commissioner Ron Somerville: I got a question.

Senator John Coghill: We have a question here. Ron?

Commissioner Ron Somerville: Thank you. Maybe it's just a simple yes or no but probably directed at Bill and some of the people. In DNR, can the state adopt a transportation plan through the Title 11 process? The reason I ask that is because, as you recall, Bill, during the conversation particularly in the Senate, we were pushing the Department to produce a transportation plan that might actually be inserted into that prior to Title 11 being adopted but that conversation went on for quite awhile and so that's my question, can somebody give me some idea whether or not that's even feasible to do that?

Senator John Coghill: Thanks, Ron. You know, I know that some of us, like Meera Kohler was saying, it's not just transportation, we need corridors for power lines, we need corridors for communication lines, we need corridors for energy distribution. So it's something that we're probably going to have to work on. Are you going to rise to the bait there, Bill? All right. Ron Arno, you had something on that issue? Okay. You want to get a microphone over there? Let's get that man a microphone and thanks for showing up to our two-day meeting. I really appreciate it.

Commissioner Rod Arno: Well, thanks. I suspect that if, Ron, you're talking about preparing some type of transportation plan that gets some level of sort of pre-approval from the federal agencies, I don't think that would work. I mean, the way that the title finally got put together was, you know, you either, it provides an expedited process if there is authority in federal law to grant a right-of-way and then it provides a mechanism for obtaining authority for other transportation utility systems where existing law does not provide and, but the idea of trying to put together something in advance, number one, I, there's nothing really like that in Title 11 per se and then, secondly, you know, you'd just run afoul of all kinds of stuff like NEPA on the side because, or you'd end up in the box that the Forest Service presently faces itself, you do a general 35,000-foot plan, you approve it but when you tried to drill down and take any of the highly specific actions, you'd find yourself subject to ESA-404, you know, NEPA and everything else and so I think that the time and energy expended on the plan would turn out to be sort of wasted energy. You, you're better off putting it into the specific enterprise.

Senator John Coghill: We'll take that under consideration. I think, did you have something on that, Chuck? Did you want to mention something on that particular issue? Why don't you get Chuck Hawley that microphone and then, Rod, you have a different topic? All right.

Chuck Hawley: Ron, one thing, the current administration has worked on this, like the road to Nome and it's really broader than that because they've looked at the transportation into the upper Yukon and things that would open up. I think they've finally decided that going to Nome really isn't what you need to do because Nome already has sea transportation but there has been work going on on this administration and it, it's important and it ties in with energy development and utility development. So there is a start but probably needs to start with identifying a need for the transportation like the stuff from the Brooks Range to get to market or something specifically and then you can go to all the battles that you need to go through to actually get the transportation plan.

Senator John Coghill: Rod Arnot, you had a, Bill, on the same topic?

Bill Horn: No, I want to progress the issue that Warren raised before so.....

Senator John Coghill: Okay. So let's go to Ron Arnot, a different topic, and then we'll go back to Bill Horn.

Commissioner Rod Arno: Oh, we got the opportunity with this expertise at the table and, particularly, we got a lawyer here we don't have to pay for. The state just lost its appeal on the *Katy John-II* and that affects the state's sovereignty to quite a bit of the navigable waters in the state and I was just curious as to whether that's a suit that the Governor could elevate to the U.S. Supreme Court.

Senator John Coghill: Those of us who can talk to the Governor. You probably have just as much access to him as I do there, Mr. Arnot, although we do have Randy Ruaro sitting here so he's probably taking notes and you want to speak to that? Sure.

Randy Ruaro: Yeah, I'll just say that.....

Senator John Coghill: Sure. Now, get a microphone so that, we're actually broadcasting this so people are listening around the State of Alaska so just be aware.

Randy Ruaro: Yeah, I can say that the Governor is aware of the case. He's asked his Department of Law and his agencies, several of them, to review it and he'll be advised from there but I think we have until October 3rd to make a decision on an appeal and it'll be, it's undergoing a real thorough review right now.

Senator John Coghill: Mr. Horn?

Bill Horn: I wanted to go back to Warren made the comment about sequestration and it, frankly, I hadn't thought about this as a potential idea but it's an opportunity to marry our interests in state authority, in fact, potentially increasing state authority, diminishing federal authority and saving a few dollars to boot. Can't beat that with a stick. I testified about a year ago before the House Resources Committee looking at kind of the funding crisis at the federal level and how that was impacting the ability of the Fish and Wildlife Service to administer the National Wildlife Refuge system and, quite plainly, they don't have the bucks and sequestration is starting to take money out of their hides and what is the agency going to do? I mean, are they just going to look for more money, are they going to shutter things or mothball things and the

committee asked us to come up with some ideas. Well, I proposed to, it's not an outlandish idea because we have authority for this idea incorporated into the 1997 Refuge Improvement Act and that is the predicate is that, as previously indicated in Ted's comment, that most places, most state fish and wildlife personnel, it costs about anywhere from 10 to 25 percent less than the comparable personnel costs at the federal level. Most of the state agencies run a lot more lean than does the U.S. Fish and Wildlife Service. Gee, what a surprise.

Senator John Coghill: To their chagrin.

Bill Horn: What's that?

Senator John Coghill: To their chagrin.

Bill Horn: Yeah. One of the thoughts I came up with is since the statute expressly authorizes Fish and Wildlife Service to enter into agreements with state fish and wildlife agencies to have them, essentially, manage units of the National Wildlife Refuge System consistent with the applicable federal standards but, nonetheless, the person on the ground is wearing a state uniform, not a federal uniform, and if it costs 10, 15, 20 percent less to hire a state person, why don't the feds take their dollars, contract with state fish and wildlife agencies, have the state agencies run some of the refuges. A, the federal standards remain in full force and effect. B, it saves money and you can spread your dollars in a broader fashion and possibly one of the options here would be to approach the feds and say hey, you guys are running out of dough, you've got the biggest chunk of the wildlife refuge system sits in Alaska, let's invoke the authority from the 1997 Refuge Act and you, the feds, contract with the State of Alaska and we'll administer the fish and wildlife refuges here consistent with the provisions of the '97 Act and ANILCA. Save money, increase authority, read them the right way. It's an idea.

Senator John Coghill: Yeah, we don't have the authority to vote but it's a good suggestion and, so one of the things that I was hoping to do in allowing the presenters and the commissioners to speak is to get the staff and those of us who are listening to assimilate and assemble the information so that we can move forward. Certainly, having the Native corporations here at different levels is going to be a huge issue. Having federal government here is going to be a, another huge issue. Public information is another huge issue and with the indulgence of those sitting around the table and those who have been listening in, I'd like to offer to anybody that is not an agency person who is sitting here in the auditorium if they wanted to make a public comment on things that they think need to be addressed that maybe we can assemble into this information and when we have the October meeting, that could become part of the discussion. So if you don't work for the federal or state government who's actually had, I mean, the, yeah, well, the federal or state government because we're going to give the federal government plenty of opportunity to answer some of the questions that we are now beginning to formulate but if you, if anybody in the, sitting around this table wants to, I'll make this seat available here and if you want to come forward, I'll get you a mike, you can address the CACFA committee and certainly those who presented. This is an opportunity and, while we're waiting for them, is there any other presenter that we missed? Okay. Right over here and this seat will be available. What, Randy, why don't you just turn that, Randy, turn this card over there. There you go. Thanks, Randy.

Mr. John Sturgeon: Besides suing the federal government, I have another life.....

Senator John Coghill: Just identify yourself.

Mr. John Sturgeon: Pardon?

Senator John Coghill: Identify yourself.

Mr. John Sturgeon: John Sturgeon.

Senator John Coghill: John.

Mr. John Sturgeon: I'm sorry.

Senator John Coghill: The only reason I'm doing that is I've normally said people's names and we do have people listening in. Sorry about that, John.

Mr. John Sturgeon: Okay. I'm sorry. John Sturgeon. I'm currently suing the federal government. Besides that life, I have a professional life which involved with Jim Clark over the years in.....

Senator John Coghill: Speak right into the mike.

Mr. John Sturgeon:the timber industry. Can you hear me okay?

Senator John Coghill: Oh, yeah. Yeah, there you go, John.

Mr. John Sturgeon: I've been in the timber industry with Jim and Rick Harris back there and have worked with the federal government a lot. One of the things that I'd recommend is that, first of all, just I can't overemphasize how important we start winning some of these battles. I think the whole future of Alaska, our resource development, is dependent upon making sure we get things, the promises that, made in ANILCA actually are fulfilled. I think that's real critical and one of the main suggestions I would have, at least from my experience, is to continue to beef up DNR so they can do the homework so if we have the information and we have the facts before us, whether we go to court or we go to negotiations and you look at what we have at stake and the number of people that we have actually working in DNR on these critical issues is a pretty small investment. I'm a business person and if I had to put my money anywhere, I'd put my money in DNR and Fish and Game to try to beef those agencies up in the areas of protecting our rights and that'd be my suggestion.

The other one, and this is a modest suggestion, if it was up to me, I would take our permanent fund, put it in a legal fund and start suing the feds. Be a good start.

Senator John Coghill: Having lawsuits has some productive value and may have some diminishing value. So, you know, I think we've heard that part loud and clear and I just didn't want it to go unnoticed that you, at great personal cost, are standing up for the rights of many of us in Alaska so thank you for that.

Mr. Clark, you had something? Why don't we, and, Dick, where did Dick Mylius, if you want to, what I asked was if there was something that you felt that needed to be added or asked from the various different presentations, you are certainly welcome to come to the table and add a couple, we've had a group, kind of a free-flowing discussion here but we're really looking for things that we should be focusing on as we assemble this information so huge volumes of information. Mr. Clark, you're up.

Jim Clark: Just to follow very quickly on the point that John made and it's been around the room about ANILCA and the promises of ANILCA, please focus on this issue in Southeast as you work through your issues here because that's a place where, again, the grand bargain of 1980 has been completely breached. There it was 5.4 million acres of wilderness in those days in exchange for 450 million board feet of timber, \$40 million a year to build roads so that we could access that timber and for transportation. A good deal of that was taken away in the Tongass Timber Reform Act of 1990 and at this point, the land grab of 9.6 million acres of wilderness on top has taken away 92 percent of the land. So the grand bargain of ANILCA, at least as far as Southeast is concerned, has been completely broken and, making my Spanish Civil War speech, you know, you need to watch what's going on there because, you know, who's going to be next in terms of them completely breaking the agreements that they had in ANILCA and I just thank the Committee for inviting me here today and having a chance to talk about all this. I was delighted to come in back of Meera Kohler who I thought did an excellent job hitting on some of the same points and I'd just ask the Commission to stay on it because this is a big deal happening to us in Southeast.

Senator John Coghill: You make a good point. Alaska is not a series of appendages. We're not Southeast only. We're not Southwest only. We're not Interior only. We're not Railbelt only. We're not Northwestern only. We are one and it just has a lot of diversity to it and your point's well taken.

All right. So let's get Ron the mike and then, Dick, did you have something you wanted to chime in on?

Senator John Coghill: Okay. All right.

MALE: Yeah, and just a quick, one of the statements made and I think it needs to be clarified is several times it's been very expensive Mr. Sturgeon taking on this responsibility. The state has intervened in this case. Why can't the state carry a bigger burden, financial burden, in helping in, ease the financial impact on Mr. Sturgeon? He, in essence, is doing what the state should have been doing, or should, I'm not criticizing individuals as much as the state should have been up front on this rather than him having to do it.

Senator John Coghill: Good question. I don't have the answer to that. I don't know that Randy has the question to it. John, do you have a comment? Have they had that conversation with you and is it even appropriate at this point to talk about it? You know, I, it might be speculation on our part so I'm reluctant. The answer is I don't know.

Mr. John Sturgeon: First of all, one of the comments that I heard when the state intervened was that boy, this is going to be a lot less expensive for you. It doesn't work that way. It's actually

more expensive because everything the state generates I've got to have my attorneys review so it's actually more expensive and the way I understand it, it's against the law to donate to an individual lawsuit. However, there are mechanisms if there's a private 503(c) or whatever they are, the state can donate to those and then donate money to the case but it can't do it directly. That's the way I understand the rule, Ron.

Senator John Coghill: Point well taken.

MALE: Randy.

Senator John Coghill: Who?

MALE: Randy had something.

Senator John Coghill: Randy Ruaro? Special assistant to the Governor.

Randy Ruaro: Yeah, I was going to say I'd never really been presented with that issue before but I think you're correct, you'd need an appropriation approved by the legislature for funding a specific item and I do hope, you know, while your lawyer has to review the state's briefs, I hope they're helpful. I hope they're assisting in the case. Your case is the case I'm asked most often about by the Governor watching the status of it so we are aware and I do hope the state is helping.

Senator John Coghill: One of the things that, as a legislator, I'll be reviewing is what it would take to do a review of the MOU's. It's not only just the legal framework that we have to look at but some of the MOU's. It was new information to me that these are hidden in various different parts of our law so it would be interesting to kind of drag those out and look at those in respect to the law that we agreed to and the management plans that are now being proposed. That is, looks to me like a very huge effort. So, as the legislature moves forward, that won't be lost on me on what are some of the things we can do to take a good, hard look at that but it looks to me like that's a resource strong issue. That's going to take a lot of elbow grease and so we'll see.

Warren Olson, you had something and then we'll get to Dick Mylius.

Commissioner Warren Olson: Yes, I, unfortunately, missed Mr. Sturgeon's presentation yesterday but just wanted to make note that the cases appearing before Judge Holland's court, District Court, right here in town on the 28th of August at 9:00 a.m., the Second Avenue, and I'm very aggressive on this, is from past experience with the Ninth Circuit and our continuous abuse, for a better word, from the Ninth Circuit Court is that the Governor is the sole person responsible for making a decision of bypassing the Ninth Circuit with the Sturgeon case when it comes down and going directly to the Supreme Court of the United States. There's tremen, I don't think we've actually possibly had a direct case to the Supreme Court on fundamental rights on navigable waters but that is a very, very strong consideration that the administration should make.

Senator John Coghill: Dick Mylius, thanks for showing back up. We greatly appreciate the lesson you gave us earlier and so the floor is yours.

Dick Mylius: Oh, sorry I wasn't here earlier and some of what I was going to say may have already been covered but in addition to things like, you know, kind of the bigger picture things, as Bill Horn pointed out, when, before ANILCA was even passed, there was a reluctance by federal agencies to see some of the provisions put in there and one of the things I've observed over the years is they're slowly being eroded a, some of those agreements made are slowly eroded away partly because people don't even know they're there and I think a big thing that can be done without legislation and without lawsuits is just working on education and even educating just the federal people. I think there's, there are efforts to educate the federal people up in Alaska but I think somehow the message needs to get back to people in Washington that are actually making some of the decisions about, you know, what the commitments or promises were made in ANILCA, why they were there, why they're important to Alaskans and I think that's real important. Like I say, that doesn't require lawsuits or, you know, legislation to do that. It does require some money and stuff and the state agencies have some funding to do, you know, the, kind of monitor all the federal programs that are, planning and all that kind of stuff and constantly remind them but I think that needs to be expanded.

Senator John Coghill: I think Tina Cuning brought the point up and brought it up well. One of the things that had occurred to me is since it, ANILCA particularly affects Alaska, it's a, particularly our issue to deal with. So even if it's our responsibility to stand in front of the feds and say this is what you've said, certainly, that's an accountability issue but here's our willingness to help you walk through the process but there's the education issue, as I said earlier, and then there's a philosophical debate that we end up that really pushes that one way or the other but I think the point's well taken from CACFA that ANILCA training and even Tina suggested a title review which I think is an excellent idea of ANILCA at a, as broad a level as we can get it so point well taken, Dick.

Steve Borell: Oh, yeah, Steve Merle was first and then Kathleen at.....

Senator John Coghill: Steve, you're up and then we'll get down to Kathy. You got to hit me.

Steve Borell: To carry on with John, John, is there an address that each of us could send a check to to help you? And I'm serious. Okay? What is it? Can you give that to them and they can distribute it to people?

Mr. John Sturgeon: One thing I neglected to say is that last Christmas, I got a call from a guy that said that he was interested in my lawsuit and asked if he could help. I said sure, you can help and the guy's name is Ed Rasmussen so he's been helping quite a bit but what Ed does is just send money to my law firm so I don't touch it. It just goes into a trust fund and I'll provide that to these folks if anybody is interested in helping. Thank you, Steve.

Senator John Coghill: Right.

Steve Borell: Secondly, second point I'd say it's been incredible since I spoke yesterday afternoon the number of people that have come to me and said I didn't have a clue about world heritage sites or Beringia and what that was going on. You just need to know that there have been close to a dozen people that have said that and so anyway.....

Senator John Coghill: It was news to me. I'd heard about world heritage site but Beringia was a new one on me and so thank you for bringing it to the attention and that's one of those things, bring it to light. Kathleen Liska, you're up next.

Commissioner Kathleen Liska: The first time I just was a listener at my first CACFA meeting in February in Juneau and Commissioner Ron Somerville put forth a resolution that was tabled at the time and I would like him, if possible, to re-state that motion that he put forward but also I'd like to make a recommendation too. My understanding, small understanding, of the history of CACFA when it was first instituted in 1984 was that there was five members and maybe Stan or staff, maybe Stan could speak to that but now it's he and Karrie and we have just dumped on them a massive amount of work with this summit in compiling. Thank you, Tina, for your help and efforts probably voluntarily to pull this together also but the reports and recommendations that need to come out of here, especially by October with our next meeting and a meeting to hear from the federal agencies, I would make a recommendation very quickly that funding and, additional funding and staff be added to CACFA if not more to their purview based on where we determine to go from here and, Kyle, your comments regarding, you know, the human element, that I think one of the things too is that CACFA is that, is the outreach to the citizenry of the State of Alaska for all these different people who are being impacted and I know Senator Murkowski talked about Auntie, you know, I don't remember her name with, you know, the picnic table incident. So she's hearing things and I imagine that there's many others that are hearing things but CACFA is like the front lines to hear that and my understanding, progressively, in how this summit came to be is that the rising level of frustration in the population of the overreach that's impacting individuals and CACFA hearing these stories and testimonies is rising and for the state agents to be able to testify here and what's interesting is so many of the people that are now retired who could say things that they couldn't if they were still employed by the state and yet those who are still employed by the state who still can't say things because they have to honor, rightfully so, the administration, I think Theresa's comment how do we guarantee that CACFA can be here weathering political storms because they did disappear for I don't know how many years. So I'm, Ron, I would really love for you to say what it was that you, the resolution that you put forth in February that we tabled at the, or that was tabled. I wasn't even a part of it then that was tabled.

MALE: Before you respond, Ron, I asked, by the way, Senator Coghill's permission to jump in here in the middle. I know Frank is waiting in the midway. I'm still, I submitted to your guidance here on this. I just want to say on your budget comments, I saw Randy Ruaro taking notes and he's the Governor's right-hand man and the Governor's budget, of course, is pending so I just wanted to say that that was recorded and I saw it. Thank you.

Senator John Coghill: But, to be fair, that cannot really take fruit until this time next year. I mean, we could, it could work through the legislative process and a budget process but that will not save us the effort that needs, the herculean effort that needs to be done between now and October. So those of us on the Committee and myself included will be willing to shoulder it as much as we can because what we're trying to do here is we're trying to raise the level of discussion so that the citizens will know there is a discussion, it's a huge discussion. Certainly, we have to, we have yet to engage two of the larger partners that we have in Alaska then, the Native folks who have huge land tracts and have quite a strata of people that need to be dealt with on land management and that's certainly true even with the federal government. The Park

Service has a very different view quite often than the wilderness managers and the forestry people quite often have a very different view than NOAA, for example. So, I mean, it's not monolithic in that regard, it's just that we see it as, you know, this cloud. So I do have a couple commissioners and I just wanted to respond to it in context and, you're right, the need is great. So, Frank, you're up.

Commissioner Frank Woods: Yeah, thanks, Commissioner Lease (ph). I was going to ask the same question because we got two staff and they're standing and Karrie. The crisis that I see coming up, you know, for me as a rural user and a Native subsistence and a person that deals with federal and state both under dual management is that we've gone beyond the shock of having dual management and we're beyond denial that it's a problem.

The different solutions I see for the next phase in this, we've gathered all, I mean, there's not enough people in the room to satisfy the problems that are at hand. If someone at the next level can, we can outline the economic solutions to this problem and if it's a judicial, regulatory, legislative or administrative fix and we categorize them in that order and Stan's only one person. If you sit there and read Stan and Karrie's reports on a monthly basis, I ain't got enough time to sit there and imagine going to bed with that much information going through my office. So, you know, and the next, as we convene in October, I really appreciate all the presenters and all the staff and the retirees that came back because all this information is real important. So if maybe someone else besides Stan take a note that, if we could outline it in that process.

Second thing is that I've heard Native ownership and Native land status and in the last, I don't know, since I've been involved is, maybe Board of Game chairman can help me but I brought Native land status maps to the Board of Game in helping them educate that there is a huge land mass that we're not capitalizing. Everybody else has a plan for Native lands but I tell you what, there are Natives meeting right now for them plans and they're being solidified without the bureaucracy and without the, we live under state management and that controls access. So, with that, I want to add that, you know, we include them Native private landowners to jump aboard this because they're just as much impacted with this whole process. So thank you.

Senator John Coghill: Ron, you also had something to, I have you on the list. You looked shocked there for a second that I would call on you.

Randy Ruaro: I have a good question I have Jones too.

Senator John Coghill: Okay. All right. And then, Scott, you had your hand up.

Scott Ogan: Yeah, as we talk about the mission and the additional tasks, I'd like to maybe share a little bit about my experiencing working with Department of Law. Before we got staff dedicated to focus entirely on RS-2477 and the significant amount of time with the, our navigability attorney, Jessie Alloway, it was very, very difficult to get a lot of attention just because of the demands that are put on them and they work on case after case after case and there's some, I just want to say there's some very, very bright people there. There are some people that have been there a long time and have a lot of experience like a lot of you around the table and, but, as we talk about that, it just needs to be put on the table that demanding more with

less, it's like Stan. You know, Stan's got, Stan and I both look over the same plans. You know, the plans are overwhelming as it is so there's always these staff considerations and existing demands so just keep that in the mix.

Senator John Coghill: Thank you, Scott. At this point, what I was going to do is I was going to ask the Chairman to start pondering the wind-down to some of the things that are going to hit the high level but I, I'm going to take Frank's lead. What are some of the things the state could do as a state government? What are the things that we only can appeal to the federal government for? What do we have to talk to the Native community about on land management? I think this is a top issue. What are some of the things that this citizens' advisory committee need to do to get other citizens involved? You know, John Sturgeon brings up a good point. We, until they get in a court case, maybe not understand some of the struggles and maybe there's ways that we can get them to tell us those issues before they have to end up in court. So maybe there's a way to reach out to the general population who feels the pressure of that and actually can solve some of those issues by just vetting them. So, but it seems to me that, I hadn't even thought about this, Frank, but one of the issues is the court system. I don't know exactly how we might do that except for the first thing is a review of court cases with regard to land management. That might be quite a study in itself, the MOU's, the actual law itself, the judicial decisions, a judicial review of those decisions, and then the policies and procedures that kind of float kind of, like they say, under the federal register that we really don't understand that well. That would be a monumental review but there are things that we should look at with regard to the federal government, the state government, the citizens of the State of Alaska and industry how they're impacted by these things. So I don't know how we get there but what we can do is we can see things that maybe we could deal with as a citizens advisory commission, what we can say to the state this is what we've heard and what we can say to some of our federal partners this is what we've heard as well.

I know Stan has done an awesome job of reviewing and writing for reviews for all the CSU plans that go on in Alaska and I think all of them are under review right now, aren't they?

MALE: A fair number of them.

Senator John Coghill: Yeah, a fair number of them are under review.

MALE: Thankfully, not all.

Senator John Coghill: And that, in itself, is a phenomenal task, just seeing what is proposed. I heard one person this week say I took those as a matrix and said here's what the original plan was and here's what those plans are and here are where the difference is, this word was left out now. That is an awesome job to do. I don't, we don't have staff time to do that. So those that are affected by that, we need to draw them to this kind of a table for discussion, I think, to show some of those things that are happening but I know uncovering the MOU's and doing the legal title review of ANILCA probably are two things that, you know, either we recommend to the state, the legislature. I don't know that that's something that CACFA can do but that sure is a recommendation I'm hearing loud and clear.

Mr. Chairman, I was kind of reviewing some of the things that I heard. Tina did such a good job reviewing, I, all of my notes just went into insignificance. So if there's anything that you want to encourage these people or draw out yet.

MALE SPEAKER: No, I, it, we're, I'm, oh.

MALE SPEAKER: Yeah, I'm thinking that we're heading toward wrap-up here. That's my feeling. I think that I'm going to declare this summit a huge success from my perspective and I don't, you know, I don't mean to put myself in the position where I can read the minds of the commissioners. However, having worked with them, you know, I know that, you know, the feedback I'm getting from them, it's huge. We set out here to document that there was a problem and let the people that are, that have their hands on to document it, people with experience. You look around the room, the, I'm intimidated, you know, by the level of experience and understanding in this room and it's been incredibly strong. I mean, we have documented the problem. We've documented the history. We've put down something to work with. That was the goal but, like I say, it's beyond my wildest dream, you know, that we got this far. We even had an unofficial survey of the, everybody in the room, you know, does anyone not think that there's a problem, Commissioner Somerville. There was one person in the room that said yeah, we, I don't think we have a problem. So it's, we documented the problem. Then the other end of it, we wanted solutions, we wanted action steps, we wanted a play-book and we've got the raw data to make that happen, again, beyond my wildest dreams, you know, and I think that we did so, you know, successfully in the eyes of the commissioners.

I just want to add a couple things. One has already been alluded to a little bit and that is that CACFA staff is incredibly overworked. I was talking to Mark Wased (ph) here a little bit ago. He says he gets e-mail back sometimes 11:00 o'clock p.m. from Karrie and midnight from Stan, you know, and, from my experience and, I'm sure, the commissioners' experience, they're always right there and, yeah, there's two people there and I also want to say to the Commission, the entire Commission is here on their own dime. This is volunteer work and I want to say thank you. Some of you have traveled a long ways. I'm thinking of the, you know, like Charlie and Susan and who I'm missing, I mean, Frank, you know, from a long ways away and it's a, I just want to say that, a huge effort put out and it's already been pointed out by a lot of the presenters. You know, retired, could be doing other things, whatever, here you are. Thank you. You know, it's wonderful.

So, anyway, that's just to declare and, from my perspective, a success and the only thing that I have left is to say thank you to Senator Coghill for really being the work horse here on the MC but I'm going to turn it back to the MC to go ahead and field the question.

Senator John Coghill: You know, Stan does have some housekeeping measures but I didn't want the discussion to flow. I'm going to kind of give him the anchor point so, Ron, did you have something? Yeah. Let's get a microphone to Ron, Mr. Somerville.

Commissioner Ron Somerville: Thank you. I didn't want to make it after Representative Wes's talk but what I wanted to say was money. This puts the legislators on this body in a unique position because you're kind of bound to support the majority, the budget the legislature has produced but the rest of us aren't. Well, I shouldn't say that. Administration people are and

I could quote you a number of cases where, in fact, leg council, Governor's office, other bodies, have come up with money. You know, we're not talking huge amounts of money but one of the things we talked about before, should this Commission reach out at other public hearings to the public to have more input. That's a question. Costs money. We don't have the money. So if this body feels there's a fiscal need right now, why shouldn't we at least bring it to the attention of the Governor? Can he roust through the agents? I've been in the agencies. I've got the message from the Governor's office. Gee, can't you come up with \$10,000 tomorrow to do something the Governor felt was necessary. I'm just saying money is kind of a minor problem here in a sense. This is a fairly influential body here of people who have access to the Governor, certainly, the staff. Why shouldn't we say that there are some things here, I hate to see us leave and not emphasize the fact there needs to be some things done now, not October. So I want to let, you know, I'll leave it at that. It's kind of up to the Chairman and the Moderator to decide if we pursue that subject but I'm putting that out on the table.

Senator John Coghill: Thank you. Not lost. I know there's a lot of thank you's that should go around the table here but I got to tell you what Tina did in whittling this down just goes to show that she not only understands the issue but she knows how to assimilate that information so I'm very grateful. I'm going to take your work very, very seriously as we move forward so, I think Stan had a couple of housekeeping items he wanted to bring up.

Stan Leaphart: Thanks, Senator. Just a couple of items. One, I know there's been a couple of, or several comments about the absence of federal agency people at the presenter's table, if you will. Just for the record, they were, all the agencies were advised of the summit. Certainly, the invitation was not directly extended to them but all, just like it was with everybody else. I know we had a couple of federal agency folks signed up but, unfortunately, I didn't see them here so I hope if they're listening in, just to let you know that by the end of the week, there will be letters of invitation going out to the heads of all the federal land management agencies and some other agencies here in Alaska to attend, participate in our October meeting which will be here in Anchorage on October 3rd, 4th and 5th. We don't have a meeting location. Normally we meet at the LIO. If we do it maybe the way we're, similar to what we're doing this way, we may need a bigger venue but that'll all be decided pretty shortly.

This whole summit has been recorded by the good technical folks from the LIO and we thank them for sitting here and listening and doing all that. Transcription, I don't know if that's going to be possible. Any of you have attended, read the transcripts from the Board of Game or any of the regional advisory councils, they run into the hundreds of pages and for a summit of this length, I'm not sure but we will try our very best to make the recording available and, certainly, notes or at least outlines of what were presented at the summit.

To the presenters, I want to say thank you. You've made our job a lot easier. There were some really great presentations. I know most of you or a lot of you were able to provide us with a white paper or a written version of your comments. If you have those and you haven't provided them, that would be great. We would like to post those on our website. We'd like this website to be, the Stand With Alaska website to be a source of information, you know, reference, if you will, that people can use and Karrie has worked very, very hard to set that up and it's an enormous job to keep it updated. So, but we're happy to post anything that is appropriate with regard to this subject.

And also with respect to our next meeting, invitations will go out to the corporations and AFN and the Native community because Woody's point's well taken. We can't go forward with, without hearing what their concerns and issues are. So those will be going out as well. So that's all I have.

Senator John Coghill: Well, I'm going to wrap it up then. We're a little bit early. We, if we had timed it a little better, we could have ended on 404 but we missed it by six minutes. I was just thinking about that when I checked my clock. Thank you very much. If the Chairman has no other comments, we'll adjourn the meeting. Thank you.

Adjourn
