CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
ALASKA STATE LANDS ADVISORY GROUP
OCTOBER 9, 2015 | TELECONFERENCE

DRAFT MEETING MINUTES

9:06am – Call to Order

Roll Call – Stan Leaphart, Ray Kreig, John Crowther, Bud Fate, Craig Fleener, Scott Ogan, Dick Randolph, Bill Satterberg, JP Tangen

Also on the line – Cameron Eggers, Wes Keller, Sara Taylor

PROPOSED MEETING AGENDA – Sara Taylor
09:00am - Roll Call; Approve Agenda & Meeting Minutes
09:05am - Member Opening Comments
09:15am - Focal Area Updates
- Litigation
- Legislation
- Negotiation
- Confrontation

09:45am - Draft Report to CACFA
10:15am - Next Steps; Set Next Meeting Date
10:30am - Public Participation
11:00am - Member Closing Comments; Adjourn

9:10am – Motion to Suspend Agenda, Allow Scott Ogan to Present Out-of-Order [Bud Fate]
No Objections; Motion Passes

9:10am – *Mead Treadwell joins meeting*

REPORT FROM AMERICAN LANDS COUNCIL SUMMIT, SALT LAKE CITY, UT – Scott Ogan
Utah doing in-depth legal evaluation on breaches of its compact, had three hour lunch with attorney working on that matter; product expected before Utah legislative session, don't know what the outcome will be or what legislature will think about it. He wasn't at all able to go into specific detail. Hands down best presentation was Harriet Hageman, trial lawyer with a lot of natural resource clients, litigates a lot of BLM interference issues, very compelling and passionate overview of how bad federal management is in some of these states. Significant difference with other state is more people living on the land and interacting with federal land managers; here, they were either run out or not there to start with. Pat Matrisciana and I produced a film we'd like to show the committee on federal overreach in Alaska, focused on federal management of wildlife, very well received at the summit. Hard-hitting video, exposes truth of behavior of wolves, knowledgeable people in Alaska talking about game management. Lots of people wanted to get on tape at the ALC Summit. Phil Lyman, County Commissioner in San Juan County, was one of them. Giving the government the benefit of the doubt that there was no retribution, there appears to be a plausible link. In that county, undercover agents offer people $1000 for an arrowhead, which is well above black/gray market, convinced several people to sell them, and raided people's homes. One of those charged with a federal felony committee suicide.

{Q – Treadwell} You talked about a legal report going to Utah legislature, what do you think of the current status of the legal theories? Our House has passed a bill, largely subscribed to same theories, any advice for us?
{A} Report will be a public document, probably available around the same time the Alaska State Legislature meets, should demonstrate the probability of success. There are disclaimers in every state's constitution. Attorney might have been a lot more candid at the CACFA meeting in June 2015 since he wasn't under contract at that time. The Utah legislator who oversees this contract described him and his colleagues as a "legal dream team."

{Comment – Treadwell} **Suggest meeting/hearing with Utah legal team when the report comes out.**
{Comment – Ogan} Also spoke to Harriet Hageman about coming to Alaska, vis-à-vis her presentation, legal reasoning, and about advising the incoming administration. Encourage CACFA and ASLAG leadership to bring her around to policy makers, get her before some of the NGO groups, worked with a lot of great attorneys at the State, would be fun to work with her.
{Comment – Keller} Echo Scott's opinion of Harriet Hageman, she comes at it from a broad perspective; not narrowly, puts things in context. Would be great to have her be a part of it. DOL's Mike Schechter was down there, also, need to keep him in the loop.

{Q – Tangen} When you spoke with William Perry Pendley from Mountain States Legal Foundation, did he express any support from the foundation? Is he likely to get the foundation on board?
{A} Did not have a direct conversation with him. He did film with Pat Matrisciana, that film would be available, and pretty sure he supports it because he went on film.

{Q – Tangen} Regarding **having Ms. Hageman come up**, is it worth **making presentations to larger groups**, in a more public forum?
{A} Totally agree.
{Comment – Treadwell} Toward that end, I haven't looked at the RDC or AMA conference schedules, some happen in November, happy to do a call with JP Tangen and Pendley directly. He was not up to speed when had lunch a year or so ago, glad he is catching up. When litigation subgroup met with AG, he said he wanted to have more of a federal-state strategy.
{Comment – Fate} In regards to people coming up and addressing larger groups, AMA is already aware of this, there are groups that need to be apprised who are not in tune with this overreach problem. Get teachers' unions, people like that, get message out not just to people who have this message.
{Follow-Up – Treadwell} Agree, and there are mayors and governors groups that meet, as well, good to figure out where these alliances are.

DISCUSSION ON DRAFT REPORT TO CACFA – Mead Treadwell
Need to leave shortly, gavel will pass to Vice-Chair Leaphart. Wanted to ask members if they have comment on the draft report. In going forward with our report to CACFA, the key things we've done since organization include meetings with the delegation, AG, Governor, very strong support for having a more comprehensive agenda on federal-state relations. We've come up with these four categories, where subgroups within ASLAG are developing ideas. Vice-Chair Leaphart will represent us before CACFA at the next meeting, I will be out of the country, but I feel we are off to a strong start.

NEGOTIATION

Mead Treadwell – Governor is trying to have both a working relationship with Obama administration and to challenge them on our lands. Administration would be welcome to a document from us.

Bud Fate – Special interest in one of the topics – **reviving the Alaska Land Use Council**. It has merit but the goals and objectives have to be clearly defined and timing is very important. Those appointees are by the President and the Governor. That idea has merit when it is given that kind of power. Very interested in that discussion.

Mead Treadwell – That idea has been spoken positively of a lot, short conversation about it with Secretary Jewell, who found it funny there was something Fran Ulmer and I agree upon. If in your discussion with CACFA, if we want to pursue this on the negotiation front, it can be done by legislation or MOU, all parties might be amenable to it. Not sure we can get a full amount of homework done by the meeting, but could be **highlighted in the verbal report**.

Stan Leaphart – I think one of the things to think about – take a closer look at the ANILCA Section 1201 report, makes a number of recommendations for restructuring. Lengthy and involved public process, need to look at those and think hard about proposing some/all of them if we recommend reinstatement. The council got politicized at times, and counterproductive; we want to avoid that.

Bud Fate – Once a similar group is formed, it is a tacit admission we will continue with land issues and use that council to litigate or continue on in helping manage the lands, but it is a tacit admission those lands will remain the same as on council formation. The goals and objectives must be clearly defined.

Mead Treadwell – Pull and **review the report and the MOU** (under Knowles) that extended things with the State of Alaska. One thing it would do is get an additional layer of review and provide a forum for comment of the current planning and management efforts.

JP Tangen – The last point being made about essentially diluting our position by supporting the Alaska Land Use Council, suggest counterpoint that the council could be effective as a forum to discuss management issues. One thing on the table is surrender of federal public lands to the State, but we should also keep the book open a little bit on the surrender of management of federal lands. Because ultimately our concern is the federal government is doing such a lousy job, we are looking to get around management issues and not so much possessory issues.

Scott Ogan – Totally concur with that. The Alaska Land Use Council was pre-constituted, gives forum to put things on the record, such as areas of mismanagement. We can point to that record if we have to take things to the next level.

Bud Fate – The council was designed primarily to implement ANILCA, it had no power. The people on the council had power, but the council did not. It could be very useful in that regard, putting things on the record and vetting. But this one would have a different reason to exist than the original one.

Stan Leaphart – It did have a specific mission, outlined in ANILCA, but it is the forum itself that is important. Since the State gets treated like just another member of the public, forming a council like this would elevate things a bit, even though it does not have veto power. Lots of changes were made responding to negative votes by the council, gives us a little more leverage. Tailor a new council to address the transfer of public lands, a little broader focus than simply the implementation of ANILCA.

LEGISLATION

Mead Treadwell – Had very good discussion recently with Mike Pawlowski from Senator Murkowski's office, identified places to go into greater depth with our research. May need more legal resources behind that process.

9:45*am – *Mead Treadwell leaves meeting*

REPORT FROM AMERICAN LANDS COUNCIL SUMMIT, SALT LAKE CITY, UT – Scott Ogan [*continued*]
{Q – Kreig} At last year's meeting, lots of importance put on economics, noted with interest in your report that they left out the cost of firefighting in those studies. Was there much discussion in this year's meeting of the importance of those economic studies, or are they considered to be flawed?
{A} Very articulate economist gave presentation, but she added as a sidebar that they just looked at resources without considering firefighting in showing where state would make money and feds would lose it in managing the resources. Their lands are much more accessible for development than Alaska lands. Almost every big canyon has a road in it, with roads spurring off those roads. We need to hire an economist and look where we can get lands to make money. We don't have money to do more land management. Maybe we can enter into MOUs with federal agencies to manage certain things.
{Follow-Up} One of the points was not that the feds would lose revenue, because there was no revenue, but there was evidence the state could manage better and generate more revenue. What stuck in my mind was the studies were so important last year, because you'll be criticized on increased land management expense, just surprised they omit firefighting.

{Comment – Leaphart} Looked at other states' activities, Wyoming passed a bill to mandate a study on management of public lands (not the transfer of ownership), they just solicited proposals and hired a consultant. Have white paper on what the study will look at, current revenue generation and cost of management. Arizona created a transfer study committee, met last month. They also had consultants on economics of public lands. Hopefully we can learn from them, crib from them, as they will probably be pretty comprehensive studies. It is an economic issue. All interested states are looking at economics.

{Comment – Keller} American Lands Council spent a lot of time on the messaging, and nothing was said against the studies that have been done, but there is an emphasis on talking and communicating this time about jobs, because of the fact they shut down logging, community dried up, it was just another perspective on the data. We all think about this as "freeing" the land, not just a land transfer.

9:52am – Return to Agenda

9:53am – Motion to Approve August Meeting Minutes [JP Tangen]
No Objections; Motion Passes

DISCUSSION ON DRAFT REPORT TO CACFA – Stan Leaphart [*continued*]
Chairman Treadwell asked for comments on the report, anything the subgroups would like to add to the report or bring us up to date on?

LITIGATION

Bill Satterberg – One thing is that the U.S. Supreme Court has granted certiorari on John Sturgeon's petition, very surprising. My understanding is that this might be a tip of the iceberg: where Court is looking to push back on overreach, can do it in a small scale in Alaska, sort of off the radar screen.

Stan Leaphart – Talked about tweaking ANILCA in meeting with Senator Murkowski, this would speak right to that issue and avoid having the slippery slope, re-opening ANILCA. Really good news.

Bill Satterberg – Looked to see if Jim Wilde could file amicus brief; costs to get brief published are phenomenal. The deadline to file is early on. State should be encouraged to weigh in on that.

John Crowther – Speaking from my DNR perspective, everyone is excited. As with every government operation, there are resource allocation challenges but this is top-of-the-pile. I am going to be working with DOL on creative ways we can supplement their effort; case focuses on his particular circumstances but it is really a state's issue.

JP Tangen – Opportunity to tie two or three things together. *Sturgeon* is poster child case for federal overreach, **maybe some of the other states that have overreach issues should be petitioning for amicus status** on those grounds. Suggested to litigation subgroup before, and to this group now, the *Burwell* case which the court handed down this year on Obamacare was an interesting case because Roberts cut new ground that the intent can be more important than the words. When you have this intent of the statute to make clear jurisdictional lines, but the courts are hung up on the words, this is a really important, seminal case, and one with a reasonable chance of success.

Stan Leaphart – 6th Circuit Court of Appeals issued nationwide stay today blocking EPA Final Rule on Clean Water Act. Anything else on litigation?

John Crowther – Following on Scott Ogan's report on publication of Utah legal analysis, that is exciting and the recommendations in the CACFA report note engagement to learn more about the argument so we can support others. Look forward to reading report, thank you for getting it out there.

Scott Ogan – You're welcome, developed good relationship with the attorney, we think a lot alike.

Stan Leaphart – Did he give you a timeline?

Scott Ogan – Beginning of Utah session, which corresponds closely to Alaska's, I think

[NOTE: *The Utah legislative session starts January 25 and Alaska's starts January 19*]

NEGOTIATION [*continued*]

Stan Leaphart – Any thoughts on how to extend the Alaska Land Use Council?

Bud Fate – An MOU could get it started, would probably suffice.

JP Tangen – I would argue for legislation because of the fact I would like to ensure it cuts a broader swath. Council had USFS at the table, too, would like to push the envelope a little bit by inviting ACOE and EPA and would require presidential appointment.

Bud Fate – The old ones were appointed by both the President and the Governor, suggestion of legislation is probably a good one.

Stan Leaphart – Look at two co-chairs, were appointed, but the federal members were the heads of the Alaska offices of NPS, USFWS, USFS, BLM, NOAA, DOT, then Commissioners for ADNR, ADF&G, ADOT, ADEC and two representatives from ANCs. Quite a broad-based membership but, as Bud Fate pointed out, they dealt with ANILCA-related issues; not sure what NOAA and DOT had to do with that. JP Tangen's point is well-taken: if we reauthorize under MOU, then a new administration could come in and toss it out.

Bud Fate – I have most of the original land management plans in storage, text and the maps.

Stan Leaphart – Look at those plans in comparison today's plans, they wouldn't even make an appendix to today's plans. There wasn't enough support in 1990 to keep it going. I can try and draft something up and have Sara Taylor circulate it in the next couple weeks.

Scott Ogan – Comment on what JP Tangen said about legislation. Have a hard time believing state legislature will be in the mood to expand government or create a fiscal note unless there is a compelling reason. Not sure where money would come from to support expense of travel, per diem, there might be some discretionary money somewhere but not as much as there used to be.

Stan Leaphart – The only state staff hired for the original council was a state staff coordinator; existing employees dealt with it as part of the long-standing ANILCA program and, for commissioners of the departments, it was just an extra duty for them. Point taken, these are lean times. I would expect quite a bit of push back from the individual federal agencies. Bureaucracies hate to have power and authority eroded, some push back from those agencies, but that no more so than against the lands transfer issue.

Scott Ogan – Should not add duties for Sara Taylor, who is staff to both CACFA and ASLAG.

Stan Leaphart – Definitely, and worth remembering the council had a strange, arms-length relationship with CACFA, there wasn't a direct working responsibility between them, it was all done with other state agency personnel. I would not want to see this commission's autonomy or authority compromised by being too close or involved with the council. Should remain separate entities.

John Crowther – Scott Ogan makes a good point about resource expenditures and Sara Taylor's workload but the State is working on both the ANILCA program and CACFA to comment on all these plans and try and participate in the federal process. If we had a council with a clear directive and scope, it is not like we would have to add much of a participation element, but we'd have more leverage.

Sara Taylor – Agree on difficulty of asking state legislature to allocate funds, but do not think it will be as big of an issue because I think legislation would have to be federal to be effective at getting us the leverage we need, and to be a viable successor to or reconstitution of the original council.

10:19am – *Scott Ogan leaves meeting*

CONFRONTATION

Stan Leaphart – One more focal area, confrontation, anything to discuss?

Dick Randolph – I think having read the reports, listening to this conversation, this is an area we need to keep in the back of our minds. King Cove Road is the most apparent issue. For other issues, other things need to play out before we resort to confrontation.

10:21am – Draft Report to CACFA Can Move Forward with the Following Additions
Summary of today's meeting;
Sturgeon case update; and,
Hopefully Stan Leaphart will hear back from WY, AZ and ID, would like to include more of that under the "Legislation" section.

Still open for changes; email any comments, thoughts or edits to Stan Leaphart or Sara Taylor

10:23am – Set Next Meeting Date

Thursday December 10, 2pm to 4pm
Via Teleconference

10:33am – Public Participation

No one on the line asking to provide testimony

10:34am – *Dick Randolph leaves meeting*

10:34am – Next Steps

Sara Taylor and John Crowther will add Sturgeon Update to Report
Sara Taylor will add summary of today's meeting to Report
Stan Leaphart will present Report to CACFA at October 24 meeting
Stan Leaphart will work on successor to Alaska Land Use Council, including cost and staff

{Comment – Keller} How can we get other states to participate in *Sturgeon* case?
{A – Taylor} I'm not totally qualified to speak on appellate procedure, but I think you have to present or offer something to the Court that is not necessarily going to be offered by the parties.
{A – Tangen} Amici respond to other questions of law the Court should attend to when attending this matter. What concerns me about *Sturgeon* is that it appears to be Alaska-specific, and we do not traditionally do well anywhere with Alaska-specific matters. Trying to suggest connecting with other states because this is a poster child case for federal overreach, that the government is stereotypically violating the rights of the citizens of the various states; some interest and cooperation there.

{Comment – Leaphart} Recall NPS water regulations, the basis of Sturgeon's challenge. When they were adopted, Governor Knowles declined to challenge but Legislature did, was dismissed for lack of standing or something. Can we **find out whether any other states attempted a legal challenge to the regulations** and, if there were, it might be worthwhile contacting those states and see if they were open to filing amicus briefs and maybe it becomes less of an Alaska-specific issue.

10:42am – Adjourn