

**DRAFT MEETING MINUTES**

**10:35am: Call to Order**

**Roll Call and Introductions**

Scott Ogan; Stan Leaphart; Ray Kreig; John Crowther; Cameron Eggers; Craig Fleener  
[phone] Mead Treadwell, JP Tangen, Bud Fate, Bill Satterberg

CACFA Commissioners Present

Charlie Lean, Kathleen Liska, Ron Somerville, Rod Arno, Susan Smith

**10:37am: Approval of Agenda**

Bud Fate – **Motion** to approve the agenda

Mead Treadwell – Second, with amendment to allow Michael Pawlowski or Representative Ken Ivory to be given the opportunity to present if and when they call in

*No objections*

Agenda approved, as amended

**10:38am: Opening Comments**

*[Bill Satterberg leaves the call]*

**10:46am: Utah Litigation Report – John Howard, Esq. [by phone]**

*Scott Ogan introduces John Howard, one of the authors of the Utah Litigation Report*

- Utah Joint Commission put out a Request for Proposals last year, which we answered and put together an extraordinary legal team to prepare
- Charter was to do the research on viable options for litigation having to do with transfer of public lands; objective advice, possibilities and probabilities, so they can make the decisions they need to make
- We were to do the research and develop a report to be reviewed by the Commission, which would make a recommendation to the Utah legislature
- Commission received report on December 9, approved the report, and would like to put it before the legislature, appropriate the cost and send to the Attorney General
- In Utah, the decision on whether to file suit is with the Attorney General
- It will go before the legislature, which is just opening now, and if they say yes, it will go to the Attorney General who will decide on whether to initiate litigation
- Once money is allocated, it is a no-loss situation, Utah will be exactly where it is today if the suit is lost

10:59am: A brief overview of what the team discovered on surveying both American land history and a deep dive survey of constitutional law; found there are very good arguments for the transfer of public land

- Historical overview
- Legal context and impetus behind specific choices with respect to federal land over time
- Equal Footing Doctrine and compact theory both work together very well

11:13am: Strategies and addressing University of Utah critics

- Equal sovereignty principles, an extension of equal footing to also require equal treatment under the law (equality of the states doctrine)
- Smaller principle is equal footing, larger principle is equal treatment
- Equality of the states and incidents of sovereignty

11:20am: Unsure what will happen, but arguments are sound

- Supreme Court decides on the lowest possible plane, so it could decide it on procedure, or on statute, will avoid big constitutional questions when it came
- Think most likely outcome will be Court accepts equal sovereignty and note the national policy for 150 years required disposal, so the FLPMA retention policy was unconstitutional, transfer matter to federal government to dispose of land
- Another outcome would be the Court finding equal footing is equal footing and the land belongs to the states; dream outcome but result may not be that dramatic

11:24am: Member Questions

*Assistant Attorney General Mike Schechter recognized and allowed opportunity for questions*

**11:53am: Budget Update**

**12:14pm: Adjourn for LUNCH**

**1:35pm: Back on the Record**

### **Public Participation**

[1] Michael Pawlowski, Chief of Staff, Senator Lisa Murkowski

- Compliment ASLAG for the work it is doing
- White House issued a statement of administration policy this morning on the Energy Bill, looking forward to working with Congress

{Question} Scott Ogan: Can a rider be attached to a spending bill or similar to halt federal planning? Any help from the Senator, power of the purse? Similar to what was done on RS2477s, cut off the planning money at least until we have a rational administration.

{Answer}: Happy to express that idea to the Senator, it is in the wealth of ideas ASLAG has shared over time.

{Question} Ron Somerville: Is there a way Michael Pawlowski can appear in front of CACFA at some point, schedule time to talk on Friday or Saturday?

{Answer}: Will work with Sara Taylor to set that up.

{Question} Mead Treadwell: Please listen to Ken Ivory's presentation, if you can. We know the Public Lands Initiative is in play, whether Congress can designate lands in Utah which might otherwise be designated as a national monument under the current administration. Do you see an opportunity, in that bill or another bill, to set some ground rules on the way plans for federal management units play out where the state has equity?

{Answer}: Not prepared to talk about the bill pending now, multiple amendments being filed, the agreements are all in process. I do intend to stay on the line and listen to Ken Ivory. It is important to look at the Outer Continental Shelf Lands Act, which provides an opportunity to be involved in the planning process.

{Follow-up Question}: Any piece of legislation being pursued as a result of the ANILCA hearing?

{Answer}: Still developing strategies and looking for further input.

{Comment} JP Tangen: A proposed amendment was forwarded by the Alaska Miners Association for appropriations legislation – which would address Scott Ogan's point, at least in part – which will define withdrawals. Some of us are very conscious of the timeline and window of opportunity to resolve primary issues with federal management agencies.

{Response}: I appreciate that. The clarification I would make is the language I remember receiving and sharing was geared around the appropriations bill that passed at the end of last year. The timing is different but there are still opportunities in the cycle this year. The latter part of February is the deadline for submitting policy considerations, which is noted on Senator Murkowski's website.

[2] The Honorable Ken Ivory, Utah House of Representatives

- We have invented reasons to legitimize the status quo

- Alaska is kind of an exception but the authority for that exception did not exist, in terms of our enabling act, a very contrived statehood compact, may be a distinction without a difference constitutionally
- Federal government held lands as a trustee to dispose of the lands
- I presented to CACFA in August 2014; since then, Utah has appropriated several million dollars to a commission to study this, including a Request for Proposals for a legal analysis of our claims and a litigation strategy to move these issues forward
- We are prohibited from providing infrastructure, we cannot take or tolerate this fundamental unfairness and shackles on our capacity to determine our destiny
- Accepted proposal from constitutional law "dream team" which released report on December 9 last year that found a number of legal theories to substantiate Utah's claim
- Three legal theories which dovetail into a fourth theory interpreting the Property Clause, needful rules is a supremacy clause over the supremacy clause
  - (1) Equal Sovereignty Principle, comes from a case a little over two years old (Shelby County v. Holder) which reviewed 150 years of case law on sovereignty, found it is essential to the harmonious operation of the republic
    - PILT is a concession acknowledging they have seized a critical aspect of sovereignty; now Congress pays what it feels like when it feels like, yet we have counties in Utah that substantially rely on PILT due to lack of a taxable land base, but they are not sure whether they will receive PILT at all, which is now wrangled into things like a farm bill with enormous sums being coerced from Western states in exchange for PILT
    - Our union does not function without equal treatment of states
  - (2) Equal Footing Doctrine, related but not the same as Equal Sovereignty, about incidents of sovereignty, a Texas case that having more land, more water, more claims you are not equal, so the reverse (having less) should be similarly compelling
    - What were public lands held by the union and eventually ceded to the states
  - (3) Compact Theory, the people of the states forever disclaim right and title until title is extinguished; but viewing the historical context, Western states have that in their enabling acts
    - giving land to federal government as a trustee to dispose of over time
- The question of a duty to dispose has not been presented to the Supreme Court, and the legal team feels that the time is right
- There is certainly an argument the federal government does not have the authority to retain lands in perpetuity, many things indicate this, no authority in Article I, certainly the option of a full transfer
- Option of looking at FLPMA where it states they will retain the land in near permanent federal retention, do a challenge to FLPMA and form a meaningful transition in Congress, similar to what Canada has done with devolution to the territories
- Our Commission voted affirmatively for the legal team to draft a complaint for consideration by the Attorney General and our legislature will be looking at appropriations; difficult to say how much litigation will cost, but the argument is there is original jurisdiction with the Supreme Court, and we may choose to file there, estimate for that is \$14M
- Utah realizes \$11M a year from two cases it won regarding sovereignty (Salt Lake and Utah Lake)

{Question} Scott Ogan: How important is it to have other states in support of the litigation?

{Answer}: We are committed in moving forward, having other states is good to present a united front; other states in the west had this problem and banded together in strength; education is critical, otherwise Dred Scott would still not be a man, need to challenge the status quo, the statehood terms are essentially the same (except Alaska), but the Shelby case stands for the principle that Congress cannot make different classes of states; having more states makes this more powerful

{Question} Mead Treadwell: Regarding the debate happening in Utah on the Public Lands Initiative, how might it relate to the initiative you have been leading?

{Answer}: I don't know if it is getting play in the Senate yet, was just unveiled last year, Senator Lee is the sponsor in the Senate, many people are still getting briefed; somewhat concerned we are making a case the federal government has no authority to retain the land, which may contrast with the Public Lands Initiative effort

{Comment} Scott Ogan: The only thing that really helps the passive aggressive behavior by DOI officials was to bury them in paperwork, litigation and IBLA appeals. We would have to win six or seven appeals and they finally started showing up with conveyances, asking us to work with them and starting to address our concerns. You just have to make it painful enough, bureaucracy will go the path of least resistance

### **2:20pm: Research Update – Taylor Holshouser [by phone]**

- Looking at a strategy overview of four different states on how they are addressing the public lands issue
- See handout

### **2:50pm: Research Assignments**

- See handout
- New: effectiveness of the “no more” clause
- New: compare and contrast devolution in Canadian territories and other countries with how that might transpire considering how federal-state relationships in the United States may differ

### **2:55pm: New Business**

*Scott Ogan submits draft resolution for consideration to support Utah litigation strategy*

- See handout

Scott Ogan – Motion to forward the resolution to CACFA for consideration  
Craig Fleener – Second

Ray Kreig – Objection and Proposed Amendments

- Consider striking the word “preserves”
- Consider making “national park” lower case

{Question} Craig Fleener: For discussion on that amendment, is the paragraph necessary at all in the first place and, if we do have that paragraph, should we restrict it to what is already spoken about constitutionally and leave it to those authorizations, not to minimize or go beyond (understand there is a role for the federal government, laid out constitutionally, and not to go beyond that)?

{Answer} Scott Ogan: I wanted to keep it consistent with what Utah is doing and what HB115 said. Many parks were established after statehood, like a bait-and-switch on our land entitlement, and should be a separately litigated question as we are so different from the other states. This is more intended to build a movement.

{Comment} Mead Treadwell: Our charge is to figure out whether we advise the legislature to do what is in HB115, on the basis of what we do now. I agree with John Howard that we are no better or worse off with HB115, though some things may need to be better tailored to ANILCA. The question I have today is do we ask the legislature to say “Atta Boy, go sue,” and to also pass another law that says transfer all the lands? We are speaking with two voices. We all agree Alaska has its unique problems, some things help bolster the Utah case and we may even get a better case. I don't really disagree with the resolution, not sure it goes far enough and it might be speaking slightly too soon, I would like to see the legislature have serious hearings and call on CACFA and ASLAG to advance HB115, nervous this resolution might kill HB115 for the legislative session and deflate our ability to be a plaintiff. Take a look at HB115 and see how we can bolster HB115 with nicer things about Utah but find a way to bolster our bill.

{Response} Scott Ogan: This would go to CACFA and not to the legislature, as us advising them to do this.

{Follow-up Comment} Mead Treadwell: My advice to CACFA would be to encourage holding hearings on HB115 and keep this resolution in our pocket in case Utah decides to back off. We can do an “Atta Boy” then. But sending this, in a vacuum, we are not doing ourselves or our charge a service.

{Response} Scott Ogan: We don't know the future for this committee or CACFA. This doesn't bind anyone to do anything. I would like to see a hard deliverable come out of this committee that we support this litigation. If this was the legislature we could refine this, work on the language, but I would like to see a deliverable from this committee. Or CACFA can do it on its own, keep the discussion on the table.

Scott Ogan – Amend the proposed amendment to just delete the fourth paragraph from the bottom on the second page.

Ray Kreig accepts.

{Question for Mead Treadwell} Craig Fleener: What are your thoughts? I see this as (1) encouraging Utah to move forward, and (2) encouraging the Governor to support Utah. How would us supporting this lead to no action on other fronts? I like the idea of holding hearings on HB115, happy to make that motion, not sure how this resolution would interfere with that.

{Answer} Mead Treadwell: I think it is a confusing thing to throw in the mix. HB115 has passed the House to set up Alaska for litigation aligned with Utah's, sets us up in a conflict to do that. Governor can file suit without this resolution. This resolution says Utah should sue for return of its lands, and that is very different from the grand strategy. I am all for deliverables and getting the legislature to pay attention to this legal analysis. We are saying "Will you sue yourselves or will you encourage Utah to sue?" And yet we are the ones who were charged with advising them on which course to take. I'd just as soon they deal with a Senate version of HB115, to get that done, instead of having this resolution get pushed through two houses. We are to look hard at HB115 and see if we go Utah's direction ourselves.

{Comment} Scott Ogan: The train has left the station. Utah gave them until the end of 2014 or else, and that date has come and gone. The behavior of the feds was a big collective shrug, does not have any binding effect on them whatsoever. The train at the station right now is whether they will file suit and whether they will have partners at their side. I applaud Speaker Chenault for introducing HB115. It is similar to one I introduced regarding Glacier Bay – it feels good but has no effect. With all due respect, the outcome of that legislation will be another collective shrug.

{Comment} Bud Fate: This is an ASLAG document, I see nowhere in here that it should go to CACFA and have CACFA take this to the legislature. Should state in document that this go to CACFA, as passed, and CACFA, in its discretion, move it to the legislature, which can entertain it or maybe they won't need it.

Bud Fate – Call the Question on amendment to delete fourth paragraph from the bottom of the second page.

*All Ayes*

Amendment passes

Mead Treadwell – Amend resolution to say ASLAG commends the following advice to CACFA at the beginning of the resolution, and add a point before that for the legislature to hold hearings on HB115, and to consider dropping confrontation clauses and moving directly to join with Utah in the lawsuit under the arguments below.

Craig Fleener – Second

{Question} Ray Kreig: What are the confrontation clauses?

{Answer} Mead Treadwell: They are in HB115, remove them and just join Utah in the lawsuit. HB115 has already passed one house and this would be a recommended amendment.

{Follow-up Question} John Crowther: Amend our resolution to suggest amending HB115?

{Answer} Mead Treadwell: Yes.

{Follow-up Question} Ray Kreig: I am not seeing what the confrontation clauses are.

{Answer} Scott Ogan: Section 3 of HB115, shall transfer by the deadline.

{Comment} Mead Treadwell: We come up with a workable HB115 that gets us to join Utah in the lawsuit.

{Comment} Craig Fleener: Should show that we consider it good to revise HB115 to be less confrontational, and we leave it to the legislature to come up with the language instead of having us debate it.

{Comment} Ray Kreig: Very strongly support the Chair's approach – elevate HB115. We may be better off leaving out the part about advising there be less confrontation. All in favor of overall direction of elevating this and giving Representative Chenault recognition and soliciting his support.

{Comment} Scott Ogan: It might be advantageous to have two vehicles. Leg Legal has an opinion that HB 115 was unconstitutional, so we could have two vehicles operating simultaneously. Maybe this will be the one that gets the juice and makes it through.

{Response} Bud Fate: But it is a resolution, gives the idea, but HB115 has teeth in it and is asking the State to do something. This could be a great companion, and I agree two is better than one, but this will not engender a lot of activity, whereas HB115 will.

Mead Treadwell – Is there consensus on Bud's point of saying this is our advice letter to CACFA, to take or move as it pleases, and point two is to say we would like to see HB115 move with suitable amendments to get the State started in joining Utah in this lawsuit? And all the language in Scott's resolution bolsters the case, send that forward as a letter of testimony. If the fallback later on is that HB115 won't fly because lawyers don't agree or etc., then drop it in as a law that looks like a resolution.

Bud Fate – Is that an amendment to the amendment?

Scott Ogan accepts

Craig Fleener – Second

Amendment to the original motion: Include preamble to proposed resolution that this is to go to CACFA, as passed, and CACFA, in its discretion, can move it to the legislature, which can entertain it. Further include ASLAG would like to see HB115 move with suitable amendments to get the State started in joining Utah in its lawsuit, forwarding the resolution as a letter of testimony.

*No objection*

Amendment passes

Bud Fate – Motion to approve resolution, as amended

Craig Fleener – Second

{Comment} John Crowther: I realize we are not a body that meets all the time and can argue about language, and that might stand in the way of a deliverable, but a lot of the language in here I am not sure I agree with, so I am not sure how to approach that.

{Response} Mead Treadwell: We can frame it as advisory, attach the Utah Litigation Report.

{Response} Bud Fate: We can provide a letter of intent along with this.

{Follow-up Comment} John Crowther: I would agree, if these are rhetorical points alone, but I feel we should do our due diligence.

{Response} Bud Fate: However we refine it, until everyone is perfectly at ease, CACFA will find something to revise. I am not hung up on finer points, even though there are some I question, and if CACFA wants to clean up those points, I'd like to move it on.

{Follow-up Comment} John Crowther: With that understanding, I am satisfied.

{Response} Stan Leaphart: We are submitting this to CACFA, they will not forward until they are comfortable, which may require some wordsmithing and those concerns can be addressed.

Vote on the main motion as amended

*All Ayes*

Motion passes

### **3:45pm: Focal Area Updates**

Mead Treadwell – Lots of arguments about devolution, lots of arguments about the problems. Let's think about each of the focal area updates for the next meeting, get the agreement on components of the outline for our report to CACFA. Let's get to an outline stage with proposed conclusions by the next meeting.

Bud Fate – No qualms at all about that approach. I will be out of commission for three weeks.

Mead Treadwell – If there are specific ideas, it is time to sort out what we stirred up. I would like us to get to an outline of a report.

Stan Leaphart – Outline what we want the report to look like. We could study in every way possible and come up with 1000-page report, but we need an outline and move forward to fill in those gaps.

Ron Somerville – Concerned about the money, when it comes to waiting until March to get a report. We need to encourage every member of CACFA to look at how we can demonstrate to the legislature the unique role we play and prove we are giving the State a meaningful product for that \$200,000 we fought so hard for. We are not pleading, we need to demonstrate we are doing something positive.

Craig Fleener – It will be far easier to justify that if, when we present a report in March that provides a list of successes, we lay it out to the Governor and the legislature. Both what we have done and what we are doing and see in the future. We need a long-term vision, convince people this is worthwhile.

Ron Somerville – Still concerned about the timing.

Mead Treadwell – In the next two weeks, let's come up with simple one-liners we can put into outlines as the bottom line, report writers can come back with more later. Let's get it organized into action items.

Stan Leaphart – This group submitted a report to CACFA in October, so we will not start with a blank slate. We have something to build off of, something timely and informative, so let's crib off of that report, as well.

#### **4:05pm: Set Next Meeting Date**

*Proposed date of March 4, 10am to 4pm*

*Teleconference with partial in-person meeting in the Atwood Building, Anchorage*

#### **4:10pm: Adjourn**

#### **Action Items**

- Send letter to Donald Trump, all Presidential candidates, not let his statement opposing the transfer of public lands to go unchecked
- Ask legislature to follow through with HB115
- Research effectiveness of no more clause
- Compare/contrast devolution authorities, range of possibility
- ASLAG and CACFA to hold joint work session to talk about all of these things and formulate a plan for the future, even if we have to do it on our own; put a plan into place for how to fix these land and access issues, not tackle them one at a time, without time, without money, as we get inundated
- Need an army of retired Alaskans to help us write these things up; even with the funding that CACFA had, it won't be enough to get done what needs to be done; we need to look outside of what has been funded and find possibilities
- [In Two Weeks] Skeletal outlines (“one-liners”) on focal areas
- [By Next Meeting] Outlines on focal areas for the draft report