

**Alaska Citizens' Advisory Commission on Federal Areas  
Federal Overreach Summit  
Randy Ruaro's Remarks – AS DELIVERED  
8.12.13**

Good morning Mr. Chairman, members of CACFA. Thank you for the opportunity to testify today. For the record, my name is Randy Ruaro. R-U-A-R-O. I am a policy advisor to Governor Parnell.

I am also a 3<sup>rd</sup> generation Alaskan. Born and raised in Ketchikan, Alaska. Natural resource-related jobs allowed me the opportunity to work hard and earn enough money to become the first member of my immediate family to attend and complete college and law school.

Mr. Chairman, the topic of federal/state relations is critical for Alaska to a greater degree than many other states. This is due in large part to the extensive amounts of land in federal ownership and the many federal laws that extend beyond the boundaries of federal land to impact all other land owners, State, ANCSA corporations, and private.

Examples of such triggers are the presence of wetlands on property, or having your land included as critical habitat for an endangered species, or simply developing your land and being subject to a federal NEPA process.

Mr. Chairman, Article 8, section 1 and section 2 of our Constitution is our guide. It sets the policy of the State as encouraging the settlement of our land and development of our natural resources for the maximum benefit of all Alaskans.

“Maximum benefit of Alaskans” includes good paying jobs. It is particularly very expensive to live in rural Alaska. Families have to be able to afford to not only survive, but have their children provided with that same opportunity or to send their children to college or a trade school if they so choose. Good-paying, family-wage jobs based on natural resource development provide that opportunity.

Mr. Chairman, the directions were to share some perspectives on decisions by federal agencies that impact the ability of Alaskans to use the land and resources in a responsible and productive manner. With the chair’s permission, I will walk the committee through several examples and then discuss recommendations on how to mitigate or improve relations with the federal government.

But before I do that Mr. Chairman, I would like to point out some common efforts the State takes when dealing with federal actions:

First, at the direction of the Governor, we are vigilant and on the watch for federal actions that threaten the ability of Alaskans to use the land and seas. This

might sound like an easy task but there have been hundreds if not thousands of regulatory and other actions taken by the Obama Administration. And sometimes it can be just one part of the overall regulation package that is a concern. Notice of these actions is usually required in the Federal Register, but it is a herculean task just to track and find all the issues. We work with the D.C. Office of the Governor, and other Western States on this monitoring effort.

Second, when we identify an issue due to federal action, regulations, etc., we involve our agency experts and the Department of Law. We want to make sure we understand issues and impacts on Alaska and the scope of authority Congress granted to the agency to act. We need this information to make sure the federal agency is not acting outside that authority, (“ultra vires”) in an illegal manner.

Third, we often inquire into whether the proper procedure is being followed. For example, under NEPA, we ask whether the federal agency action is a “major federal action.” This question is important for the purposes of NEPA because if it is a major federal action, the federal agency may have to perform an environmental impact statement before it can take action. This means the public and the State will get a chance to comment before a final decision is made.

The interesting aspect of NEPA is that it does not discriminate. It catches attempts at action by a federal agency and stalls it until sometimes years of work and review is completed regardless of whether it is a “green” project for renewable energy or oil and gas development. NEPA can catch and slow down or stop just about any federal action.

The U.S. Chamber of Commerce produced a study called “Project No Project” that found a number of energy projects stuck in the permitting process. These projects, if allowed to proceed to construction, would have produced a \$1.1 trillion short-term boost to the economy and created 1.9 million jobs. After construction, operation of the projects could generate as much as \$145 billion in economic benefits and another 791,000 jobs.

We also ask whether the action qualifies as a “regulation” under the federal Administrative Procedures Act? If so, that formal process must be followed, which also requires the federal agency to give notice and an opportunity for the State and the public to be heard before taking action. Some regulations also require an analysis of the impacts of the regulations on small businesses.

Fourth, once we have identified the substance of the federal action and the process that applies, our State agency personnel work very hard to research the issues and prepare comments to the federal government. It is not uncommon for us to submit our comments multiple times and there are often several in-person meetings with federal personnel to try and communicate our concerns.

Finally, with one fact pattern type of exception that I will talk about in a minute, it is only after we have gone through this review and comment process, (a process that often takes many months) that the State will litigate against the federal government. The point here is that even though we are often ignored by the federal government, we will continue to try and work with, and educate the federal government about the facts in Alaska.

The facts are that Alaska is very different than other places in the United States. You can't truly understand Alaska from Washington D.C. We often express legal concerns, which we find are related to protections provided in ANILCA for State or other interests or other federal statutes.

The exception to the efforts described above is when the federal government decides to implement a policy that is developed internally and never shared with the States or the public before it is decreed and mandated from Washington D.C.

When this occurs, the State is left with no choice but to litigate and/or ask our congressional delegation for relief in the form of a statute change or budget action.

### **RS 2477 – Rights of Way**

Some specific examples are the February 20, 2009 memo from then Acting Director of the BLM Ron Wenker. Mr. Wenker set a new policy for the BLM; it has been directed not to process or review any claims for public rights of way under RS 2477, a law that provides the public the opportunity for access across federal lands to reach mining claims, recreational hunting or fishing areas, etc.

The BLM never sought any input on this rule from any state or the general public that I am aware of. There was probably input and lobbying from environmental NGOs, but they never asked us what we thought of such a blanket prohibition on RS 2477 claims. If they had stopped to ask states, counties, or the public, they would have heard, “This will result in you being sued and worsen your

relationship with states, counties, and the public. Don't do it." It has. Utah has filed thousands of RS 2477 claims and Alaska recently filed in federal court as well.

### **Secretary of the Interior – Wild Lands Policy**

Fact pattern is the same, the secretary never sought the input of the states or the general public before surprising everyone – with the possible exception of the environmental NGO's, by issuing a secretarial order creating a new policy that would have created de facto wilderness designations for federal lands. If they had stopped to ask us and other states, and counties, and the public first, they would have heard, "Don't do it. It will get you sued, and worsen your relationship with the states, counties, and the public." It did. At the Governor's direction, the State of Alaska joined with the states of Utah and Wyoming and several county governments and sued the Department of the Interior. After being sued and after hearing from Congress, the Wild Lands Policy was withdrawn.

So those are examples of unilateral action by the federal government that were intentionally taken in a manner so as to not provide states, counties, or the public the chance to provide input and participate in a meaningful dialogue and process. When that happens, the federal government has provided only one choice to states: Litigate.

We hope the federal government understands and respects states, counties, and the public in general, to stop taking these kinds of actions. They damage relations and are simply unfair to everyone involved.

There are also those cases or instances where there is a chance to participate in a process.

### **NPR-A**

As frustrating as RS 2477s and Wild Lands were, it can be more frustrating to actually have a chance to provide input and be part of a process with the federal agency, only to have the process have a pre-determined outcome.

With the NPR-A planning process, the state participated as a cooperating agency. We were supposed to be part of the process and meaningfully involved with our concerns heard. The hope was to produce a work product – land use plan – that was fair and balanced. Instead, State employees from several agencies spent over a year providing comments and concerns, meeting with local federal officials to develop alternatives, participating in public meetings, only to have the secretary jet into Alaska from D.C., with no notice to the State, (after the public meetings ended), land on the North Slope, and announce he had come up with a new alternative, one that was new to the table, putting thousands of acres of land off



limits to development, and isolating federal leases and state offshore leases, and jet out again. The State and North Slope Borough protested, was not listened to; and that became the final decision for the NPR-A.

It was extremely frustrating for the State, the North Slope Borough, and members of the public.

It's an example of a type of action, where a process is allowed or required by the federal government, but it is not a true meaningful opportunity to participate in the decision.

### **Izembek Road**

A similar example to NPR-A is the Izembek Road. Again, the State offered to dedicate resources and personnel to help the federal agency make a good decision. In this case, it was to save the lives of Alaskans and fulfill its trust obligation to Alaska Natives to provide the best health care possible to the residents of King Cove by allowing them a 13-foot-wide gravel road to finish connecting King Cove to Cold Bay. Again, the State's comments, strongly supporting the road, along with the comments from the local tribes, local Alaska communities, and local ANCSA corporations, were completely ignored by the U.S. Fish and Wildlife Service.

Fortunately, Secretary Salazar, and now Secretary Jewell have agreed to conduct an additional review of the issue despite the recommendation of USFWS.

### **Tongass**

You will hear from Kyle Moselle [Alaska DNR] on this issue. Here I would commend [Forest Service] Chief [Tom] Tidwell for actually visiting the Tongass and listening to residents' views that 300,000 of lands for timber supply is not enough on an 18-million acre forest.

There are success stories of cooperation.

### **Logjam Timber Sale**

The State coordinated with the U.S. Forest Service to create the Logjam timber sale in Prince of Wales Island, and then jointly defended the sale against eight different injunction requests by environmental NGOs to stop the sale. Stopping the sale would have meant killing 40 to 50 good-paying jobs on the island and wiping out those families who depend on those jobs.

### **Arctic Port Project**

The State is coordinating and working with the U.S. Army Corps of Engineers to develop recommendations for an Arctic port site, focused now on Port Clarence and Nome as a potential site. The Corps expertise will be very helpful in this work.

### **Arctic Mapping**

The State is working with several federal agencies to map the Arctic with digital elevation mapping. This type of mapping is very helpful to plan infrastructure and development, and serves as a base layer for additional mapping of the location of natural resources.

### **How To Mitigate Those Impacts**

To mitigate the impacts of certain federal decisions, you have to do exactly what the State has been doing for years at the direction of Governor Parnell: Be vigilant, do your homework and make the best efforts possible to educate federal bureaucrats in Washington D.C., who are often making the decisions, that Alaska is different, that we have strong programs in place to protect the environment and responsibly develop resources. We met with a chief advisor for the president, Ms. [Nancy] Sutley and had our agency personnel describe our programs and functions. Hopefully, the need and the benefit of working with the State before

federal actions are taken will have an effect. [We] litigate as a last resort and communicate with our congressional delegation about what federal agencies are doing and the impacts they are having on Alaskans.

Another way to mitigate the impacts is, again, a step we are already taking, which is to fund our own science and research, particularly on Endangered Species Act issues. The Governor has led efforts for funding independent State research and the Legislature has supported those efforts. It helps, or should help, in discussions with the federal government if we have good science and research to present to them when trying to work with them. Unfortunately, we have seen the same pattern as described above where the State is simply ignored. With Western Stellar Sea Lions and the shutting down of the cod fishery, the State funded independent science review of the decision, which found the federal science was wrong. The cod fishery was not a threat to Steller sea lions. We were ignored and forced to litigate. We will keep working to find the best research and facts and present them to the federal government in support of our position.

### **Avoiding Future Impacts And Improving Our Relationship**

To avoid future impacts, we should continue our methods that are in place now: Communicate, educate, try to protect Alaska jobs and families and, as a last resort, litigate.

What would help improve the relationship in most instances is for Washington D.C. to give back control and decision making authority to the federal regions and local authorities, many of whom are lifelong Alaskans who understand our issues and concerns. The more tightly held control is by federal bureaucrats in Washington D.C., the more difficult it will be to avoid future impacts and improve our relationship. For a while, simple special use permits to go into the Tongass had to be sent to [Agriculture] Secretary [Tom] Vilsack for his approval, a process that often took months. That level of micromanagement and control is not helpful.

With more local control returned to federal land management agencies, there is room to enter into MOUs for how the State and federal government will resolve disputes, when and how they will communicate on issues. This will rebuild the relationship.

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