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ANILCA and other Compromises and Agreements

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Introduction

For those of you who do not know me, I should introduce myself. My name is Ron Somerville and I am a 73 year resident of Alaska. My folks moved to Alaska when I was a year old and took up permanent residence in Craig, Alaska. I worked my way through College commercial fishing in the summers and eventually received a Bachelor Degree in Wildlife Management from Humboldt State College in Arcata, California and a Master Degree in Wildlife Management from the University of Montana in Missoula, Montana. My 24 year career in the Alaska Department of Fish and Game included stints as a research biologist, management biologist, habitat biologist, Regional Supervisor, Director of Wildlife Conservation and Deputy Commissioner. I also served as the National and International Director for the Wildlife Legislative Fund of America and Executive Director for the Alaska Outdoor Council. The last 12 years of my career were dedicated to the position as Resource Consultant to the Alaska Legislature and eventually to the Governor of Alaska.

During my tenure with the Alaska Department of Fish and Game, I served as the Department's liaison with the Federal/State Land Use Planning Commission and subsequently as the Department's representative on Governor Jay Hammonds d(2) Task Force. I served on the Task Force for almost 4 years. This latter assignment gave me an insight into the difficulties of crafting national legislation that would affect only one state and give unfettered power to the federal agencies while trying to protect the State's interests and those of its residents.

Since Statehood in 1959, the State has been bombarded with federal legislation and bureaucratic regulatory processes that are unparalleled in the history of our great country. Some of these statutory or regulatory processes affected all or most states (i.e. the Endangered Species Act, ESA, and the Marine Mammal Protection Act, MMPA) while others were directed specifically at Alaska (i.e. the Alaska Native Claims Settlement Act, ANCSA, and the Alaska National Interest Lands Conservation Act, ANILCA). While significant benefits accrued to Alaskan Natives, the state and all Alaskans with the settlement of the land claims and the resulting development of the North Slope oil fields, significant sacrifices and unintended consequences have been forced on the state. I believe the purpose of this Summit is to examine and document those consequences and offer possible solutions.

Some of the participants I have talked to about this Summit seem to agree that we are not here to just whine about the pathetic treatment the state is receiving from the federal government and federal courts. Some of

us have been documenting federal abuses of authority and power for over 30 years and, by and large, it has done little to alter the course of federal over-reach.

However, there may be some cathartic benefits for us all to eventually produce an accurate documentation of federal abuses of authority and the callous disregard for the documented agreements and promises made to the people of the 49th state. I am convinced that without a definitive and aggressive program to combat continued federal regulatory and statutory abuses, the future economic and social fiber of our state is in serious jeopardy.

The state has been blessed with an almost unlimited number of commissions, councils, conventions, boards and committees with charges to regulate, coordinate, plan and over-see resource development, the uses of Alaska's natural resources and the conduct of the everyday lives of Alaskans. The Federal/State Land Use Planning Commission certainly set the stage for the eventual debate and passage of ANILCA while others have been less successful in meeting their stated goals.

In 2000, the Alaska Miners Association produced a booklet titled "d(2), Part 2" or "A report to the People of Alaska on the Land Promises Made in ANILCA (the Alaska National Interest Lands Conservation Act)." That document should be made a part of this record as it provides a progressive record of federal abuses and concocted conflicts being purposely directed at the state in direct conflict with the provisions of the Act.

My intent in this paper to summarize some of the more egregious actions of the federal government that I have dealt with personally and the long term impacts of these actions. Others at this Summit will provide other examples and more detail than I can because of their past exposures and experiences in these arenas. It is also my intent to offer my assessment of where we are as a State and some possible courses of actions that could or should be considered.

Endangered Species Act

The Endangered Species Act (ESA) is one of the most powerful tools that environmental groups use to stymie economic development. This is used effectively in Alaska, throughout the country and, in fact, man other countries. Placing a species, subspecies or population segment on the list as "endangered" or "threatened" produces an endless array of federal oversight procedures and bottlenecks. It certainly subjects any proposed activity within areas listed as critical habitat to multiple agency reviews and makes a perfect platform for any environmental group to litigate.

I have listed this Act here because it needs to be changed. During my tenure with the Department of Fish and Game and my employment with the Legislative leadership, we made a couple of attempts to help coordinate efforts to make rational modifications to the ESA. The most successful was a collective effort to work through the Western Governor's Conference and the National Governor's Conference to advocate modifications to the Act. Although some improvements can be made through administrative action, the courts have so badly disconnected parts of the Act that it needs to be reviewed, clarified and amended with specific improvements.

The courts have forced the agencies to treat "endangered" and "threatened" species the same as far as protective measures are concerned. Congress never intended that interpretation. A species is listed as "threatened" to identify when a species is declining and, if not corrected, may become "endangered." Activities allowed within the habitat of threatened species can be much more lenient than are applied to those that are listed as endangered.

Other major amendments are needed such as identifying population objectives in the recovery plans which, when reached, trigger delisting processes. Frequently, agency recovery plans are so vague that they can keep a species listed forever.

Since the Act has not been reauthorized for more than one year for some time now, it is time to address this issue again and develop a supporting cast of states to focus on the process again.

Navigable Waters

Alaska became a State in 1959 and under the Equal Footing Doctrine and the Submerged Lands Act inherited title to almost 60+ million acres of submerged lands. However, settling title to those lands has been an onerous task of gigantic proportions. Alaska has over 20,000+ potentially navigable rivers and well over 1 million lakes that could qualify as navigable and at the present rate of title resolution it could take thousands of years to settle the State's claims.. Unfortunately, time works against the State as it has to prove, on a case by case basis, that the water body was navigable at the time of statehood. Couple that with an uncooperative Federal Government and the task rates high on our "Mission Impossible" list. This issue must be addressed or the state stands to lose, by attrition, a major part of its statehood entitlement.

I have included a paper (appendix # 1) that Mr. Ted Popely and I wrote for the legislative majority in 2004. This information was put together with help from the Department of Law and legislative legal counsel. The legislature subsequently passed legislation authorizing the creation of a Joint Federal/State Commission with authority to identify and resolve navigability determinations in hopes that the Federal Government could be enticed to participate in such an endeavor to reduce the title resolution issue from thousands of years to a few hundred.

This issue has broader implication as the native community attempts to resolve the title to its lands. Hundreds of rivers, lakes and streams considered navigable by the State were determined to be non-navigable by BLM prior to 1983 when lands were conveyed to village or regional corporations under ANCSA. This issue becomes more critical as efforts are made by the federal government to establish a deadline for completing the land conveyance process. If the State exerts its title rights, ANCSA corporations may be unable to replace erroneously conveyed submerged lands if the selection process has been terminated.

The State must file a Quiet Title Action in federal courts to definitively resolve a dispute with the federal government regarding ownership of a navigable water body. The federal agencies have taken a very narrow interpretation of the Quiet Title Act asserting that the courts have no jurisdiction to hear quiet title actions unless the federal government expressly asserts an interest in the lands. The courts have upheld this view in

some cases which means that the State's title cannot be resolved if the federal government refuses to cooperate. The Quiet Title Act must be amended to allow the State to quiet title to its lands by forcing the federal government to either assert an interest or concede title.

Every effort must be made to look for some cooperative solution to this title problem. If nothing is done or the rate of title resolution remains the same, literally billions of dollars will be wasted on litigation and endless surveys and documentation. In the end, the State will still not receive its total entitlement.

Wilderness Management

One of the most insidious examples of federal over-reach is in the area of "wilderness" management. Congress made over nine amendments to the Wilderness Act for the 55 million+ acres established as "wilderness" in ANILCA. Obviously, Congress sent a message to the agencies that wilderness areas in Alaska were not to be patterned after the "Bob Marshall Wilderness Area" in Montana. For instance, aircraft and other transportation methods were specifically allowed in wilderness areas, subject to reasonable regulation, of course.

Unfortunately, the Act left considerable discretion up to the Regional Directors of the Federal agencies to decide whether a proposed non-traditional activity, such as the use of power equipment for maintaining emergency and cabin facilities in wilderness areas, will be allowed.

Throughout the hearing process, the Federal agencies testified that they recognized that wilderness in Alaska had to be treated differently because of the size and location of many of the areas. Although Senator Stevens was asked by those of us on the d (2) Task Force to list as many exception items as possible in the law, he decided after continued promises from the agencies that they would be reasonable, to only target aircraft and other transportation specifically. All other exceptions like the use of power equipment for administrative purposes were left to the reasonable discretion of the agencies. A big mistake.

For example, in Southeast Alaska, the Territorial Sportsmen had built, furnished and maintained cabins within the Tongass National Forest for over 30 years when ANILCA passed in 1980. After passage of the Act, the sportsmen continued to maintain and furnish support for the cabins within the forest, including those in the wilderness areas. This included cutting and stacking wood, repairing cabins, clearing the sites and general maintenance. Obviously, the volunteer crews used power equipment such as chain saws and generators. Usually this activity was conducted in the spring when no one else was using the cabins and the disturbance was limited and minimal.

The sportsmen continued this volunteer work for another 20+ years after ANILCA passed. However, the U.S. Forest Service Regional Director made a policy change, counter to the intent of ANILCA and the testimony of the agency during the hearings, to limit the use of power equipment to align the management of the wilderness areas in Alaska more closely to the requirements for wilderness areas in the lower 48. The sportsmen decided that they could no longer call on volunteers to supply wood and cabin maintenance services without the temporary use of power tools and the 50+ year cooperative program was terminated.

Although these actions do not have the implications of other federal over-reach examples such as the restriction of access or closure to mining and logging, it does clearly illustrate the cavalier attitude of the agencies and the loss of respect for the basic promises made in ANILCA. In retrospect, Senator Stevens should have listed every possible exception to the Wilderness Act that we could have provided. It might have made ANILCA look like Obamacare in length but it would have served the state interests much better. It also gives us a clue as to how to treat any future federal legislation affecting our State.

Remote Cabin Policies

ANILCA clearly provided for the continued building, maintaining and use of remote cabins within the Conservation Units. In many cases, the federal agencies have established conflicting policies designed to eliminate some of the cabins entirely or to discourage their use. The size of the Conservation Units and their locations require some shelters for safety purposes and for the continued public uses that have been authorized in the Act. Although the Act provides for continued public ownership and use of some remote cabins, subject to some phase out periods, the agencies have adopted stringent policies and regulations designed to discourage public uses. Fees for some of the cabins have been set at exorbitant levels.

If possible, clarifying amendments to ANILCA should be considered to overturn these stringent counter-productive policies.

Compendium Regulations

CACFA and the State agencies have consistently hammered the National Park Service on their illegal use of compendium regulations. Compendium regulations are intended for emergency short term purposes. Permanent regulations, on the other hand, are specifically addressed in ANILCA and require a more elaborate hearing and documentation process. Hearings are specifically required to be held in the vicinity of the area regulated. In order to avoid the more stringent requirements of ANILCA, the agency has adopted compendium regulations which has less stringent notice requirements and kept them in force for years. This process is illegal under ANILCA and National Park Service regulations.

Although the Service has agreed at times to alter this practice, it has continued to this day. The State has to quit complaining and litigate to force the agency to comply with ANILCA and its own regulations. Although the end result may not differ, it at least guarantees that those Alaskans most affected by the regulations will have direct input into the decision. That is something they are not afforded while the compendium regulations are in place.

CACFA records can be provided to document specific examples for review.

National Preserves

It was clear during the debate and hearings on H.R. 39 (eventually ANILCA) that the environmental community and the conservation oriented Congressmen and Senators were pushing for vast expansions of the National Park System in Alaska. Literally millions of acres of expanded National Park areas were proposed and seriously considered.

The Alaska d (2) Task Force was asked to look for innovative ways to minimize the impacts of an expanded National Park System. I eventually came across an area in Texas called a National Preserve. It was administered by the Park Service but specifically allowed a variety of activities, like hunting, fishing and trapping and other recreational activities, which are either not allowed or limited in National Parks. We were advised by officials in Texas that it had worked well to that date.

The Alaska delegation focused on limiting the National Park expansions in ANILCA and providing further expansion in the form of National Preserves. In most cases, the Preserves served as buffers to the core Park areas, a concept that was advocated by the environmental groups. ANILCA clearly establishes that traditional activities such as hunting, fishing, subsistence and trapping will be allowed under applicable State and Federal laws.

The National Park Service has systematically attempted to restrict or limit uses in National Preserves under the pretense of protecting core Park values. Eliminating remote cabins in Preserves serves to discourage subsistence and trapping uses. The refusal to comply with provisions of the Memorandum of Understanding with the Alaska Department of Fish and Game has resulted in conflicting management regulations with the State.

Continued monitoring, commenting on plans and litigation may be necessary to protect the purposes of the National Preserves.

Fish and Wildlife Management

At statehood, Alaska accepted the authority and responsibility to manage its fish and wildlife under the provisions of its own Constitution. As with other states, Alaska was subject to the whims of Washington DC and the Federal agencies designated to manage federal lands in the State. Depending on the Organic legislation establishing various federal withdrawals in Alaska, the impacts on Alaskans varied from the most restrictive being the National Park Service prohibition against taking fish and wildlife to the Bureau of Land Management which relied almost exclusively on State management. Varying degrees of Federal restrictions were exercised by the U.S. Forest Service, the U.S. Fish and Wildlife Service and the Department of Defense.

The focus of my report is on ANILCA. Title VIII of ANILCA establishes a priority for subsistence taking of fish and wildlife on all federal public lands. The legislation was crafted after the State passed legislation giving a subsistence priority to the taking of fish and wildlife on all lands in Alaska. Although original drafts of the Federal legislation focused on a priority for subsistence taking by Alaskan Natives, Governor Hammond

rejected that approach because the State would be unable to implement the law due to its Constitutional prohibition on racial discrimination. After subsequent changes, the drafts and final version resolved to base the priority on residency: a rural priority. The d (2) Task Force struggled with this requirement but the State was continually assured that it would be the primary manager and regulator. The State was also assured that the definition of the terms used in Title VIII would be left primarily to the State subject to a limited federal over-view. The establishment and maintenance of Regional Advisory Councils and implementation of Title VIII was to be done by the State with up to $5 million in annual financial support from the Federal Government. Surprisingly, the most the State ever received was $900,000.

Alaska Department of Fish and Game Commissioner Ron Skoog and Alaska Department of Natural Resources Commissioner Robert Le Resche requested that the Attorney General's office do a review of the proposed legislation in 1978. The response is attached to this report as appendix # 2. In a nutshell the review expressed several key points: (1) a lack of recognition of the State's ownership of submerged lands and associated authority over the management of the water column; (2) concerns that the State would be unable to implement the law because the rural priority requirement violated the State's Constitution; and (3) concerns that approval of a State plan would be a major Federal action subject to NEPA.

The same year, at the request of Senator Stevens, the Alaska Department of Fish and Game submitted a list of concerns and recommended amendments to the proposed law. That is included as Appendix #3.

These issues were debated extensively with our Congressional delegation and their staff. The primary results were that the reference to "waters and interests therein" was not excluded from the bill. However in response to our concern over being forced to amend the State Constitution, Senator Stevens requested and was granted the inclusion of the following language:

> Sec. 1314. (a) Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII, **or to amend the Alaska Constitution (emphasis added).**

Clearly it was the intent of the Alaska delegation and Governor Hammond that Alaska not be required to amend its Constitution while attempting to implement this section of the law. As most of you are aware that issue has been the hot topic over the last twenty years. The big question is whether or not that was the intent of the law and how do we correct the abuses that have been handed out by the Federal courts and the Federal agencies since 1980.

The other point to amplify here is the manner in which the law was implemented by the Federal agencies subject to the dictates of the Federal courts. As most people here are aware, Alaska now has a massive overlap of federal and state regulations dealing with subsistence which is frequently referred to as "dual management." Unfortunately, there are numerous regulatory conflicts and ambiguities which place the general public at risk and results in degenerating management programs and often non-existent enforcement of critical resource management provisions.

From the State's perspective, working with the Federal Subsistence Board has been nothing less than frustrating. While the Federal Subsistence Board (FSB), Advisory Committees and the Federal agencies cry for State fish and wildlife data and expertise, the State is rarely allowed to speak on its behalf at FSB meetings. The result is misinterpretation of data and misrepresentation of the Alaska Department of Fish and Game's position on specific issues. The FSB has refused to establish "meaningful subsistence preference standards" and consistent "evaluation standards of evidence" for determining "customary and traditional uses" as the State has done. The FSB has also been negligent in keeping up with regulatory changes when their regulations were intended to mirror State regulations. The result is a myriad of inconsistent and conflicting regulations.

It is not unusual for the FSB and the Federal agencies to ignore existing policies, regulations or the law related to providing subsistence priority. Clearly communities like Sitka have met statutory guidelines where they no longer qualify as rural under ANILCA. However, the FSB ignored the standards for these communities in order to satisfy special interest group demands for a continued priority for taking fish and wildlife. These abuses cry for Secretary of Interior and Secretary of Agriculture directives establishing clear and precise procedures for the FSB. I have submitted Appendix #4 which provides more detailed recommendations.

While the subsistence issue has bounced around in the courts, the Federal agencies, under the guidance of the Federal Subsistence Council, has been adopting regulations for federal public lands. One of the major problems is that the Federal courts have concluded that the "waters and interests therein" provision applies to all waters where the Federal Government has a reserved water right. Without following established adjudication procedures for reserved water rights, the Federal Government has claimed water rights to water bodies within, adjacent to, upstream and downstream from the Conservation Units. The resulting claim to a vast number of water bodies has placed the State's entitlement and management programs in extreme jeopardy. This process has to be addressed by the State administration and most likely through aggressive litigation.

During my tenure on the Alaska Board of Game there was an attempt to try to craft some solutions to the growing conflicts between the State and Federal agencies over subsistence management. Dr. Wayne Regelin and I produced a White Paper (appendix #4) designed to offer administrative solutions which could significantly reduce the conflicts without getting into the jurisdictional issues. Basically, the proposal was for greater cooperation, sharing of data, reducing regulatory duplication, clarifying and synchronizing terms and producing consistent background information to support regulations. After submitting the White Paper to the Department of Interior, meetings were set up to discuss our suggestions. Our group was led by Deputy Commissioner Dr. Regelin and the Federal agencies were led by former Senator Drue Pearce, a Special Assistant to the Secretary of Interior. Although the effort resulted in some enlightening discussions and even some agreements on possible administrative actions, nothing substantial ever resulted from our efforts. In fact, the most enlightening statement was a point made by Drue Pearce that," The intent by the Federal government is to make the regulations as onerous as possible to force the State to adopt a Constitutional Amendment."

Needless to say, in terms of management many of the State's management programs which overlap Federal lands and waters are in disarray. In addition, the courts are being petitioned to expand federal control over state waters beyond what has already been asserted. The Federal Subsistence Board has crafted language

allowing federal preemption beyond Federal lands and waters to meet the stated requirements of Title VIII of ANILCA.

It is also surprising that while the State has activated specific predator management programs to benefit subsistence users, the Federal agencies refuse to participate in habitat modifications or predator management programs to provide subsistence benefits to the same rural residents they are required by law to protect.

These growing conflicts must be addressed either through Congressional action or by litigation.

No More Clause

Section 101 (d) of ANILCA states:

"This Act provides sufficient protection for the national interest in he scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."

Although we all recognize that one Congress cannot tie the hands of a future Congress, it makes sense that a future Congress should have to pass a law to change a law. Federal agencies are ignoring this part of the law and proceeding with plans to create future classifications of Federal lands in Alaska.

The records of CACFA, the Department of Natural Resources, the Department of Fish and Game and the Department of Law are full of filed grievances against the Federal agencies for violating this provision of ANILCA. The booklet "d (2), Part 2" published by the Alaska Miners Association adequately covers this as well. Thus, I will only mention it here and rely on others to fill in most of the details.

One key point needs to be stressed here. Almost all of the Federal agencies are keeping qualified "roadless" areas in a quasi-wilderness condition so that when the stars are aligned, it will be favorable to approach Congress to create additional Wilderness Classifications in Alaska. Studies are being completed and prepared for that occasion. The result is the administrative expansion of the Wilderness areas. That was not the intent of ANILCA.

Wild & Scenic Rivers & Access

During the debates and negotiations on ANILCA, numerous discussions surrounded the designations of Wild and Scenic Rivers. Most of us were baffled by some of the proposals until it was confirmed that the major

purpose was to limit or block access to ice free, salt water ports. This classification coupled with the precise positioning of the Conservation Units has accomplished that in some areas. Title 11 was designed to protect the state from this dilemma but so far no transportation corridor has been established through the Title 11 process.

In my opinion, every effort must be extended to block the creation of additional Wild and Scenic Rivers in Alaska until a comprehensive transportation plan is adopted and protected by Federal and State legislation.

Planning Documents

The files of CACFA are full of an unbelievable number of planning documents provided by the Federal agencies. Some are required by ANILCA and others by the agencies own policies and other applicable Federal laws. The result is, however, beyond comprehension by the general public. An endless array of planning documents is continually thrown at Alaskans in various forms and through numerous electronic and printed mechanisms. It is virtually impossible to keep up with every phase of their process.

We all recognize that it is important to participate in the agency planning processes because of the need to place things on the record. Subsequent court cases over critical issues can and are lost due to the lack of participation by the public as the process progresses. In addition, it is extremely difficult for someone in one region to keep up with the review and comment requirements for their region with little or no time devoted to other regions and sister agencies that could, by policy or regulation, set a bad precedent for their area as well.

Commercial operators that have a vested interest in the outcome of specific planning processes are much better represented in this effort than the general public.

CACFA was twice created to assist the public in the process of dealing with the Federal management programs. In addition, ANILCA teams and assigned staff within the State agencies have tried to keep abreast of these various planning efforts. With all due respect to the staff of CACFA, they are swamped most of the time and need additional support which I will address later.

Memorandums of Understanding

On March 13, 1982, Commissioner Ronald Skoog and Regional Director Keith Schreiner signed a Master Memorandum of Understanding between the Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service. On October 5, 1982 and October 14, 1982, Regional Director John Cook and Commissioner Ronald Skoog respectively signed a Master Memorandum of Understanding between the Alaska Department of Fish and Game and the National Park Service. Both agencies proclaim that these Memorandums have not been terminated and are still in effect to this day. Both Memorandums acknowledge the respective authorities and responsibilities of their agencies and commit to cooperatively manage and share information. However, in harmony with the various provisions of ANILCA, these documents contain several provisions requiring detailed and specific cooperative efforts.

Among other things, the U.S. Fish and Wildlife Memorandum states:

> "The U.S. Fish and Wildlife Service agree to adopt refuge management plans whose provisions—including provisions for animal damage control—are in substantial agreement with the Department's fish and wildlife management plans, unless such plans are determined formally to be incompatible with the purposes for which the respective refuges were established."
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> "The U.S. Fish and Wildlife Service agrees to utilize the State's regulatory process to maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska."

The Memorandum with the National Park Service has key provisions which state:

> "Whereas, the Alaska National Interest Lands Conservation Act and subsequent implementing Federal regulations recognize that the resources and uses of Service lands in Alaska are substantially different than those of similar lands in other states and mandate continued subsistence uses in designated National Parks plus sport hunting and fishing, subsistence, and trapping uses in National Preserves under applicable State and Federal laws and regulations."
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> "The National Park Service agrees to utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska."
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> "The National Park Service agrees to adopt Park and Preserve management plans whose provisions are in substantial agreement with the Department's fish and wildlife management plans, unless such plans are determined formally to be incompatible with the purposes for which the respective Parks and Preserves were established."
>
> "The National Park Service and the Alaska Department of Fish and Game agree that implementation by the Secretary of the Interior of subsistence program recommendations developed by Park and Park Monument Subsistence Resource Commissions pursuant to ANILCA Section 808 (b) will take into account existing State regulations and will use the State's regulatory process as the primary means of developing Park subsistence use regulations.

My reason for highlighting and emphasizing these provisions in the two Memorandums of Understanding is that both the National Park Service and the U.S. Fish and Wildlife Service ignore these parts of the documents. Both agencies selectively ignore the State's regulatory and planning processes and adopt policies and regulations in direct conflict with those crafted by the State without "formally" advising the State and documenting where State regulations or policies are incompatible.

Both federal agencies utilize the Memorandums and Agreements as a mechanism to extract information and data from the State while providing minimal reciprocal cooperation.

These Memorandums should either be followed as prescribed or terminated by the State.

Recorded Federal Abuses

Through the years, I give credit to many parts of the State government that attempted to document and respond to the various Federal actions taken which impacted the State and its residents. The Departments of Law, Fish and Game and Natural Resources were all critically involved to varying degrees. CACFA also served as a depository for state and public comments and complaints. Hopefully, the archives of the agencies and CACFA will be available to help piece together the progression of federal over-reach in Alaska.

To illustrate my point and to make it part of the record, I have attached appendix #5. This summary was produced by CACFA Commissioner Susan Smith and illustrates the magnitude of our growing and festering problem.

Conclusions and Recommendations

My conclusion is that Alaska is rapidly losing the "war" against Washington DC by attrition. Alaska has attempted, in my opinion, to work in good faith with the federal agencies to craft and implement federal laws. If you step back and look at the picture of the State and its economic and social condition today versus those which existed in 1959, there have been vast improvements, primarily due to the discovery of oil on the North Slope and the influx of millions of dollars of federal funds. However, what has happened to the sovereignty of the State and what happened to the promises made to Alaskans before and after statehood are almost criminal.

Alaska's fish and wildlife management situation is a mess. It certainly doesn't resemble anything we envisioned at statehood. We are being economically strangled by the policies and regulations developed by a non-cooperative Federal government. We are on the verge of losing a major portion of our statehood entitlement by conceding title to our submerged lands and the management of the associated water column. Shared revenue from the development of Federal lands has virtually disappeared. Our logging industry in Southeast Alaska has become a non-contributor to the State's economy and the mining industry continues to struggle against Federal regulatory abuses. Residents are being excluded from traditional activities and areas despite promises against such onerous Federal actions. The Federal agencies are directly or indirectly attempting to place stricter and stricter restrictions on the classification of Federal lands in categories that severely restrict public uses.

I have personally sat and listened to Attorney Generals from Charlie Cole to John Burns express concern about aggressive actions against the Federal government because of the need for cooperation from the Federal agencies and special interest groups in other arenas. If we are trading our statehood entitlements for

promises to drill in ANWR, then we need to advise the public of that decision. If we are trading our fish and wildlife management authorities for other economic benefits, then we need to tell the public.

Clearly there is some heavy politics being played with Alaska's entitlements and extracted promises from Washington DC. Unfortunately, the public is excluded from the "need to know" group. We desperately need some assigned entity that can help develop a plan to stop the bleeding plus selectively identify areas where the State can recoup some of its losses. In addition, there needs to be a continuous public relations program to keep Alaskans apprised of documented Federal agency abuses, action taken by the State to correct the abuses and the results of the effort.

This effort cannot be accomplished without the support and participation from the Governor, the Washington delegation and the State Legislature. In light of past actions by the Federal agencies, it is doubtful that the State will gain much traction in this hostile environment without a major commitment to litigation. The AG's office needs to establish a specific section in the Department to handle the growing "state's rights" issues. This group could also provide legal assistance to CACFA, for instance, to help with its continuous efforts to participate by representing the public's interest in all of the various proposed Federal actions. Similarly, the legislature needs to provide enough funds to employ an outside contractor to assist in preparing and representing the State on cases destined to be appealed through the litigation process all the way to the U.S. Supreme Court.

Believe it or not, other States are also experiencing similar problems. Utah is as frustrated as Alaska over the identification and protection of RS 2477 rights-of-way. Almost all of the Western States struggle with erroneous interpretation and application of the Endangered Species Act. A real effort must be made to develop a good working relationship with the other States and particularly when litigation or Federal legislation is considered.

Another effort, coupled with the support of the Western State's, needs to be made to modify the Endangered Species Act. The best chance for success is through the Western Governor's Conference and the National Governor's Conference. I don't believe that ESA has been reauthorized for more than one year for the past 10 years. Using reauthorization as a focal point for change is critical.

I am not proposing that the subsistence priority in ANILCA be modified. I am proposing, however, that an effort be made to clarify exactly what it applies to and what "federal public lands" includes. If the State can contain the federal authority within the boundaries of the Conservation Units then it is possible that a better working relationship can be forged. This clarification must be accomplished as soon as possible and it will require the participation of the Governor, our Washington delegation, and, to some extent, the State Legislature. A failure to address this issue directly will be a de-facto concession of State fish and wildlife management authority to the Federal government.

The State must challenge and oppose any additions to the Wild & scenic River System, the Wilderness System, or additions to the Conservation Units. There is a continual environmental cry for buffers to the existing Parks and Preserves. In fact, the Preserves were created to provide a form of buffer in most cases to the core Park areas.

Existing Memorandums of Understanding between the State and Federal agencies must be followed by both parties or terminated. So far, the State is giving substantially more than it is receiving from the existing agreements.

The State must provide more financial support to the agencies and organizations like CACFA so that they can keep up with the voluminous planning documents created by the Federal agencies. I have already mentioned that legal support is badly needed for the preparation of comments by both the State agencies and CACFA. CACFA does fill an important void because it tends to include more public concerns in its prepared comments. An effort should be made to expand the budget of CACFA to include broader public hearings if necessary. It would also be beneficial to financially support both the State agencies and CACFA's efforts to hold the Federal Government's feet to the fire.

The State must aggressively push for a method to expedite navigable water determinations. Ideally, the "Quiet Title Act" would be amended to allow the State to proceed with the process with or without a Federal expression of a specific position. Ideally some unilateral and independent body would be empowered to at least identify those water bodies that meet the "Gulkana Case" criteria for navigability. This would at least cut the volume of contentious navigability determinations considerably.

Lastly, I would advocate for a more comprehensive public information process to target Alaskans and Washington DC. If it embarrasses the Federal agencies to have their abuses aired in public – so be it. The Feds are not immune to public pressures and they are not fond of bad public relations.

If we have learned nothing else from examining the history of State/Federal relations in our State, it is that we cannot trust the legislative history of Federal legislation to guide the implementation of Federal laws. Like some of us unsuccessfully advised Senator Stevens prior to the passage of ANILCA, "put it in the bill." Hopefully, our Governor and Washington DC delegation take this simple advice to heart.