

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 12, 2020

3:33 p.m.

MEMBERS PRESENT

Senator Peter Micciche, Chair
Senator Click Bishop
Senator Joshua Revak
Senator Scott Kawasaki
Senator Jesse Kiehl

MEMBERS ABSENT

Senator John Coghill, Vice Chair
Senator Cathy Giessel

COMMITTEE CALENDAR

PRESENTATION: REGARDING PENDING CASES AFFECTING ALASKA RESOURCES
BY THE DEPARTMENT OF LAW

- HEAR

D

HOUSE BILL NO. 122 AM

"An Act relating to the Funter Bay marine park unit of the state park system; relating to protection of the social and historical significance of the Unangax cemetery located in Funter Bay and providing for the amendment of the management plan for the Funter Bay marine park unit; and providing for an effective date."

- MOVED HB 122 AM OUT OF COMMITTEE

HOUSE BILL NO. 122 am

"An Act relating to the Funter Bay marine park unit of the state park system; relating to protection of the social and historical significance of the Unangax cemetery located in Funter Bay and providing for the amendment of the management plan for the Funter Bay marine park unit; and providing for an effective date."

- MOVED HB 122 AM OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 122

SHORT TITLE: FUNTER BAY MARINE PARK: UNANGAN CEMETERY

SPONSOR(S): REPRESENTATIVE(S) HANNAN

04/03/19	(H)	READ THE FIRST TIME - REFERRALS
04/03/19	(H)	RES, FIN
04/15/19	(H)	RES AT 1:00 PM BARNES 124
04/15/19	(H)	Heard & Held
04/15/19	(H)	MINUTE(RES)
04/17/19	(H)	RES AT 1:00 PM BARNES 124
04/17/19	(H)	-- MEETING CANCELED --
04/22/19	(H)	RES AT 1:00 PM BARNES 124
04/22/19	(H)	Moved HB 122 Out of Committee
04/22/19	(H)	MINUTE(RES)
04/24/19	(H)	RES RPT 3DP 3NR
04/24/19	(H)	DP: HANNAN, TARR, LINCOLN
04/24/19	(H)	NR: RASMUSSEN, HOPKINS, TALERICO
04/24/19	(H)	FIN REFERRAL REMOVED
05/09/19	(H)	TRANSMITTED TO (S)
05/09/19	(H)	VERSION: HB 122 AM
05/10/19	(S)	READ THE FIRST TIME - REFERRALS
05/10/19	(S)	RES, FIN
02/05/20	(S)	RES AT 3:30 PM BUTROVICH 205
02/05/20	(S)	Heard & Held
02/05/20	(S)	MINUTE(RES)
02/12/20	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

ED SNIFFEN, Deputy Attorney General
Alaska Department of Law
Anchorage, Alaska

POSITION STATEMENT: Participated in an overview of federal litigation affecting Alaska resources.

JESSIE ALLOWAY, Assistant to Attorney General
Civil Division
Opinion, Appeals, and Ethics Section
Alaska Department of Law
Anchorage, Alaska

POSITION STATEMENT: Participated in an overview of federal litigation affecting Alaska resources.

MARY HUNTER GRAMLING, Assistant Attorney General
Civil Division
Natural Resources Section

Alaska Department of Law
Juneau, Alaska

POSITION STATEMENT: Participated in an overview of federal litigation affecting Alaska resources.

REPRESENTATIVE SARA HANNAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 122.

HUNTER MEACHUM, Staff
Representative Sara Hannan
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 122.

RICHARD ZACHAROF, representing self
St. Paul Island, Alaska

POSITION STATEMENT: Testified in support of HB 122.

NIKO SANGUINETTI, Curator of Collections & Exhibits
Juneau Douglas City Museum
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 122.

JOEL BENNETT, representing self
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 122.

ACTION NARRATIVE

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CHAIR PETER MICCICHE called the Senate Resources Standing Committee meeting to order at 3:33 p.m. Present at the call to order were Senators Kiehl, Kawasaki, Revak, and Chair Micciche.

**PRESENTATION: Regarding Pending Cases Affecting Alaska Resources
by the Department of Law**

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CHAIR MICCICHE announced that the first order of business would be a presentation by the Alaska Department of Law (DOL).

[3:34:46 PM](#)

ED SNIFFEN, Deputy Attorney General, Alaska Department of Law, Anchorage, Alaska, discussed, Navigable Waterways Case Sturgeon v. Frost (in official capacity at Dept. of Interior) (Alaska intervened in support of plaintiff; after State's case dismissed, filed amicus) (Sup. Ct., 17-949) AAG C. Brooking, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - State intervened to challenge the U.S. Department of Interior's (DOI) application of National Park Service (NPS) regulations to state navigable waterways. The Ninth Circuit originally ruled in favor of the DOI and dismissed the State's independent challenge for lack of standing. State filed an amicus brief supporting Sturgeon's challenge at the U.S. Supreme Court. The Supreme Court reversed the Ninth Circuit's decision and remanded for further proceedings. On remand the Ninth Circuit again found for the DOI. The Supreme Court heard the case again and ruled in Mr. Sturgeon's favor.
- Status
 - The State is not a party to the case but participated as an amicus, including supporting Mr. Sturgeon's second cert. petition to the U.S. Supreme Court. In March 2019 the U.S. Supreme Court ruled 9-0 in Mr. Sturgeon (and the State's) favor; holding that the State's navigable waters are not transformed into federal lands by virtue of falling within conservation system units created by the Alaska National Interest Lands Conservation Act (ANILCA). The case has been remanded to the lower courts for ministerial follow-up.

MR. SNIFFEN said most people are familiar with Mr. Sturgeon's efforts before the U.S. Supreme Court. The favorable result found that the federal government cannot regulate state navigable waterways. In May 2019, Attorney General Clarkson sent a letter to the National Park Service (NPS) asking them to amend their regulations to conform to the decision in the Sturgeon case. In September 2019, the attorney general sent the U.S. Department of Interior (DOI) a formal petition for rulemaking asking them to change the specific language in their existing regulations to comply with the new mandates that the U.S. Supreme Court laid out in the Sturgeon case. DOL heard from DOI

that they have not promulgated a final rule, but their intent is to have a final rule in place by the end of 2020.

CHAIR MICCICHE asked if DOL expects compliance.

MR. SNIFFEN answered yes. He said DOL expects that NPS and DOI will promulgate a rule that will change the language to conform to the Sturgeon decision. DOL knows that the two agencies are no longer enforcing federal regulations over waters where the state owns the submerged lands.

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JESSIE ALLOWAY, Assistant to Attorney General, Civil Division Opinion, Appeals, and Ethics Section, Alaska Department of Law, Anchorage, Alaska, said she will talk about Alaska's navigability program in cases against federal agencies to determine who owns submerged lands under waterways. She said the Sturgeon case will make the lines for navigability cases even more important. For the Sturgeon case to apply, the State must prove it owns submerged lands, which is what the navigability cases are about.

MS. ALLOWAY explained that the disagreement between the State and the federal government generally falls into two categories: was there pre-statehood withdrawal of submerged lands by the federal government, or are the waterways actually navigable.

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She reviewed, Navigable Waterways Case: Kuskokwim River/Interior Board of Land Appeals (IBLA) Appeal AAG J. Alloway, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - The State requested a recordable disclaimer of interest on the Kuskokwim River to resolve a dispute over ownership of a portion of the riverbed. The Bureau of Land Management (BLM) denied the request, and the State appealed to Interior Board of Land Appeals.
- Status
 - Briefing is complete and we are awaiting a decision by the IBLA.

MS. ALLOWAY detailed that the case is a pre-statehood withdrawal issue. There is agreement on much of the Kuskokwim River except for a small section near McGrath that the federal government

claims withdrawal occurred pre-statehood for a military reservation. They ultimately relinquished the military reservation to general land status prior to statehood, but that was not a valid pre-statehood withdrawal. The Interior Board of Land Appeals decision has been pending since 2016.

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MS. ALLOWAY reviewed, Navigable Waterways Case: Knik River/Eklutna, Inc.'s Selection Application/IBLA Appeal State v. U.S. (3:17-cv-00090) AAG J. Alloway, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - In approving Eklutna, Inc.'s selection application, IBLA and the Bureau of Land Management (BLM) did not preserve Alaska Native Claims Settlement Act (ANCSA) 17(b) easements and purported to convey portions of the bed of the Knik River, which the State asserts is a state navigable waterway.
- Status
 - The State settled the easement issue to preserve public access. The State filed a lawsuit challenging the navigability finding. BLM reversed its previous navigability determination and filed a formal disclaimer of interest. The State was awarded \$400 in costs, and BLM appealed the cost decision to the Ninth Circuit. BLM voluntarily dismissed its appeal in November 2019.

MS. ALLOWAY detailed that the federal government claimed that a portion of the Knik River, just below the glacier to the old Glenn Highway Bridge, was non-navigable and conveyed to Eklutna. The State challenged the conveyance by filing a quiet title action.

She noted that the federal government ultimately agreed with the State and disclaimed their interest prior to getting too far into the litigation.

MS. ALLOWAY said she filed a motion for nearly \$425 in prevailing party costs up to the Ninth Circuit and won, but the federal government appealed. The State engaged in unsuccessful mediation prior to the case going forward, but the federal government ultimately dismissed its appeal. The State is waiting for the \$425 check. The finished case is going through an administrative process dealing with 17(b) easements.

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She reviewed, Navigable Waterways Case: Middle Fork, North Fork, and Dennison Fork of the Fortymile River - navigability AAG J. Alloway, as follows:

- Alignment with the Feds
 - Not aligned
- Brief Description
 - BLM previously found portions of the Middle Fork of the Fortymile, North Fork of the Fortymile, Dennison Fork, and West Fork of the Dennison Fork nonnavigable. In response to the State's notice of intent to sue, BLM reversed its position on the Dennison Fork and the West Fork of the Dennison Fork, but not the other two rivers. The State filed a quiet title action on those rivers in October 2018.
- Status
 - BLM filed an answer denying the navigability of the disputed portions of the Middle Fork and North Fork of the Fortymile. The parties are engaged in discovery and the trial is anticipated in the fall of 2020.

MS. ALLOWAY summarized that both parties have identified their experts. The State anticipates depositions in the spring of 2020 and a trial in the fall of 2020.

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MS. ALLOWAY reviewed, Navigable Waterways Case: Navigable Waterways/Togiak Public Use Management Plan (PUMP) AAG A. Nelson, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - The PUMP asserts jurisdiction over and directs the United States Fish and Wildlife Service (USFWS) to adopt regulations to limit unguided use on state navigable waterways in the Togiak National Wildlife Refuge.
- Status
 - The USFWS has not proposed the regulations yet.

MS. ALLOWAY noted that litigation in the Sturgeon case held up USFWS regulation promulgation. The State anticipates resolution

once the Department of Interior publishes its new water regulations in compliance with the Sturgeon decision.

CHAIR MICCICHE asked why navigability determination is important in the rulings.

MS. ALLOWAY explained that under the equal footing doctrine, all states came into the Union under equal footing. All states are entitled to the submerged lands under their navigable-in-fact waterways. The navigable-in-fact determination is a federal test that the State applies.

MS. ALLOWAY explained that she breaks the navigable-in-fact down to whether a boat can float down a waterway carrying a thousand pounds relatively easily, which is a position that the federal government would disagree with. She noted that the term "boat" means an inflatable raft carrying a thousand pounds. The State's position is the submerged lands belong to Alaska if a waterway is navigable-in-fact.

CHAIR MICCICHE asked if a waterway must pass the test at all stages of the tide in all seasons.

MS. ALLOWAY answered no. She pointed out that the State took a position in the Mosquito Fork litigation that taking a customary and ordinary watercraft down the waterway during one-third of the open water season (May through September) is sufficient. The U.S. Supreme Court has stated multiple times that navigability does not have to be easy, it can be difficult. Hitting a rock and pulling a boat does not defeat navigability but having to portage a boat might be a problem. She noted that none of the rivers she is talking about requires a portage.

[3:43:55 PM](#)

MARY HUNTER GRAMLING, Assistant Attorney General, Civil Division, Natural Resources Section, Alaska Department of Law, Juneau, Alaska, discussed, Access and Land Case: Roadless Rule - State of Alaska v. U.S. Dept. of Agriculture (D.C. Cir., 17-5260) AAGs M. Gramling S. Lynch, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - State challenged the application of the roadless rule in Alaska as well as nationwide. The roadless rule prohibits the building of roads in Inventoried Roadless Areas of national forests, which essentially

shuts down resource development in many areas of the Tongass. On a parallel track, the State is pursuing regulatory relief for the Tongass.

- Status
 - In the litigation, the district court upheld the roadless rule, and the State appealed. Briefing has been completed, but the appellate court granted intervenor's request to put the case on hold until the rulemaking is done. The State continues to object to the abeyance. On the rulemaking, the USDA proposed an exemption for the Tongass to the roadless rule. The public comment period for the proposed rule ended in December.

MS. HUNTER GRAMLING noted that every 90 days since October 2018, the State has been filing reports with the other parties on the status of the rulemaking. The State continues to object to the abeyance. The USDA published a draft environmental impact statement (DEIS) in October 2019 and comments on it occurred in December 2019. The USDA is planning to get a ruling out by June 2020. The USDA's preferred alternative was the alternative that the State requested which would be full exemption for the Tongass.

MS. HUNTER GRAMLING explained that the State's position is that even if Alaska gets the full exemption for the Tongass, the rulemaking doesn't obviate the need for the litigation. The State wants to continue with the litigation because it has claims against the roadless rule nationwide, statewide, and Tongass-wide.

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MS. HUNTER GRAMLING reviewed, Access and Land Case: Shelter Cove Road - State v. U.S. Forest Service (1:16-cv-00018); Greater Southeast Alaska Conservation Community v. Stewart (State intervened in support of defendant) (1:16-cv-0009) AAG S. Lynch, as follows:

- Alignment with Feds
 - Resolved in State's favor.
- Brief Description
 - The State intervened to defend the building of Shelter Cove Road in Ketchikan. Contrary to the federal government's position, the State asserted that it has a Section 4407 easement for the road. This would mean no environmental review is needed. To ensure the 4407 issue is addressed, State brought a separate lawsuit

on that issue. The lawsuits have been consolidated and the Court heard motions for summary judgment on all issues.

- Status
 - In the environmental group's challenge to the State's road project, the court issued partial summary judgment in the State's favor on all environmental permitting issues, and dismissed all 4407 issues with prejudice on a finding of no National Environmental Policy Act (NEPA) or National Forest Management Act (NFMA) requirements for these easements. In the State's companion suit against the USFS, on June 11, 2019 the court issued a summary judgment order providing clear and particular declarations on the scope and requirements for the 4407 easements. With the favorable decision on all causes of action, DOT&PF anticipates the acceleration of certain project timelines in Southeast Alaska.

MS. HUNTER GRAMLING explained that the U.S. District Court for the District of Alaska decided on the two consolidated cases. The State sought multiple declarations about Section 4407 easement corridors and the court granted some of them. The court ruling increases the flexibility for the State's ability to site for road construction with those easements. The ruling also declared that within those property rights the State should have permanent access across National Forest lands, a ruling that includes the Tongass roadless rule issues. The case is important because it is in a line of cases where Alaska is trying to preserve its infrastructure rights to connect communities, particularly in the Tongass.

CHAIR MICCICHE asked when resolved actually means resolved.

MS. HUNTER GRAMLING answered that to her knowledge there is no appeal for the U.S. District Court decision regarding the Shelter Cove Road case. She said, "For now, it's been resolved." She pointed out that the declarations from the case will be helpful for other cases going forward.

CHAIR MICCICHE remarked that there is potential for cases without resolution. He said there may be some forward motion, but someone can always bring a suit back. He asked if the U.S. Supreme Court ever says, "We're done."

MS. HUNTER GRAMLING answered that the decision made by the U.S. District Court is on what she believes to be an unfinished

project. She said case completion could occur when the project finishes, but litigation has concluded for the current round.

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MS. ALLOWAY addressed, Access and Land Case: R.S. 2477 Rights of Way - State of Alaska v. U.S. (4:13-cv-00008) AAGs J. Alloway, M. Schechter, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - State sued the U.S. and others to quiet title to a number of R.S. 2477 rights-of-way near Chicken, Alaska.
- Status
 - At the district court level. The State successfully condemned the rights-of-way across Native allotment lands, which was necessary before the case proceeded on the main issues relating to land owned by the federal government. The Native allotment owners appealed that decision to the Ninth Circuit, but the remainder of the case is proceeding. The case is currently in the discovery phase, and trial is anticipated in the fall of 2020.

MS. ALLOWAY detailed that the Chicken litigation deals with a series of trails that leave Chicken to the north and ultimately ends up going into Wild and Scenic Corridors in the 40-mile area, both near Franklin Creek and Hutchinson Creek. To get to the terminuses of the two trails, a person had to go through a Native allotment, so there were multiple things going on in the litigation.

She explained that the courts held that the Native allotment owners did not have jurisdiction to address the State's claim of an R.S. 2477 right-of-way. The State had to ultimately condemn the lands in order to have a continuous right. The condemnation proceeding concluded in the district court, but it gets back to, "When is it resolved?" An appeal is in the Ninth Circuit Court and the State brief is due in March 2020.

MS. ALLOWAY added that the State is now proceeding against the federal government in the R.S. 2477s that the State claimed through their Wild and Scenic Corridor. The case is at the district court level with the State in the discovery process. Depositions occurred last week and expert reports will be exchanged in a couple of months, similar to the navigability

cases. The anticipated trial date is next spring or early winter.

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CHAIR MICCICHE asked what the best way is for Alaskans to stay in touch with the cases that DOL is pursuing.

MS. ALLOWAY suggested that the public contact the State of Alaska Public Access Assertion and Defense (PAAD) Unit at DNR.

CHAIR MICCICHE remarked that his secondary objective is to inform the public and have the public care. He opined that federal decisions have compromised Alaskan's rights and everyday lives prior to and after statehood. He said what DOL is doing is very important and suggested that the department share a case spreadsheet with the public on a biannual basis.

MR. SNIFFEN explained that DOL biannually updates the federal cases chart and posts the chart on the department's website for public access.

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MS. HUNTER GRAMLING reviewed, Access and Land Case: King Cove Road Friends of Izembek NWF v. Bernhardt (3:19-cv-00216) AAGs S. Lynch, M. Gramling, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - For many years, residents of King Cove have been trying to get a road from the village to the airport at Cold Bay. The road would be primarily for health and safety purposes, as the airport at Cold Bay is the nearest location where large planes can land in the area's often poor weather conditions. A road directly connecting these two towns would have to cross federally designated wilderness in the Izembek National Wildlife Refuge.
- Status
 - There have been three attempts to complete a land exchange with federal administrations. The State has participated as an intervenor-defendant and amicus curiae in past litigation. Most recently, King Cove Corporation and the U.S. Dept. of Interior (DOI) entered into a 2019 land exchange agreement, which, like previous similar agreements, has been challenged by environmental groups. On January 8, 2020, the State

moved to intervene in the case in support of the agreement and the road.

MS. HUNTER GRAMLING reviewed, Access and Land Case: 2016 Amendment to the Tongass Land Resources Management Plan (TLMP) AAGs M. Gramling, S. Lynch, as follows:

- Alignment with Feds
 - Uncertain
- Brief Description
 - The 2016 TLMP amendment fully incorporated both the roadless rule and the Secretary of Agriculture's directive to rapidly transition timber harvest from old growth to young growth. The result would effectively place millions of additional acres off-limits to timber harvest and other resource development. The timber industry would likely be forced out of business while utilities, mining and other industries would be substantially harmed.
- Status
 - The Secretary of Agriculture granted the State's petition for a rulemaking to effectively amend the roadless rule by promulgating a state specific rule to manage roadless areas in Alaska. USDA published a Notice of Intent to commence the rulemaking on August 30, 2018. A final rule is expected by summer of 2020. But the USDA declined the State's request to simultaneously amend the 2016 TLMP concluding that any amended to the TLMP must be a second process after the regulation has been changed. There is no specific plan or timetable to amend the TLMP.

MS. HUNTER GRAMLING explained that the State's alignment is uncertain because the petition for rulemaking process is underway and the roadless rule litigation is pending. For the moment, DOL is not acting on the 2016 TLMP because it wants to see how the other two avenues that the State is pursuing pan out. After the finalized TLMP, DOL filed objections and preserved its ability to take further action.

CHAIR MICCICHE asked if alignment on the Izembek Road case relates to the land exchange agreement.

MS. HUNTER GRAMLING answered that the environmental groups challenged the federal government's decision to enter into the exchange and the State entered in support of the federal government.

[3:55:49 PM](#)

She reviewed, Access and Land Case: 2019 Amendment to the Chugach Land Resources Management Plan AAG S. Lynch, as follows:

- Alignment with Feds
 - Not Aligned
- Brief Description
 - The new Chugach NF Plan established de facto Conservation System Units (CSUs) in violation of ANILCA's prohibition of additional CSUs except by Act of Congress. The unauthorized CSU's overlap existing highways, railways, and utilities and will make it difficult to impossible to expand or improve these facilities.
- Status
 - The State sought resolution of these issues with the USFS both formally and informally. On October 29, 2019 the State filed its formal objections, under USFS NEPA procedures, to the draft ROD in support of USFS's new Chugach NF Plan. Objection resolution meetings are scheduled for mid-January 2020. The final (and judicially challengeable) ROD and Chugach NF Plan are expected in May 2020.

MS. HUNTER GRAMLING said the State will evaluate options going forward after the Final Record of Decision. Part of the issue with federal land management plans is that sometimes the national rule imposed on Alaska does not consider the Alaska National Interest Lands Conservation Act (ANILCA) provisions.

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SENATOR BISHOP joined the committee meeting.

MR. SNIFFEN reviewed, Access and Land Case: Eastern Interior Resource Management Plan (EIRMP) AAG A. Nelson, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - The EIRMP, adopted January 6, 2017, recommends unjustified mineral closures and conservation designations that are inconsistent with Alaska National Interest Lands Conservation Act (ANILCA) and Federal Land Policy Management Act's multiple use mandate. The EIRMP also fails to provide for lifting

outdated ANCSA d-1 withdrawals unless new conservation withdrawals are implemented, although BLM has lifted the withdrawals in some of the less controversial areas, facilitating conveyance of certain statehood selections.

- Status
 - The Government Accountability Office determined in 2017 that the EIRMP is a rule under the Congressional Review Act - Congress has 60 session days to repeal rules. BLM has not submitted the Plan to Congress as required by the Act and it's unclear whether the 60-day period has already run or has yet to begin. We continue to monitor congressional and agency action on the issue and evaluate options, including administrative action and litigation. We also continue to monitor implementation decisions made under EIRMP.

MR. SNIFFEN said the Eastern Interior Resource Management Plan (EIRMP) is a BLM land management plan for a very large area that contains smaller, disconnected BLM units, including the Steese and White Mountains areas in the Fortymile and Black River regions. The BLM plan is problematic because it contains land withdrawn from the federal public domain under ANCSA that is close to mineral development.

He detailed that federal withdrawals originated in 1971 to prevent the creation of third-party rights during ANCSA selections. However, in 2004 after passage of the Alaska Lands Transfer Acceleration Act (ALTAA), Congress directed BLM to identify land for lifting from those withdrawals. BLM identified about 50 million acres to lift and made them available for Alaska. The first lifted withdrawals occurred in 2018 in the Goodnews Bay area and additional lifted withdrawals occurred in 2019 in the Fortymile and Bering Glacier areas.

MR. SNIFFEN said the federal is not moving as quickly as the State would like in removing their restrictions on Alaska to pursue mineral or land development.

[3:58:48 PM](#)

MR. SNIFFEN reviewed, Access and Land Case: Lands into Trust AAG A. Nelson, as follows:

- Alignment with Feds
 - Uncertain
- Brief Description

- o After the district court in *Akiachak v. Dept. of Interior* found in favor of plaintiffs, DOI changed its regulations to permit lands in Alaska to be taken into trust. This summer, the Department of Justice rescinded the Solicitor's Opinion on which the DOI relied to change its regulations. DOI has stated it will not process any new applications, but federal representatives have stated that pending applications would continue to be processed.
- Status
 - o The State commented on six applications before the DOI embarked on the new rulemaking process--one from the Craig Tribal Association, three from the Central Council Tlingit and Haida Indian Tribes of Alaska, one from the Ninilchik Traditional Council, and one from the Native Village of Fort Yukon. BIA has granted the Craig application, but has not acted on the other applications. The BIA held public meetings and consultations with tribes throughout the State. The State submitted comments to Interior of January 25, 2019.

MR. SNIFFEN detailed that the State does not know when the Department of Interior (DOI) will issue a new Solicitor's Opinion or if they will open a new rulemaking. The State knows that DOI is not processing any new applications to take lands into trust, but they have stated that they will continue to process submitted applications. The State is not aware of any actions taken on pending applications.

CHAIR MICCICHE asked if the Craig application for lands in trust is the only one in Alaska.

MR. SNIFFEN answered yes; there is an approximate one-acre parcel of land in Craig taken into trust.

CHAIR MICCICHE asked if the application granted in Craig is a test case of some sort.

MR. SNIFFEN answered no. He explained that after the withdrawal of the Solicitor's Opinion, processing of pending applications has not occurred.

[4:01:18 PM](#)

MS. HUNTER GRAMLING reviewed, Access and Land Case: Arctic National Wildlife Refuge (ANWR) Boundary IBLA Appeal AAGs M. Schechter, as follows:

- Alignment with Feds
 - Not aligned
- Brief Description
 - BLM denied the State's request for conveyance of 20,000 acres, based on dispute over western boundary of ANWR. The State also objected to a survey plat of the area directly south of the area requested for conveyance.
- Status
 - IBLA denied BLM's motion to dismiss and has consolidated the State's two appeals. Briefing was completed in May 2018 and the case is now awaiting a decision from the IBLA, which continues to deal with a significant case backlog. The IBLA denied a joint motion to expedite the case in June 2019.

MS. HUNTER GRAMLING noted that BLM also wanted expedited appeal consideration because the Tax Cuts and Jobs Act authorized consideration to open the 1002 Area in the Arctic National Wildlife Refuge (ANWR) to oil and gas leasing. However, the inclusion of the disputed acreage within the boundary appeal is in question. BLM's preference is to clear up the dispute to determine whether leasing is possible. The State obviously would also like the acres.

SENATOR BISHOP asked if the State is claiming the 20,000 acres.

MS. HUNTER GRAMLING answered yes. She said there is no alignment between the State and federal government on the 20,000-acre conveyance request, but there is alignment between both parties to get the appeal resolved.

CHAIR MICCICHE summarized that if there were conveyance, the State of Alaska would be managing a lease sale and not BLM.

MS. HUNTER GRAMLING answered correct.

[4:03:52 PM](#)

MS. HUNTER GRAMLING reviewed, Access and Land Case: ANWR Section 1002 AAG J Hartz, as follows:

- Alignment with Feds
 - Aligned
- Brief Description

- o The Tax Cuts and Jobs Act of 2017, Pub. L. 115- 97, opened the ANWR 1002 area to oil and gas exploration and leasing.
- Status
 - o BLM finalized the EIS on September 12, 2019 and issued a notice that the final EIS was available for review on September 25, 2019. BLM must wait at least 30 days after that date to issue a Record of Decision that chooses BLM's preferred alternative for conducting a lease sale program in the ANWR1002 area. BLM has not issued a record of decision as of the time this report was provided.

MS. HUNTER GRAMLING detailed that the State submitted comments and is waiting for a record of decision. At that time, the federal government can move forward with leasing.

MR. SNIFFEN reviewed, Access and Land Case: Native Village of Eklutna v. United States Department of the Interior et al (D.C. District Court No. 1:19-cv02388) AAG L Harrison, as follows:

- Alignment with Feds
 - o Aligned
- Brief Description
 - o The Native Village of Eklutna requested a determination from the Department of the Interior that a certain Alaska Native allotment is "Indian lands" eligible for gaming under the Indian Gaming Regulatory Act. The Department denied the request primarily on the grounds that the plaintiff does not have jurisdiction or "exercise governmental power" over the allotment, as required to meet IGRA's definition of "Indian lands." The plaintiff has challenged the denial in D.C. District Court pursuant to the Administrative Procedures Act. The State has moved to intervene in defense of the Department's denial.
- Status
 - o This case is in its early stages. The plaintiff filed the Complaint on August 7, 2019, the federal defendants filed their Answer on December 17, 2019 and the State moved to intervene on December 31, 2019, and the motion was granted. The administrative record has not yet been certified. No substantive briefing has yet been filed.

MR. SNIFFEN explained that the State intervened in the case on the side of the decision that the allotments did not meet the

definition test. The decision has broad reaching applications for a lot of allotments in Alaska and the State's authority to control gaming activities and funds derived from that activity on allotment land across the state.

[4:05:49 PM](#)

CHAIR MICCICHE noted that there are a lot of Indian lands across the U.S. where gaming occurs. He asked what the difference is in Alaska.

MR. SNIFFEN explained that across the country the federal government established Indian reservation land via treaties and settlements. However, Alaska settled a lot of Indian claims through ANCSA. He noted that there has never been a decision on Native allotments in Alaska.

MR. SNIFFEN reviewed, Clean Air Act Case: 2017 Regional Haze State Implementation Plan Rule - State v. Environmental Protection Agency (EPA); Texas v. EPA (D.C. Cir., 17- 1074) AAG S. Mulder, as follows:

- Alignment with Feds
 - Uncertain
- Brief Description
 - The State, along with North Dakota, Texas, and Arkansas, challenged the 2017 Regional Haze State Implementation Plan Rule, which imposed quantification requirements on international air emission contributions to regional haze affecting national parks and wilderness areas. The State is concerned about having international contributions to haze, that are beyond the State's control, count against Alaska and other states. The State also objects to the Environmental Protection Agency (EPA) shifting its modeling responsibilities and modeling costs to Alaska.
- Status
 - At the appellate court level. Briefing is currently on hold, while EPA revisits aspects of the rule and engages in a new rulemaking process.

[4:08:55 PM](#)

MS. HUNTER GRAMLING discussed, Clean Air Act Case: Clean Power Plan (40 C.F.R. 60.5700- .5820) AAG S. Mulder, as follows:

- Alignment with Feds
 - Uncertain

- Brief Description
 - The Clean Power Plan (CPP) established mandatory "goals" for reducing carbon emissions from certain coal and natural gas fired power plants. EPA excluded Alaska and Hawaii from the final rule, but EPA indicated that they would likely include Alaska in the future after accruing more evidence.
- Status
 - President Trump signed an executive order calling on the EPA to review the CPP and end the moratorium on coal mining on federal lands. On August 21, 2018, EPA announced it was proposing a new rule, the Affordable Clean Energy rule (ACE), to replace the CPP. On June 19, 2019, EPA issued the final ACE rule "replacing the prior administration's overreaching CPP with a rule that restores the rule of law and empowers states to continue to reduce emissions while providing affordable and reliable energy for all Americans." [EPA News Release 6/19/2019].

CHAIR MICCICHE asked what the reasons were that the EPA originally excluded Alaska and Hawaii. He inquired if the EPA could exclude another state, at will, in the final rule.

MS. HUNTER GRAMLING answered that since the repeal of the Clean Power Plan (CPP) regulations, it does not seem likely that Alaska is at risk from the current administration, but it is an issue that DOL will monitor.

[4:11:01 PM](#)

MS. HUNTER GRAMLING reviewed, Clean Air Act Case: Affordable Clean Energy Rule (ACE) AAG. Mulder, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - The Affordable Clean Energy (ACE) rule and took effect on September 6, 2019. ACE repeals the Clean Power Plan (CPP); issues emissions guidelines for greenhouse gas emissions; and revises the emission guidelines implementing regulations under the Clean Air Act.
- Status
 - Legal challenges have been filed by various groups and states asking the court to toss the ACE rule and reinstitute the CPP. *Am. Lung Assoc. v. EPA*, No. 19-1140 (July 8, 2019 D.C. Circuit); *New York v. EPA*, No.

19-1166 (Aug. 14, 2019 D.C. Circuit). Numerous industry groups and power providers are seeking to intervene in the litigation to support EPA's ACE rule. Alaska and several other states intervened in New York v. EPA.

MS. ALLOWAY reviewed, Water Case: "Waters of the U.S." Rule - North Dakota v. EPA (ND Dist. Ct. 3:15-cv00059) AAG A. Roberts, as follows:

- Alignment with Feds:
 - Uncertain
- Brief Description:
 - State joined a coalition of 12 states challenging the 2015 "waters of the U.S." (WOTUS) rule. Among other things, the 2015 rule expands what falls under federal jurisdiction by automatically sweeping up "adjacent" or "neighboring" waters and wetlands within certain geographical limits to downstream waters already covered by federal law.
- Status:
 - The district court action is currently proceeding in North Dakota Federal District Court. The WOTUS rule has been stayed by the court as to the states that are a party to this case, including Alaska. Summary judgment briefing is complete. The federal government is no longer defending the merits of the 2015 rule, though intervening environmental groups are. Oral argument still has not been scheduled.

Meanwhile EPA and the Army Corps of Engineers initiated a 2-step process for revising the rule. Step 1, repealing the 2015 rule, has been completed - reinstating the prior definition. Step 2, a rulemaking to redefine WOTUS has been through public comment. On January 23, 2020 EPA issued the final rule. The affected state agencies are currently reviewing the final rule for impact.

[4:13:04 PM](#)

MS. ALLOWAY reviewed, Fish and Game Case: NPS and USFWS Rules on Management of Fish and Game - State v. Bernhardt (3:17- cv-00013) AAGs C. Brooking, J. Alloway, as follows:

- Alignment with Feds
 - Not aligned

- Brief Description
 - The State is challenging regulations adopted by the National Park Service affecting hunting on preserve lands throughout Alaska and regulations adopted by the U.S. Fish and Wildlife Service restricting hunting on the Kenai National Wildlife Refuge (NWR). Three cases were filed and consolidated. The NPS regulations preempted state management of wildlife, prohibited several means of take for predators, and changed public participation procedures for hunting and fishing closures. The USFWS regulations prohibit certain activities within the Kenai NWR and the State is objecting to the prohibition on taking brown bears at black bear baiting stations, a practice that is allowed under state regulations.
- Status
 - In July 2017, NPS and USFWS were directed by the Acting Assistant Secretary for Fish and Wildlife and Parks to initiate rulemaking procedures to reconsider their rules. In June 2018, NPS published a proposed rule that would reverse much of the 2015 rule challenged in the litigation, and the comment period closed October 5, 2018. USFWS has not published a proposed new rule. The litigation has been stayed for several months pending possible rulemaking that might moot portions of the lawsuit. The parties agreed to delay action in the case pending further rulemaking. A briefing schedule anticipates opening briefs to be filed January 6, 2020.

[4:14:39 PM](#)

MS. ALLOWAY reviewed, Fish and Game Case: Congressional Review Act Resolution CRA) on USFWS Rules - Center for Biological Diversity v Bernhardt (3:17- cv- 00091) AAGs C. Brooking, J. Alloway, as follows:

- Alignment
 - Generally aligned
- Brief Description
 - The Center for Biological Diversity (CBD) filed a lawsuit to challenge Pub. L. 115-20 which was adopted under the rules established in the CRA Pub. L115-20 revoked a rule adopted by the USFWS that would have restricted hunting and affected refuge closure procedures on all refuges throughout Alaska. The State intervened on behalf of the federal defendants. CBD argued that Public Law No. 115-20 adopted under the

CRA violated the Take Care clause of the US Constitution because it prevented FWS from carrying out its statutory responsibilities under existing laws.

- Status
 - The district court dismissed the litigation in June 2018. In August 2018, plaintiff appealed to the Ninth Circuit. In December 2019 the Ninth Circuit issued an opinion that resolved all claims in favor of defendants.

SENATOR REVAK asked what the NPS rules are, how they differ, and what DOL is challenging.

MS. ALLOWAY explained that the heart of the issue is what the State considers to be predator control. Examples include the State authorized taking of black bears in their den for subsistence hunting by Native groups, brown bear over bait, and hunting season change for wolves. The federal government views the previous examples to be predator control.

[4:17:38 PM](#)

SENATOR REVAK summarized that the National Park Service (NPS) does not allow any predator control.

MS. ALLOWAY answered yes.

SENATOR BISHOP asked Ms. Alloway to confirm that the National Park Service (NPS) does not allow predator control.

MS. ALLOWAY answered that is correct.

SENATOR BISHOP pointed out that allowing predator control is not a blanket position. He said there have been some cases in the Aleutians where the federal government has eradicated certain species.

CHAIR MICCICHE asked Ms. Alloway to talk about the relationship between the sustained yield principle in the Alaska Constitution and how that is problematic in the predator control case. He said the U.S. Department of Justice has taken a position that NPS policies preempt Alaska's constitutional management through sustained yield, and asked if that is important in the predator control case.

MS. ALLOWAY answered yes. She explained that the Alaska Department of Fish and Game (ADFG) manages wildlife populations

through the sustained yield guideline. Part of the argument that DOL is raising in the litigation is that the federal government exercises its jurisdiction to preempt Alaska without any biological studies. There is no concern about the populations that ADFG is managing because there are plenty of animals. ADFG was not reducing the number of predators to allow the prey population to increase. The federal government is hampering Alaska's ability to maintain all populations for a sustained yield.

CHAIR MICCICHE remarked that the federal government's ability to define predator control could extend into the taking of any predator for any reason in the future if they are able to create their own definition. The federal government winning the case on predator control could impact 80 percent of the lands in Alaska.

[4:20:18 PM](#)

MS. ALLOWAY answered yes, depending on how the court wants to define predator control.

MS. ALLOWAY reviewed, Fish and Game Case: Salmon Fishery Management Plan - United Cook Inlet Drift Association v. National Marine Fisheries Service (Alaska intervened in support of defendants) (3:13-cv-0104) AAG A. Peterson, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - United Cook Inlet Drift Association (UCIDA) sued the National Marine Fisheries Service (NMFS) challenging the validity of Amendment 12 to the Fishery Management Plan (FMP) for Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska. Amendment 12 effectively removes federal oversight under the Magnuson-Stevens Act, thereby allowing state management, for three fishing areas beyond the three-mile limit from shore. One of these areas was the Cook Inlet EEZ, which is the focus of the lawsuit.
- Status
 - The State intervened in support of NMFS to protect the State's interest in maintaining management authority over the area. The federal district court found in favor of NMFS, upholding Amendment 12. After UCIDA appealed, the Ninth Circuit reversed the district court and held that Amendment 12 was contrary to law to the extent it removed the Cook Inlet EEZ from the FMP. The court explained that the MSA allows

delegation to the state under an FMP but does not excuse the federal government's obligation to adopt an FMP when it opts for state management. The U.S. Supreme Court denied the State's request to hear the case. The district court retained jurisdiction to oversee adoption of a new plan. The North Pacific Fishery Management Council continues to work through the issues. The plaintiffs filed a motion to enforce judgement, seeking the court's intervention in the creation of the FMP and oversight of the fishery until the plan is in place. The district court denied the plaintiff's motion and ordered that the Council adhere to their estimated timeline and adopt a final FMP amendment by December 31, 2020, with final agency action to occur within one year thereafter.

MS. ALLOWAY reviewed, Mining Case: 2008 Mining Claim Rule - Earthworks v. U.S. Dept. of Interior (Alaska intervened in support of defendant) (D.C. Dist. Ct. 1:09-cv-01972) AAG E. Fossum, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - Plaintiffs challenged the 2008 Mining Claim Rule. State intervened to support the federal rule, which eliminated some of the regulatory hurdles for miners.
- Status
 - At the district court level. Briefing has been completed and oral argument was held on October 27, 2017. Both parties have since filed supplemental authorities. The case was reassigned to J. Rudolph Contreras on November 27, 2019. We are awaiting the court's decision.

[4:22:23 PM](#)

MS. ALLOWAY reviewed, Mining Case: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Hard Rock Mining - Idaho Conservation League v. Pruitt (D.C. Cir., 18-1141) AAG E. Fossum, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - The State intervened with 13 other states in a lawsuit concerning the EPA decision not to impose a federal

requirement for financial assurances under the CERCLA on hard rock mines. The EPA recognized that states, such as Alaska, have robust financial bonding and regulatory requirements in place to protect the environment, making a federal requirement unnecessary. Environmental groups sued the EPA, asserting that it must adopt regulations imposing financial assurances on hard rock mines.

- Status
 - Appellant's petition for review denied by the D.C. Circuit on July 19, 2019. The appellate court deferred to the EPA's interpretation of setting financial responsibility on financial risks, not risks to health/environment; and also, that EPA's financial and economic risk analyses were neither arbitrary nor capricious. No petition for certiorari was filed. The case is closed.

MS. HUNTER GRAMLING discussed, Mining Case: Wishbone Hill Mine - Castle Mountain Coalition v. Office of Surface Mining Reclamation and Enforcement (OSMRE) (State intervened in support of defendant) AAG C. Moore, as follows:

- Alignment with Feds
 - Not generally aligned
- Brief Description
 - The State intervened to defend the validity of the state-issued mine permits, which plaintiffs asserted had automatically terminated.
- Status
 - The district court found in favor of plaintiffs and remanded the decision back to the agency. On remand, the federal agency ultimately found that the State had "good cause" to not take action because it needed additional time to come to a decision. The State issued a decision at the end of November 2018, upholding the validity of the permits. OSMRE subsequently determined that it did not have sufficient reason to believe a violation existed, and therefore did not issue a ten-day notice or order an inspection. At this time, no party has requested further review.

MS. HUNTER GRAMLING explained that the way the Surface Mining Control and Reclamation Act (SMCRA) works is that if a state's regulatory program and laws are consistent with SMCRA, then a state can have primacy. Alaska has primacy over surface mining

as long as the state's programs are consistent with Office of Surface Mining Reclamation and Enforcement (OSMRE). The Wishbone Mine issue concerned a state permit and DOL intervened to enforce primacy.

[4:24:43 PM](#)

MS. HUNTER GRAMLING reviewed, Oil and Gas Case: Reversal of Ban on Offshore Development -Trump v. League of Conservation Voters (Nos. 19-35460, 19-35461, 19-35462) AAG L. Fox, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - Before leaving office, former President Obama issued an order pursuant to the 1953 Outer Continental Shelf Lands Act indefinitely banning all leases in certain offshore areas, including large portions of the Chukchi and Beaufort Seas. President Trump issued an executive order rescinding the ban, and environmental groups have challenged the order. BOEM is gathering comments on a new proposed five-year National Offshore Oil and Gas Leasing Program, for years 2019-2024. The State intervened in a lawsuit to support and defend President Trump's executive order.
- Status
 - At the 9th Circuit in the briefing stage argument expected in June 2020. In district court on March 29, 2019 Judge Gleason granted summary judgment to the League of Conservation Voters (and denied summary judgment to Trump and State) ruling that the Outer Continental Shelf Lands Act's language permitting a president to "from time to time, withdraw" unleased lands from disposition did not permit President Trump to undo a previous withdrawal that had been ordered by President Obama.

MS. HUNTER GRAMLING explained that Alaska's interest in the case is based on Alaska having more coastline than the rest of the states. The outer continental land shelf issues are very important to Alaska. The case concerned withdrawal under the Outer Continental Shelf Lands Act of certain lands from leasing. The State's position in the case is that one of the goals of the act was to benefit the state's infrastructure and economy.

[4:25:46 PM](#)

CHAIR MICCICHE asked if the language in the Outer Continental Shelf Lands Act is actually as loose as saying, "Permitting a president to from time to time withdraw unleased lands."

MS. HUNTER GRAMLING answered yes. The State and federal government are aligned that "from time to time" means one president can do it and another president can change it. The Act is not meant to imply a permanent withdrawal or a permanent grant of anything.

CHAIR MICCICHE remarked that the threshold is sort of like, "Substantially similar."

MR. SNIFFEN reviewed, Endangered Species Act Case: Endangered Species Act Rules - California v. Bernhardt, (N.Cal. Dist. Ct., 4:19-cv-06013-JST); Animal Legal Defense Fund v. Bernhardt, (N.Cal. Dist. Ct., 4:19-cv-06812-JST0; and Center for Biological Diversity v. Bernhardt, (N.Cal. Dist. Ct., 4:19-cv05206-JST0 AAG C. Brooking, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - Three lawsuits were filed challenging regulations adopted in 2019 by the US Fish and Wildlife Service and National Marine Fisheries Service. Among other things, the rules clarified the meaning of "foreseeable future" in determining whether a species is threatened, allows economic factors to be considered while still making decisions based on the best scientific and commercial data, and provided guidance on when to consider unoccupied areas as critical habitat for listed species.
- Status
 - In December 2019 and January 2020, Alaska joined twelve other states to move to intervene in all three cases to defend the new rules.

MR. SNIFFEN explained that a few years ago, Alaska joined about 15 other states in a lawsuit challenging EPA rules that expanded the types of areas that can be designated as critical habitat, and that under those rules there was little if any connection to the presence of a listed species. For example, the lawsuit listed Alaska polar bear and ringed seals as threatened even though the populations were healthy. The dismissal of that lawsuit lead to new rules that were much more reasonable. The new rules became final in 2019. Alaska joined 12 other states to

intervene and help defend the new rules under attack by environmental groups.

[4:28:59 PM](#)

MR. SNIFFEN reviewed, Endangered Species Act Case: Seismic testing in Cook Inlet - Cook Inlet keeper et al., v. Ross, et al. (D. Alaska 3:19-cv-00238-SLG) AAG C. Brooking, as follows:

- Alignment with Feds
 - Aligned
- Brief Description
 - Cook Inletkeeper and others sued to challenge permission given to Hilcorp Alaska to conduct seismic testing in Cook Inlet. The testing is permitted by the National Marine Fisheries Service under the Marine Mammal Protection Act and the Endangered Species Act. The permission includes conditions to avoid and limit impacts on beluga whales. Cook Inlet belugas are listed as a distinct population segment.
- Status
 - In December 2019 the court granted Alaska's motion to intervene. The federal record is scheduled to be filed by February 7, 2020.

CHAIR MICCICHE asked if alignment with the federal government sometimes changes with administrations.

MR. SNIFFEN answered yes.

CHAIR MICCICHE thanked the DOL presenters. He said his office will look for the DOL link for the public to keep up with federal cases.

He noted that DOL has a heavy caseload. He asked how much of the litigation is associated with Alaska being an infant state with an agreement such as ANILCA as opposed to older states that have settled their land and water issues.

[4:31:14 PM](#)

MR. SNIFFEN explained that Alaska is fairly unique in a lot of ways. It has more coastline than any other state, it gets involved in issues that other states do not get involved with, it has the Alaska Native Claims Settlement Act (ANCSA) that is unique to Alaska, and it has unique statehood issues like navigability that seem to be prolific. He concurred that many of the litigation issues are associated with Alaska being unique and new.

SENATOR REVAK asked how much the federal government might have spent to get its \$400 back in the Knik River/Eklutna, Inc. Selection Application case.

MS. ALLOWAY answered that she has no idea.

SENATOR REVAK asked for the duration of the case.

MS. ALLOWAY answered that it went on for over a year.

CHAIR MICCICHE remarked that the federal government paid more than \$400.

HB 122-FUNTER BAY MARINE PARK: UNANGAN CEMETERY

[4:32:53 PM](#)

CHAIR MICCICHE announced that the final order of business would be HOUSE BILL NO. 122 am, "An Act relating to the Funter Bay marine park unit of the state park system; relating to protection of the social and historical significance of the Unangax cemetery located in Funter Bay and providing for the amendment of the management plan for the Funter Bay marine park unit; and providing for an effective date."

[4:33:25 PM](#)

REPRESENTATIVE SARA HANNAN, Alaska State Legislature, Juneau, Alaska, sponsor of HB 122, said Ms. Meachum will present the bill to committee members.

[4:33:43 PM](#)

HUNTER MEACHUM, Staff, Representative Sara Hannan, Alaska State Legislature, Juneau, Alaska, explained that HB 122 would transfer land from the Division of Mining, Land and Water to the Division of Parks & Outdoor Recreation for land management and protection of the Unangax cemetery in Funter Bay. She detailed that the Unangax cemetery has 30-marked graves and a number of unknown grave sites. She noted that there is no additional cost to the state from the bill.

[4:34:46 PM](#)

CHAIR MICCICHE opened public testimony.

He noted that many entities have submitted letters in support of the bill. He said HB 122 is a very important bill and he looked forward to hearing public testimony.

[4:35:18 PM](#)

RICHARD ZACHAROF, representing self, St. Paul Island, Alaska, testified in support of HB 122. He said he represents the communities of St. Paul Island and St. George Island. He detailed that he is a tribal council member and a tribal corporation representative. He noted that representatives from the Pribilof Islands were in attendance.

He disclosed that 10 percent of the Unangax population passed away at Funter Bay. He said the legislation is important to the Pribilof Island communities for protecting and preserving the burial site of loved ones and family members that perished at Funter Bay.

[4:36:49 PM](#)

NIKO SANGUINETTI, Curator of Collections & Exhibits, Juneau Douglas City Museum, Juneau, Alaska, testified in support of HB 122. She said she has been working with a group in Juneau and various community members from St. Paul and St. George to work on not only HB 122, but added recognition regarding the Funter Bay internment camps as well. She noted that the museum will do its largest exhibit of the year on the internment camps to address a very important part of Alaska's history. She said the resources around the cemetery will preserve the site, provide a buffer zone, and limit more destruction in the future.

[4:38:46 PM](#)

JOEL BENNETT, representing self, Juneau, Alaska, testified in support of HB 122. He disclosed that he is a property owner in Funter Bay and his three-acre site abuts the Unangax cemetery. He said he has owned his property for over 30 years and is intimately familiar with the area around the cemetery. He said it is essentially low-quality timber with no mining development since the 1930s. He added that the U.S. Forest Service designated that area as remote recreation and there has never been consideration for resource development for timber harvest.

He summarized that from a perspective of perhaps the closest landowner to the cemetery, there is not a conflict. He said the bill is a great step forward to recognize the sad history as well as the significance of the graveyard to the Pribilof people.

CHAIR MICCICHE remarked that his initial concerns with the bill pertained to transferring the surrounding property into the park area. He noted that his responsibility is to ask questions for all Alaskans, not just those at Admiralty Island. He said he is

no longer concerned about transferring the land and is convinced that the bill is the right move.

[4:42:38 PM](#)

SENATOR MICCICHE closed public testimony.

[4:43:03 PM](#)

SENATOR KIEHL moved to report HB 122 am, work order 31-LS0637\U.A, from committee with individual recommendations and attached zero fiscal note.

[4:43:18 PM](#)

CHAIR MICCICHE said there being no objection, HB 122 am moved from the Senate Resources Standing Committee.

[4:43:45 PM](#)

There being no further business to come before the committee, Chair Micciche adjourned the Senate Resources Standing Committee meeting at 4:43 p.m.