ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE
February 3, 2021
3:32 p.m.

MEMBERS PRESENT

Senator Joshua Revak, Chair
Senator Peter Micciche, Vice Chair
Senator Click Bishop
Senator Gary Stevens
Senator Natasha von Imhof
Senator Jesse Kiehl
Senator Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW: ALASKA LANDS AND WATERS HISTORY

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

DICK MYLIUS, Natural Resources Consultant
Anchorage, Alaska
POSITION STATEMENT: Provided a historical overview of Alaska's lands and waters.

ACTION NARRATIVE

3:32:27 PM
CHAIR JOSHUA REVAK called the Senate Resources Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Bishop, Kawasaki, Kiehl, Micciche, Stevens, and Chair Revak. Senator von Imhof joined the meeting shortly thereafter.

OVERVIEW: Alaska Lands and Waters History

3:33:18 PM
CHAIR REVAK announced the purpose of the meeting is to hear an overview of Alaska's lands and waters history by Mr. Dick Mylius.

He noted Mr. Mylius retired from the Alaska Department of Natural Resources (DNR) in 2010 with 29 years of service. He added he served as director for the department's Alaska Division of Mining, Land, and Water.

3:34:50 PM
DICK MYLIUS, Natural Resources Consultant, Anchorage, Alaska, detailed he previously worked for almost 30 years for DNR and has been retired for the last 10 years. He said he has stayed engaged and current on land issues through trainings he does on the Alaska Lands Act including for the Institute of the North.

He explained his presentation is something that he has put together for new DNR employees because it had taken him 15 years as a DNR employee to figure out how the pieces of Alaska's land ownership fit together and thought sharing the information would be useful.

MR. MYLIUS noted his overview is part one of two parts, part one covers information up to 1980. He said Ms. Tina Cunning is addressing the committee on the following Monday to talk about the [Alaska National Interest Lands Conservation Act] (ANILCA) and some of the things that have happened because of ANILCA.

He explained his overview will get the committee members up to how Alaska got to ANILCA. The act is based on things that happened prior to its passage, including influences going back to Alaska's territorial days, the [Alaska Statehood Act], and the Alaska Native Claims Settlement Act (ANCSA).

3:36:38 PM
MR. MYLIUS addressed slide 1 from his overview, Alaska Land History. He said land ownership in Alaska is unique, something important to understand when someone is dealing with individuals outside of Alaska, whether it be federal individuals in Washington, DC who are proposing things that do not work in Alaska for various reasons or other legislatures who are trying to compare Alaska's situation to their situation.

MR. MYLIUS explained slide 2 details some of the reason why Alaska landownership is unique. A large percentage of the state is public land, 87 percent: federal, state, and municipal. There is a large acreage area of federal land set aside for conservation. Over 60 percent of federal lands in Alaska are set aside for conservation. The State of Alaska owns more land by far than any other state and has the most generous land grant of any state.

He referenced slide 3 and noted the other thing that makes Alaska unique is two federal laws. The first one is ANILCA, no other state has one federal law that applies to all federal lands within its borders—at least parts of ANILCA apply to all federal lands. For example, the subsistence provisions in ANILCA-Title XIII and other parts apply to very specific units of parks and so on. However, ANILCA applies in one way, shape or form to every piece of federal land in Alaska.

MR. MYLIUS said no other state has a comprehensive federal law like ANILCA that makes exceptions to the nationwide federal land laws such as the Wilderness Act. Also, no other state has a comprehensive statewide land settlement with its Native people, that being ANCSA.

3:38:40 PM
He explained slide 4 references a U.S. Supreme Court decision on Alaska's unique land ownership. Two recent U.S. Supreme Court cases dealt with John Sturgeon's use of a state-owned navigable water within a National Preserve. In 2016, Chief Justice John Roberts specifically addresses the Park Service's authority, but it applies generally to all federal land, he paraphrased as follows:

> ANILCA repeatedly recognizes that Alaska is different, and ANILCA itself accordingly carves out numerous exceptions to the Park Service's general authority over federally managed preservation areas. Those Alaska specific provisions reflect the simple truth that Alaska is often the exception, not the rule.

MR. MYLIUS said slide 5 details his presentation outline as follows:

- Native use and occupancy
- Russian ownership
- Federal ownership
- Statehood Act

- Alaska Native Claims Settlement Act
- Alaska National Interest Lands Conservation Act

MR. MYLIUS explained slide 6 shows general land ownership in Alaska. The color-coded map of Alaska shows the following:

- Green: Federal National Parks, National Wildlife Refuges, and National Forests
- Blue: State Lands
- Dark Grey: [Bureau of Land Management] (BLM) National Petroleum Reserve
- Tan: Other BLM Lands
- Pink: Native Corporation Lands

He noted the map also shows military properties, municipal lands, etcetera.

3:40:22 PM
MR. MYLIUS referenced federal acreage via an Alaska map on slide 7, Federal Land, as follows:

- National Parks: 54 million acres
- National Wildlife Refuges: 77 million acres
- National Forests: 22 million acres
- BLM-National Petroleum Reserve: 23 million acres
- Other BLM: 51 million acres
- Military: 2 million acres
- Total Federal Land: 242 million acres (60 percent of Alaska)

He said at the time ANILCA passed, approximately 70-80 percent of all acreage in the National Wildlife Refuges in the Lower 48 are generally small tracks of land, whereas in Alaska they are huge tracks of land that were set aside to protect large ecosystems.

MR. MYLIUS noted the two National Forests totaling 22 million acres are two of the three largest National Forests in the country: Chugach—third largest, and Tongass—the largest. BLM has a unique area, the National Petroleum Reserve—23 million acres—and 51 million acres scattered throughout Alaska. The military has two million acres, which includes: Fort Wainwright, Fort Greely, and Fort Richardson. The total amount of federal land in Alaska is 242 million acres, 60 percent of all of Alaska.

3:41:30 PM
MR. MYLIUS referenced slide 8 and said there are a lot of different figures about how much land Alaska has and that is partly because the state is still having land transferred to it and at the same time the state is transferring land out to municipalities and through land sales, etcetera. The total amount of land granted to the state totals about 105 million acres.

He detailed Native Corporations will eventually receive 46 million acres of land, 12 percent of the state. When ANCSA passed, the act referenced 44 million acres. However, BLM figures note 46 million acres will transfer to Native Corporations.

MR. MYLIUS noted Native allotments, other private, and municipal land totals five million acres, which is one percent.

He said people raise the issue that only one percent of Alaska is in private ownership. The question is not quite correct because Native Corporation land is private land, so private ownership is approximately 13 percent of Alaska. Alaska is a huge state and has very few people, so in terms of per capita land ownership, Alaska is second or third in the country in terms of per capita private landownership. North Dakota and Montana might have larger private landownership where there are large ranches and large agricultural tracks.

3:43:14 PM
MR. MYLIUS addressed the need-to-know Alaska's land history and referenced slide 9 regarding the Sturgeon cases. U.S. Supreme Court Justice Elena Kagan wrote the court's unanimous decision in the second Sturgeon decision, [Sturgeon v Frost, March 26, 2019]. He recommended reviewing Justice Kagan's comments because she provides a well written and entertaining short history of Alaska landownership. He referenced one of Justice Kagan's quotes on the importance of understanding the history, she said:

> We begin, as Sturgeon I did, with a slice of Alaskan history. The United States purchased Alaska from Russia in 1867. It thereby acquired "in a single stroke" 365 million acres of and—an area more than twice the size of Texas. You might think that world be enough to go around. But in the years since, the Federal Government and Alaskans (including Alaska Natives) have alternately contested and resolved and

contested and...so forth who should own and manage that bounty...

MR. MYLIUS added he is going to address those years of contesting, controversies, and actions taken regarding lands in Alaska.

He said slide 10 details prior to 1867, Native Alaskans owned most of the land in Alaska through Aboriginal Title, but they did not have the western concept of private landownership. A map on slide 11 shows territorial areas for Alaskan Native languages that kind of coincides with traditional areas occupied by the different Native peoples of Alaska.

3:45:17 PM
MR. MYLIUS referenced slides 12 and 13 regarding Russian occupancy from the 1700s to 1867. Unlike the eastern United States where the colonists came with the idea of settling the land, the Russians never had an intention to settle Alaska, their interests were to extract natural resources, furs and timber were the primary ones.

He noted Russia established several forts for trade with limited settlements in areas around Sitka, Kodiak, and so on. Russia had limited land claims in terms of private ownership. The Russian Orthodox Church got deeds to property, but for the most part the Russians did not settle or establish specific parcels of landownership other than claiming all of Alaska.

MR. MYLIUS pointed out a map on slide 13 that showed Russia's limited settlements in Alaska, primarily coastal communities. There were settlements in the Seward Peninsula and Bering Strait area, but no settlements in northern Alaska. The Russians did not get very far in the Interior, the farthest inland was Nulato Island [Yukon River], and they explored further up the Yukon and Copper Rivers.

He referenced slides 14 and 15, 1867-Treaty of Cession. In 1867, Secretary of State William Seward—an influential guy and President Lincoln's most trusted advisor—negotiated the Treaty of Cession. After the treaty passed, the federal government said all of Alaska is federal property—except of where the Russians essentially established ownership transfer to the Russian Orthodox Church or individuals.

MR. MYLIUS noted the Russians never really dealt with the Native people of Alaska in terms of ownership issues. The Russians

never really claimed that they conquered Alaska Natives, but they certainly did not give them citizenship or any property rights.

MR. MYLIUS referenced slide 15 and detailed Article III of the Treaty of Cession that basically said:

> The uncivilized tribes will be subject to such laws and regulations as the United States, from time to time, adopt in regard to aboriginal tribes of that country.

He explained that basically there was no settlement of Native land claims through Russian days or through the Treaty of Cession.

3:48:07 PM
MR. MYLIUS noted a map shown on slide 16 detailed the land ceded by Russia to the United States. The actual map is from the National Archives and shows Alaska to be exactly in 1867 what it is today as a state.

He referenced slide 17, Early Territorial Land Events, as follows:

- 1870: gold discovered at Sundum (SE Alaska)
- 1880s: gold discovered at Juneau and Fortymile
- 1884: District Organic Act—first federal land law in Alaska, extended mining laws to Alaska, recognized Native possession of lands
- 1897: Klondike Gold Rush
- 1899-1900: Nome Gold Rush
- 1900: Kennecott Copper discovered
- 1903: Alaska open to Federal Homesteading
- 1906: Alaska Native Allotment Act

MR. MYLIUS said people called the Territory of Alaska "Seward's Icebox" or "Seward's Folly." However, there was a lot of interest in Alaska shortly after its acquisition from Russia, particularly by miners. The first federal land law applied in 1884 was the District Organic Act that essentially extended mining laws to Alaska, but the laws were subject to Native land possession, a provision not quite understood and not enforced very much.

MR. MYLIUS detailed there was a large influx of people into Alaska for the Klondike and Nome gold rushes, and the Kennecott copper discovery. The Alaska Native Allotment Act—passed in 1906—allowed individual Alaskan Natives to acquire up to 160 acres of land.

3:49:53 PM
MR. MYLIUS addressed slide 18, The National Perspective on Federal Lands. He said about the time that the United States acquired Alaska, there was a movement started in the country to set aside some of the public lands. The first National Park was Yosemite in 1864, followed by Yellowstone shortly after that. The federal government established the U.S. Forest Service in 1905 and the U.S. Park Service in 1918. The federal government did not lose sight of its actions when looking at Alaska.

He referenced slide 19, Pre-Statehood Federal Land Withdrawals-Alaska, as follows:

- 1868: Pribilof Islands Reserve
- 1891: Afognak Island Reserve
- 1907: Chugach and Tongass National Forests
- 1917: Mount McKinley National Park
- 1918: Katmai Monument
- 1923: Naval Petroleum Reserve
- 1925: Glacier Bay Monument
- National Wildlife Refuges (Ranges): Kenai Moose Range, Kodiak, Arctic, Aleutians
- Indian Reserves

MR. MYLIUS said the land withdrawals became significant when addressing land that both the state and Native Corporations received.

3:51:18 PM
He detailed slide 20, Significance of Pre-statehood Land Withdrawals, as follows:

- Largely off limits to Statehood Land Selections (400,000-acre exception from Chugach and Tongass National Forests)
- Often constrained ANCSA selection—especially in Parks and Refuges
- Generally closed these lands to public land laws (such as mining claims, except National Forest)
- May defeat State's title to navigable waters

- May alter how certain provisions of ANILCA and ANCSA apply (old Mt. McKinley, NPRA)

MR. MYLIUS said the withdrawals often constrain Native Corporations' selections, particularly National Parks and Refuges; those lands closed public land laws to mining claims and homesteading—except for National Forests in the case of mining claims—and they may defeat the state's title to navigable waters. The withdrawals also impact provisions of ANILCA and ANCSA—best example being old Mt. McKinley National Park, and NPRA.

3:51:57 PM
He noted a map on slide 21 shows the original colonial land claims that extended as far west as the British territories. For example, Massachusetts had a land claim that went as far as the Mississippi River and Virginia to northeastern Minnesota. The 13 original states decided that any of the lands to the west of the Appalachian Mountains would cede to the federal government for carving out new states.

MR. MYLIUS said slide 22 explains the carving out and setup for new states through the Land Ordinance of 1785, which created the Public Land Survey System for establishing townships, ranges, and square mile selections—a system that everybody in the western states was familiar with.

He explained as an incentive for states to form in a way for states to get revenue, the federal government said Section 16—one section out of the 36 sections for each township—would grant the states trust—land for public schools. The first state to receive such a grant was the state of Ohio in 1803. As new states came into the union, each state negotiated their entry terms.

MR. MYLIUS noted when California became a state in 1850, they asked for each township to receive 2 sections out of every 36 sections because their land was more mountainous than the midwestern states. In 1896, Utah requested four sections because they claimed their land was drier and more mountainous than California. Some states argued that they should get "trust" land grants for other public purposes such as prisons, etcetera.

3:54:15 PM
He referenced slide 23 and detailed the "trust" lands the Territory of Alaska received as follows:

- School Trust: 104,000 acres
- University (1929): 111,000 acres
- Mental Health (1956): 1 million acres
- These are all trust lands: lands must be managed for fiduciary interest of the trust beneficiaries

MR. MYLIUS noted the "trust" lands for mental health was the only mental health grant ever granted by the federal government because Alaska's mental health services were out of state in either Seattle or Portland. Mental health advocates in Alaska probably asked for land or money, but Congress decided to give one million acres to generate revenues to provide for mental health services. The first parcel granted for mental health is where the Alaska Psychiatric Institute and is in Anchorage.

3:55:05 PM
He said he added slide 24, Status of Trust Land Grants, for the legislature's interests. In 1978, the legislature dissolved those trusts because there was a push for the state to sell and transfer more lands to municipalities and to put some trust lands into, for example, Chugach State Park.

MR. MYLIUS detailed in the 1980s, both the University and subsequently Mental Health sued and said those land transfers violated the trust because they were not getting the revenues from those lands and land disposals, or in the case of municipal entitlements, there were no revenues. Basically, the legislature had approved giving away University and Mental Health lands without compensation to the trusts. The courts ruled the state had violated those trusts' responsibilities and required the legislature to reconstitute those trusts with unincumbered original trust lands, and to not set aside other state lands for other uses.

He explained the "trust" land grants led to the [University of Alaska Land Management] and the [Alaska Mental Health Trust Lands Office]. The dedicated trust funds occurred before statehood and are not subject to the Dedicated Funds Provision.

MR. MYLIUS referenced slide 25, Alaska Statehood Debate, and noted there was a certain amount of federal spending in Alaska during WWII. The federal government largely provided public services including roads and schools. Congress asked how Alaska would support itself as a state and statehood advocates asked for a large federal land grant without any strings to use for funding development and state services.

3:57:35 PM
SENATOR VON IMHOF thanked Mr. Mylius for his informative presentation. She recalled learning about the lawsuit, particularly the Mental Health land, but people have talked about the University and their lands grant office. She asked him if the University land trust is an active, viable, and cash-flowing trust that annually kicks out money.

MR. MYLIUS answered yes, there is a land office under University management in Anchorage. He said he is not sure who the person in charge is, but they do have money and receive a fair amount of money from timber and parcel sales. As part of the settlement, they have an active land-fill program. The trust is a dedicated fund, and a large part funds go to [The University of Alaska Scholars Program to award scholarships to students in the top ten percent of their Alaska high school class].

He noted there is a long history of controversy where the University has argued that they should have received a larger land grant—Alaska's university land grant was smaller than every state other than Rhode Island, but some people argue that part of Alaska's large statehood grants were meant for the University.

MR. MYLIUS said the legislature over the years has passed various legislation to transfer land to the University. There was a proposal in Congress to transfer some of the state's entitlement out of the Tongass, but the legislation did not pass. There are constitutional questions with transferring state land to the University. The legislature did pass two bills, but a previous governor vetoed one bill and it went to court.

4:00:57 PM
SENATOR MICCICHE noted earlier discussions about transfer issues. He asked him if there is another section where he will talk about dates, timing on the remaining state land transfers, and what is holding up the transfers.

MR. MYLIUS answered yes, he will specifically address transfers during his Alaska Statehood Act overview and will provide a recap on where all the entitlements remain.

He referenced slide 27, Alaska Statehood Act. He said there is often confusion on how many acres Alaska has, and people say 103.35 million acres—which was in the act—but that does not include the million acres the Mental Health Trust received, the UA grant, and subsequent changes that increased the state's

entitlement—Cook Inlet Land Exchange increased the state's entitlement by a half million acres.

MR. MYLIUS detailed there were two sections in the Alaska Statehood Act that granted lands to the state, one was the Community Grant, Section 6(a), which was a small grant of 400,000 acres via the National Forests and 400,000 acres out of BLM.

He said the [Section 6(b)] General Grant—the big grant with an area the size of California—was 102.5 million acres from BLM land; that excluded the pre-statehood withdrawals noted earlier in his presentation as off limits: Mt. McKinley, the NPRA, the Arctic Refuge, and so on.

He noted Section 6(m) of the Alaska Statehood Act applied to the Submerged Lands Act, and Section 4 acknowledges Native land rights that were unresolved at the time the act passed.

4:03:06 PM
MR. MYLIUS said slide 28 shows a couple of unique provisions of Alaska's land grant that differed from any other state. Alaska was able to select its lands, noting he believes all the other states' grants were specific sections of lands. Sections were originally sixteens, then sixteen and thirty-six, and then sixteen and thirty-three. Alaska was able to select from any vacant and unappropriated federal land which was most of the BLM and Forest Service lands within the state at the time—the Forest Service limit was 400,000 acres.

He noted the unique provisions also gave Alaska 25 years to file its land selections—amended to 35 years in ANILCA because of the "(d)(2)" debates—and ANCSA basically made it impossible to meet that 25-year deadline, and they are not "trust" lands.

MR. MYLIUS referenced slide 29 and noted the National Forest Community Grant [Section 6(a)] was unique where the state would receive a smaller grant of 400,000 acres out of both the Chugach and Tongass National Forests. The grant required the lands had to be adjacent to established communities suitable for prospective community centers and recreation areas; that went into litigation to define that because the state wanted to use some of its land selections for forestry and minerals out of the Tongass. Through a settlement agreement, the state agreed to only select land for those purposed in the Alaska Statehood Act. The selections allowed the state to create most of the Marine Parks in Prince William Sound and Southeast Alaska.

MR. MYLIUS noted maps on slides 30 and 31 that illustrated Southeast Marine Parks and Prince of Wales Island. He said the Alaska Statehood Act constrained the purpose of the state's selections but did not constrain the state after its selections. The state can harvest timber off those National Forest lands selections and some selections ended up in the Southeast State Forest created by the legislature a few years back.

4:05:48 PM
He referenced slide 32 and noted Section 6(i) is an important part of the Alaska Statehood Act which said all state land grants will include minerals but requires the state to reserve minerals and any sales or other disposals—which means the state can never dispose of the mineral estate through a sale or a disposal.

MR. MYLIUS explained because of Section 6(i), whenever the state sells land or transfers land—like to municipalities—there is a mineral reservation to the state under AS 38.05.125 which basically says the state is retaining the mineral rights. The section has been an issue at times, especially 15-20 years ago when the state proposed a large natural gas sale in the Mat-Su Valley—mostly the Susitna Valley—and the property owners realized they did not own the minerals under their land. The section can become an issue, particularly when the state has sold or transferred the land to a municipality.

He said Section 6(i) is also why state mining claims can never go to patent—a claim going to patent is possible under federal law in theory but hardly anybody has received a federal mining patent in quite a few years. The state needs to deal with the patent issue to retain the minerals and land exchanges. The section also complicates land exchanges dealing with Native Corporations' subsurface ownership.

4:07:16 PM
MR. MYLIUS addressed slide 33, state Land Grants, and noted the slide gets to part of the question that Senator Micciche asked about the status of the grants. The state has received about 100 million acres to date. The federal government patented or surveyed 69 million acres to the state with 31 million acres tentatively approved. The Alaska Lands Act confirms tentative approval is titled—but it just means those lands are not surveyed—and that is really a BLM workload issue.

MR. MYLIUS noted there are current issues where BLM has proposed cutting some of the corners of surveying that the state disagrees with because the state argues that is a federal responsibility to adequately survey the land before they issue the patents.

He summarized the state has received 100 million acres out of 105 million acres and noted he will address the remaining 5 million acres.

4:08:14 PM
MR. MYLIUS referenced slide 34, Promised Land—the last 5 million acres. The federal government has largely fulfilled the University, School, and Mental Health grants. The remaining five million acres, the State, under ANILCA, can top-file on lands currently not available because of an administrative federal withdrawal and one of those is the [Trans-Alaska Pipeline System] (TAPS) corridor that follows the Dalton Highway—about two million acres—that the state has coveted forever. However, the state cannot get the lands because of the federal withdrawal. BLM issued a Land Use Plan a month ago that proposes to revoke that withdrawal, but the plan is only a draft plan subject to public comment and that is one of the big issues to deal with.

He said he believes the state has narrowed down the acreage amount it wants in the TAPS corridor—less than two million acres—but the state is holding on to some of its entitlements specifically to get the corridor land because the parcel is more valuable than some piece of tundra the state could get in western Alaska.

MR. MYLIUS noted there is about one million acres that the state is holding because there are various inholdings, particularly mining claims because a lot of miners with federal claims would prefer to operate under state claims. There is process that BLM, the state, and the miners use to transfer federal mining claims—considered inholdings because the federal government excluded the claims when they transferred the land to the state.

He added there is various chunks of land—often close to communities—that the state could get, but the state cannot get the land until the federal government surveys all ANCSA land, and that essentially is a survey issue resolving all the final ANCSA conveyances.

MR. MYLIUS noted that state also has selections via top-filings on military lands—lands such as Fort Richardson and Fort Wainwright—that the state could hold those selections in place for 50 or 100 years in case the federal government ever surpluses any of those properties versus taking tundra land in western Alaska.

4:11:11 PM
MR. MYLIUS noted in slide 35, state-owned Navigable Waters, the state also owns 60-65 million acres, defined under three categories: shorelands, tidelands, and submerged lands—defined in state statutes.

He detailed shorelands are lands under inland navigable waters such as the Susitna, Tanana, and Gulkana Rivers, acquired under the Equal Footing Doctrine which is when the original 13 colonies became 13 states where they reached certain agreements and every other state that enters the Union comes in under "equal footing" with those agreements. One agreement was the state, not the federal government, would own land under inland navigable waters—this includes waters within Conservation System Units established after statehood—but it may not include waters within those units established prior to statehood.

MR. MYLIUS said as a side note, the John Sturgeon case fed into the second [state-owned navigable waters] category. Mr. Sturgeon was on a state-owned water within a Conservation System Unit established after statehood—the Nation River which the state has a court decision that says it is a state-owned navigable waterbody—but the river flows within the outer boundaries of a Federal Park created under ANILCA, and that had led to the dispute.

He explained state-owned tidelands—lands under tidal influence between high tide and low tide—that the state also owns out to the three-mile territorial limit under the Equal Footing Doctrine Submerged Lands Act.

MR. MYLIUS noted slide 36, What are the state-owned Navigable Waters, and one of the big issues is the state acquired title to its navigable waters in 1959, but there are no lists of what they are and there is disagreement about what is navigable.

4:13:00 PM
He referenced slide 37, Multiple Legal Definitions of Navigable Waters and Navigability, and explained he is talking about "title for navigability purposes," which means who owns the bed

of the navigable waters—it has been defined by over 150 years of federal court cases and is not to be confuses with navigability definitions used for the Clean Water Act within the [U.S. Army Corps of Engineers'] jurisdiction or the [U.S. Coast Guard] authority.

MR. MYLIUS addressed slide 38 on the determination of navigable waters and noted a landmark case—[U.S. Supreme Court in Daniel Bell (1870)]. He paraphrased the court's ruling as follows:

> Susceptible of being used, in their ordinary conditions, as commerce, over which trade and travel.

He explained—from slide 39—there are several ways to determine navigability and one is through the federal courts. The state has gone to federal court and a landmark case the state cites is the Gulkana River which established the commercial rafting and susceptibility for commercial rafting and commercial uses would define navigability in Alaska.

MR. MYLIUS said the Gulkana River case is important because the time a state becomes a state defines navigability. Prior to Alaska, the last state under the Union Act was Arizona in 1914. Arizona has two navigable waters within the state, so there are not a lot of good federal precedents out of any of the western states. The states that have a lot of navigable waters go back to the days before people had motorized crafts. So, Alaska was charting new ground.

He noted a case where Alaska tried to assert a floatplane established navigability in the Slopbucket Lake case. The court ruled an airplane is not a boat and the state did not own the bed of the lake just because airplanes can land on it.

MR. MYLIUS said the state has always asserted that anything that meets the Gulkana River criteria should be navigable. Sometimes federal agencies and ANSCA Corporations disagree with the state, but the only way to resolve that is through Quiet Title, or if the state and the federal government—BLM—can reach an agreement. BLM will typically issue a Recordable Disclaimer of Interest—an active project that BLM and DNR have been working on for quite a few years.

4:15:31 PM

He noted slide 40, Impact of Pre-Statehood Withdrawals on Ownership of Navigable Waters, and referenced his earlier talk about the pre-statehood withdrawals of Mt. McKinley, Tongass,

and Chugach. Depending on area definitions, the federal government could retain ownership of the navigable waters within the pre-statehood withdrawals.

MR. MYLIUS said the landmark case before the U.S. Supreme court was Utah Lake—the largest lake in Utah that is clearly a navigable waterbody—withdrawn at the time Utah became a state. The U.S. Supreme Court said, "No, you have to make it real clear that you are including the waters and that you intended to defeat the state's title to those navigable waters." That became a big issue in Alaska's North Slope.

4:16:39 PM
He addressed slide 42, Pre-Statehood Withdrawals-NPRA and Arctic National Wildlife Range, and noted a U.S. Supreme Court case where the state thought was an island called Dinkum Sands.

He explained Dinkum Sands is more than three miles offshore of Prudhoe Bay shoreline and beyond the three-mile state territorial limit. However, the state argued Dinkum Sands was an island and therefore was state land with a three-mile ring around it. There happened to be a lot of oil under Dinkum Sands, so it was worth going to court to fight about whether Dinkum Sands was a state-owned island.

He said the court ruled that the state does not own Dinkum Sands because it is not an island since that area emerges above water a couple of times a year due to unique water and ice conditions. The court ruling meant the federal government gets the revenues from Dinkum Sands. However, because the case went to the U.S. Supreme Court, the state included some other legal issues.

MR. MYLIUS noted there was an issue about the [Arctic National Wildlife Refuge (ANWR)—formerly known as the Arctic Wildlife Range]—established after statehood—and whether that defeated the state's title. The boundary of ANWR goes offshore to barrier islands—within the boundary of ANWR that would normally be state-owned waters between the barrier islands and the shore—but the court said, "No, the refuge defeated the state's title and more significantly on contemporary issues," the same thing was true of the National Petroleum Reserve established in 1923 by President Harding.

He referenced a map on slide 43, BLM's National Petroleum Reserve-Alaska (NPRA), to illustrate the boundary of the reserve. He pointed out the boundary near Wainwright and near Utqiagvik goes offshore and includes what normally would be

state-owned waters. However, because those are within the boundary and the U.S. Supreme Court ruled the withdrawal was meant to defeat the state's title to those, they are off limits.

MR. MYLIUS noted a similar situation in NPRA and pointed out a "blue blob" on the righthand corner of the map that identified Teshekpuk Lake. Again, that would normally be a state-owned waterbody—Teshekpuk Lake is one of the largest lakes in the state—but because of the U.S. Supreme Court decision, the state does not own the lake's bed, so it is the federal government that decides about oil and gas leasing in Teshekpuk Lake.

4:18:56 PM
MR. MYLIUS referenced slide 44, Pre-Statehood—Glacier Bay Monument and Tongass National Forest, and noted the state also went to court over Glacier Bay regarding an issue about who regulates fishing within the former National Monument—now a National Park. The U.S. Supreme Court ruled Alaska's pre-statehood withdrawal did defeat the state's title.

He noted because the state could go directly to the U.S. Supreme Court, the state included other disputes. One dispute was the Tongass marine waters that are more than three miles offshore—areas between islands—and who regulated those; that was an issue that had to do with where you could dump waste as well as the unspoken question about whether the federal government retained the marine waters of the Tongass National Forest. Since statehood, the state managed the marine waters, but there were always people in the U.S. Forest Service that said those might be federal waters.

MR. MYLIUS said the U.S. Supreme Court affirmed a disclaimer that the federal government issued to say "no, the state owns those" to clear that up. That expanded to include the inland navigable waters in the Tongass through a reportable disclaimer issue with the Stikine River.

He addressed slide 45 on why navigable waters ownership matters. He explained whoever owns the bed of the water for title purposes determines if state laws govern use of the riverbed and waterway and decides who gets the mineral rights and so on. Regardless, the Alaska Constitution governs public use and private owners—and occasionally federal agencies—may try to restrict the uses the state believes the constitution protects.

MR. MYLIUS referenced slide 46, Alaska's State-Owned Land: 165 million acres. He explained the amount of land the state owns in

title is about 165 million acres—eventually 105 million acres up uplands and 60-65 million acres of tidelands through shorelands and submerged lands—an area equal to California, Oregon, and Washington combined, making Alaska the second largest landowner in the United States next to the federal government.

4:21:23 PM
MR. MYLIUS addressed slides 47-48, State Constitution-Article VIII. He said the people that drafted the Alaska Constitution knew the importance of state lands. Someone told him Alaska is the only state that has a whole article of its constitution dedicated to natural resources. Some court issues and federal lands disputes tie directly to the Alaska Constitution, including subsistence issues—noted on the last point on slide 47 regarding fish, wildlife, and waters available for common use.

He added slide 48 includes constitutional requirements for public notice, the ability to stake mining claims, and so on.

MR. MYLIUS noted he included slide 49, Municipal Land Entitlements, as an issue of interest to the legislature. The state shares its lands bounty with municipalities in the form of, "Municipal Land Entitlements."

He explained municipalities receive 10 percent of vacant, unappropriated, unreserved state land—defined in statute. The act passed in 1978 and granted specific acreage and entitlements to the boroughs that existed.

MR. MYLIUS said an entitlement example includes the Mat-Su Borough receiving the most generous entitlement—355,210 acres—because there is a lot of state land in the borough. The Municipality of Anchorage never received its full entitlement because most of the big chunks of state land are in Chugach State Park or at the Anchorage International Airport. The municipality reached a settlement agreement in 1986, but there may be some outstanding state land—like DOT properties—that the municipality could someday get if they are surplused by the state.

He referenced slide 50, State Land Selections—1960s. The state was able to select what lands that they got but was initially cautious. The state selected lands around communities, but some smart geologists at the [Alaska Division of Geological and Geophysical Surveys] (DGGS) suggested selecting land at Prudhoe Bay—one of the state's earliest land selections.

4:24:09 PM
MR. MYLIUS noted the state then decided to branch out and file state selection claims near Native communities—slide 51, Native Claims-1960s. As a result, Native communities said, "Wait a minute, the State of Alaska has been around for six or seven years and just filed claims on the land right around our village." Native communities started to file land claims and by 1966 the Secretary of Interior announced the state would not receive any more land until it dealt with the aboriginal land claims—those claims covered 80 percent of Alaska by 1968.

He said the Prudhoe Bay oil discovery in 1968 kind of forced Congress to deal with the Native claims to allow for the building of a pipeline from Prudhoe Bay to a deep-water port in Cook Inlet or Valdez, which resulted in the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971.

MR. MYLIUS referenced slides 52-63 regarding the key provisions of ANCSA. He noted with ANCSA, the federal government took a different approach to dealing with Native lands versus how they dealt with it in the Lower 48. In the East, the federal government pushed Native people off their lands and gave them lands in the more central and western parts of the country; they were reservations held in trust by the federal government and the Native tribes did not own their lands outright, Alaska Natives said they wanted a different deal.

He explained what ANCSA did was extinguish aboriginal land claims. The Treaty of Cession acknowledged they were Native people but there was no lands agreement. The Alaska Statehood Act acknowledged that there were Native lands rights and claims, but they were unresolved. ANCSA was the final resolution of aboriginal land claims.

MR. MYLIUS noted ANCSA provided land near villages for subsistence and community uses, provided economic opportunities, and provided for Native ownership. They are private lands, not trust lands or reservations, they are tribal lands. He said because Alaska Natives had essentially aboriginal title to all of Alaska, there was a billion dollars set aside basically as compensation for the lands not conveyed back to the Natives.

He referenced slide 55 and detailed ANCSA established 13 regional and 224 village corporations. Stockholders were Alaska Natives living on the date the Act passed in 1971. Alaska Natives could enroll in a regional corporation and a village

corporation, receive stock, and there was a billion dollars set aside as compensation for the lands not conveyed.

4:27:09 PM
MR. MYLIUS addressed slide 56, ANCSA Regional Corporations. There was a unique ownership split in terms of ANCSA land where the regional corporations received the sub-surface estate under the village lands—except in pre-ANCSA National Wildlife Refuges and NPRA—and they received additional acreage based on a population and area formulas. The result of that, for example, Doyon received a huge land grant, making Doyon—he believes—the largest private landowner in the country.

He detailed the total amount of surface and subsurface that Native Regional Corporations got was 17 million acres. The Regional Corporations also received the subsurface under village lands, cemetery and historic sites, and a 70 percent revenue sharing provision.

MR. MYLIUS referenced the map on slide 57, ANCSA Regional Corporation Boundaries, and noted the map shows Doyon's geographic area—in terms of the state—is very large due to their large population and number of villages, and they received a very large land grant.

He noted slide 58, ANCSA Village Corporations, and explained they received surface estate, required to select lands around their villages—the amount of land was a function of their population. The smallest villages received three "townships" which was 69,000 acres, the largest—he believes—is 6 townships. The ANCSA villages received 22 million acres of land.

MR. MYLIUS said the Tlingit-Haida villages in Southeast received 23,000 acres because there was a previous settlement due to the formation of Tongass National Forest. The Tlingit-Haida villages had received a monetary compensation through court decisions—the compensation came through in the 1960s.

He noted slide 59, ANCSA-Provisions for Indian Reservations, and detailed reservations existed at the time of ANCSA—14 reservations with 13 extinguished by ANCSA. The reservations had the choice of either taking simple title to their reservation land, receiving surface and subsurface, or getting the provision similar to other villages where they received the split between the regional and village corporations.

MR. MYLIUS said large reservations receiving a larger entitlement and basically took the simple title provision. For example, St. Lawrence Island is over a million acres of land, the Gambell and Savoonga Native corporations jointly own the land. Similarly, Arctic Village and Venetie had a very large reservation—just south of the Arctic Wildlife Refuge—and they took simple title as did Tetlin in eastern Alaska and Elim on the Seward Peninsula. Those that had small reservations opted for the regular provisions for ANCSA villages. One reservation on Annette Island, Metlakatla Reservation, opted out of ANCSA entirely.

4:30:09 PM
MR. MYLIUS addressed slide 60, ANCSA Section 17(b). He explained the provision requires access across ANCSA lands to public lands and waters—state or federal—but there are a lot of issues related to identification and management. Public access is an important part of ANCSA.

He referenced slide 61, Select ANCSA Amendments, and noted ANCSA has received amendments a whole bunch of times. He suggested knowing what the amendments are when reviewing ANCSA due to its changes over time.

MR. MYLIUS addressed slides 62-63 regarding ANCSA and federal lands. He said one other provision in ANSCA deals with federal lands and note native lands. He noted from a historical perspective, the environmental movement was kind of born in the 1960s. There was the Wilderness Act and there was a huge controversy about Redwood National Park. The first Earth Day took place in 1970, the National Environmental Policy Act (NEPA) passed in 1970, and the Environmental Protection Agency (EPA) formed in 1970. So, ANCSA comes along in 1971 and Congress inserted Section 17(d)(1) and Section 17(d)(2).

He noted slide 63, ANCSA Section 17(d)(1). He explained "17(d)(1)" still lives on and it allows the Secretary of Interior to withdraw lands from entry under public land laws, withdraw lands for mineral entry, leasing, sales, for study and classification; many of these withdrawals are still in place.

MR. MYLIUS said in 2004, Congress—with the urging of Senator Murkowski—passed the Alaska Land Transfer Acceleration Act. The Act required BLM to finally look at the [17(d)(1)] withdrawal parcels and see if some of them could go away, made available for mineral entry, or to speed up the transfers to the state.

He noted on January 19, 2021—right before the [presidential] inauguration—the Secretary of Interior revoked 9.7 million acres of 17(d)(1) withdrawals in northwest Alaska and the Seward Peninsula—it was a land use plan that BLM adopted approximately 15 years ago that called for those relocations—but the Secretary of Interior had to do the actual act; that is the biggest chunk of 17(d)(1) withdrawals ever revoked, a big accomplishment.

4:32:39 PM
MR. MYLIUS referenced slide 64, BLM Map: ANCSA 17(d)(1) withdrawals. He said the 17(d)(1) withdrawals shown on the map is a little more alarming than one might think because most of the purple areas—which are 17(d)(1) withdrawals—are actually within National Parks and National Wildlife Refuges—are kind of irrelevant. However, the green areas are the areas that are active BLM lands where there is Section 17(d)(1) withdrawals that could result in revocation. He pointed out on the map areas numbered 4, 5, and a little bit of 7, that is some of the areas where BLM just revoked some of those withdrawals. He noted the salmon-colored corridor in the area labeled 3, is the "PL5150" Dalton Highway corridor that he previously mentioned; BLM's current draft plan proposes to revoke it—it is not a (d)(1) withdrawal but is different and withdrawn for the construction of TAPS.

He addressed slide 65, ANCSA Section 17(d)(2), a big part of ANCSA that was hugely controversial. He explained Section 17(d)(2) allowed the Secretary of Interior to withdraw public lands from state and ANCSA Regional Corporations—up to 80 million acres—for study as future National Interest Lands. During the 1970s there was a huge debate in Alaska between 1971—when ANCSA passed and Section 17(d)(2)—and 1980 when the Alaska Lands Act passed, a huge debate about what lands should be permanently set aside as National Interest Lands.

4:34:24 PM
MR. MYLIUS noted slide 66, "(d)(2)" Lands—Examples of Disputes. He said the Wrangell Mountains—that is where the Kennecott copper deposit is, the richest copper deposit in history—is in the middle of what is now a National Park and there was a big issue. The question was whether the area should be open to mining, timber harvest, and preserving its watershed. ANILCA preserved the area, and it is now the [Wrangell-St. Elias National Park and Preserve Alaska], the largest national park in the country.

MR. MYLIUS said timber production versus wilderness in the Tongass National Forest was another huge dispute. In the 1970s, there were large timber contracts with two pulp mills during the "(d)(2)" debate, but there was a big push to create wilderness areas. The Tongass is one area where ANILCA compromised and set aside a number of areas for wilderness as well as a provision that required a certain amount of timber harvest; that is one of the compromises that became undone by the Tongass Timber Reform Act.

MR. MYLIUS remarked ANILCA was a lot of compromises and the Tongass is a good example where there were significant compromises between timber interests and the wilderness preservation interest. One of the compromises that has not quite held—oil and gas in the Arctic Coastal Plain—was an issue that Congress "punted on" in 1980 when ANILCA passed. The Arctic Coastal Plain was a big controversy fought about in "(d)(2)" debates, and nobody could decide what to do and they decided to study it and let somebody else decide.

He noted some of the decided areas included earlier proposals for "(d)(2)" units included a National Wildlife Range in what today is the [proposed Pebble Mine] site. The state argued for keeping the area for state ownership—nobody thought there were significant mineral deposits in the area during the debate, the Pebble deposit discovery did not occur until the late 1980s—but it was an issue in terms of whether the federal government should retain the area.

He said another big issue during the "(d)(2)" debate was whether creating a National Park like Yellowstone would impact what Alaskans like to do.

4:37:09 PM
MR. MYLIUS addressed slide 67, 1980-ANILCA, as follows:

- Created or expanded National Parks, Wildlife Refuges, National Forests, National Monuments, and other federal land designations.
- New Conservation System Unites (CSUs) areas totaled about 106 million acres
- Protected federal lands now total 137 million acres (37 percent of the state)
- ANILCA established new wilderness areas

He referenced slides 68 and 69, Acreage—Before and After ANILCA, as follows:

- National Park System
  - Before: 7.5 million
  - After: 54 million
  - Net: +46.5 million
- National Wildlife Refuges
  - Before: 23.3 million
  - After: 77 million
  - Net: +53.7 million
- National Forests
  - Before: 19 million
  - After: 22 million
  - Net: +3 million
- BLM National Recreation/Conservation Areas
  - Before: 0
  - After: 2.2 million
  - Net: + 2.2 million
- Other BLM
  - Before: 200+ million acres
  - After: 72 million acres
  - Net: -125 million
- Designated Wilderness
  - Before: 0.1 million
  - After: 57 million
  - Net: +56.9 million
- Wild and Scenic Rivers
  - Before: 0
  - After: 0.6 million
  - Net: +0.6 million
- Total National CSUs
  - Before: 30.8 million
  - After: 137 million
  - Net: +106 million
- Note: "Before" acreages are estimates and exclude 1978 Monuments

MR. MYLIUS explained National Forests were a significant part of the Tongass set aside as federally designated wilderness where none had existed before.

He noted BLM received two unique areas to manage, the National Conservation Area and the White Mountains National Recreation Area. Also, the change in BLM acreage was due to all the acreage for National Parks and National Wildlife Refuges came out of previously managed BLM lands.

4:39:09 PM
MR. MYLIUS addressed slide 70 and said ANILCA included a whole bunch of amendments, many were land adjustments based on some corporations not wanting their lands within the new CSUs.

MR. MYLIUS referenced slide 71, 2021—Remaining Land Transfers, as follows:

- 2 million acres still to transfer under ANCSA
- 7 million acres to survey/patent under ANCSA
- 5 million acres still to be transferred to State of Alaska
- About 19 million acres of State selections and topfilings
- Many State selections overlap ANCSA selections and Native Allotments
- 36 million acres to survey/patent to State
- About 250 Native Allotment parcels to transfer
- New Veteran Native Allotment Program in 2019 Natural Resource Management Act (S 47)

He explained topfilings refers to land currently not available for some reason because of a federal withdrawal or competing claim.

MR. MYLIUS noted there is a lot of overlapping between ANCSA selections and the state selection. However, the rules as to who gets what are clear, there are no disputes, and the transfers are just a matter of getting the last land surveyed. For example, a Village Corporation generally trumps a state selection and the Regional Corporation maybe not, but the rules are all real clear so there is not disputes so much between the state and Native Corporations.

He said there is a whole new Veteran Native Allotment Program that just passed in 2019 that BLM is in the process of rolling out. BLM is trying to identify the "(d)(1)" withdrawals because they act as area transfer constraints under the Veteran Allotment Program.

4:40:44 PM
MR. MYLIUS referenced slide 72, Three Laws to Remember, as follows:

- Alaska Statehood Act—granted land to the State (1958)
- Alaska Native Claims Settlement Act—(ANCSA) resolved aboriginal land claims (1971)

- Alaska National Interest Lands Conservation Act (ANILCA)—designated federal conservation units and legislated unique provisions for public use (1980)

MR. MYLIUS said understanding the Alaska Statehood Act, ANCSA, and how they lead up to ANILCA is important.

4:41:14 PM
CHAIR REVAK thanked Mr. Mylius for his informative overview. He asked him to elaborate on "(d)(1)" withdrawals and how that affects Native allotments.

MR. MYLIUS explained the "(d)(1)" withdrawals go back to ANCSA, put into place to both enable the Native villages to file their ANCSA land selections and to allow BLM to look at those lands for figuring out if some require protection. They were meant as temporary withdrawals but have been in place for almost 50 years. The withdrawals have prevented mining claims and Native allotments until they go away.

He said he believes BLM has not got to a point where people are actually filling their Native allotment claims because the bureau is still sorting out eligibility. The issue is a federal BLM question as to how that program operates, but it is a new program. BLM is working with the [Bureau of Indian Affairs] (BIA) to identify who is eligible and what lands are available.

4:43:13 PM
CHAIR REVAK summarized the administration removing the revocation of those withdrawals continues to tie up the land that would otherwise be open for the Native Veterans Allotment program.

MR. MYLIUS answered yes, but not revoking those withdrawals.

SENATOR MICCICHE asked if he may meet with him and Roger Pearson to further address the continuous erosion of state rights under the Alaska Statehood Act, ANILCA, and a little bit of ANCSA.

MR. MYLIUS answered yes. He noted he has worked with Mr. Pearson and others via the Institute of the North to address the erosion of knowledge of what is in the Alaska Statehood Act, ANILCA, and ANCSA. He said Alaskans, federal land managers, and "fresh faces" from administration changes—whether Democrat or Republican—have no understanding of the compromises in those past federal laws.

CHAIR REVAK thanked Mr. Mylius for providing the committee with important information on what the [federal government] promised Alaska throughout the history of the state, something that deserves focus.

4:47:46 PM

There being no further business to come before the committee, Chair Revak adjourned the Senate Resources Standing Committee meeting at 4:47 p.m.