

In The Matter Of:
United States Department of the Interior
Office of the Solicitor

Listening Session
July 26, 2018
Authority to Take Land Into Trust in Alaska Under the IRA

Crystal Thompson Court Reporting Services, LLC
104 Kutter Road
Fairbanks, Alaska 99701
(907) 460-9535
AlaskaCrystal@gmail.com

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UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SOLICITOR

LISTENING SESSION

AUTHORITY TO TAKE LAND INTO TRUST IN ALASKA

UNDER THE INDIAN REORGANIZATION ACT (IRA)

Taken: Thursday, July 26, 2018

Place: Fairbanks, Alaska

A P P E A R A N C E S:

Mr. Jim James
Deputy Director-Field Ops
Bureau of Indian Affairs

Mr. John Kindred
Attorney-Advisor
Office of the Solicitor

Ms. Elizabeth Appel
Acting Chief of Staff for
The Assistant Secretary
Indian Affairs

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1 THURSDAY, JULY 26, 2018

2 FAIRBANKS, ALASKA

3 1:00 P.M.

4

5 MR. JAMES: Okay. Well, I guess we can go
6 ahead and get started. It's a little bit after 1:00. I
7 know we're scheduled at 1:00.

8 The second half of the listening session today
9 is going to be devoted towards hearing what your comments
10 are on the process of taking land into trust for the State
11 of Alaska.

12 But before we get going, I asked Chief Charley
13 if he could kind of open the meeting with us with an
14 invocation to get us on a right path. Chief.

15 CHIEF CHARLIE: My name is Clifford Charlie.
16 I'm from Minto. First chief. I was raised by my
17 grandmother, Lucy Frank. That's about all. Okay.

18 Lord, our Heavenly Father, we ask you to bless
19 our gathering here; and keep our minds open for other
20 people's comments and suggestions; and help us to learn
21 from one another and understand our true feelings and how
22 to express ourselves; and give us wisdom and understanding
23 in our endeavors. This we ask in Jesus name, Amen.

24 AUDIENCE: Amen.

25 MR. JAMES: Thank you, Chief.

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1 CHIEF CHARLIE: You're welcome.

2 MR. JAMES: So for the record, my name is Jim
3 James. I'm the deputy bureau director for field
4 operations. So I'm here to basically hear what you have
5 to say about this second piece of our -- the purpose for
6 being here today. It's sort of an informal back-and-forth
7 dialogue. We do have a court reporter here or a reporter
8 who will be recording our comments this afternoon.

9 We're really focused here on the land into
10 trust process as it relates to Alaska land acquisitions.

11 Back in the beginning of this administration,
12 President Trump issued a directive to all executive
13 departments asking us -- asking all of the agencies, all
14 the departments to take a look at regulatory issuances,
15 and to determine whether or not they were appropriate or
16 they needed to be streamlined or whatever. And so that's
17 what we're doing here.

18 There was an M-Opinion that was issued on
19 January 13th, 2007, about land into trust applications for
20 the State of Alaska. And so we're following the directive
21 of the Executive Branch in conducting these listening
22 sessions to get some ideas on how the secretary can
23 exercise that authority for taking land into trust into
24 Alaska.

25 So there's some other federal officials here.

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1 Gene Peltola, who is the regional director for Alaska
2 region; Lisa DeCora for the Solicitor's Office; and Josh
3 Kindred.

4 This is a very complex issue, and I'm happy
5 that Josh and Lisa are here to help us with the
6 discussion, but we really are here to listen to what your
7 thoughts are.

8 So with that, Josh, do you have anything to
9 add?

10 MR. KINDRED: No. I mean, I would just
11 highlight the fact that when we -- we referenced the
12 January 13th, 2017, M-Opinion. And the -- I think the
13 concern from our standpoint is whether or not that was a
14 legally sufficient or comprehensive approach to a Lands
15 into Trust analysis. And so while we're happy to hear any
16 and all thoughts you have, you know, if you look at the
17 questions in the tribal leader letters, they're really
18 focused on -- on some of these legal questions and whether
19 or not that analysis from January 2017 and any process
20 moving forward is legally sufficient and defensible.

21 So to the extent that you have any of that,
22 you know, it's definitely valuable to us to try to, you
23 know, take back and keep working on it.

24 MR. JAMES: Chief.

25 MR. GINNIS: May I begin?

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1 MR. JAMES: Yes, please. And for the record,
2 we'll follow the same process, if you can state your name.

3 MR. GINNIS: Hello, I'm Steve Ginnis. Hello,
4 hello.

5 Hi. I'm Steve Ginnis. I'm the official chief
6 of the Gwichyaa Zhee Gwich'in Tribal Government.

7 So, gentlemen, I again have to emphasize that
8 I -- this -- I'm not going to speak to this legal stuff
9 because I feel that those issues had already been
10 addressed, and there's no need for me to speak to it.

11 You know, I'm going to tell you something
12 about my tribe. When I was the chief of my tribe back in
13 '93, one of the things we did was we transferred part of
14 our corporate -- village corporate lands to the tribe.
15 And we did that because we recognize that the younger
16 generation, those that were coming through high school
17 didn't have a land base. All the town sites were taken
18 up.

19 And so we embarked on this transfer of the
20 land from our corporation to our tribe. Half the
21 entitlement of the tribe. The stumbling block we ran into
22 was that there was some opposition to the transfer over
23 the argument that we were taking an economic base from the
24 corporation.

25 So in our agreement between the tribe and the

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1 corporation, we put a provision in there that stated that
2 any economic development that would occur on those lands
3 that have been transferred over to the tribe would require
4 an agreement between the tribe and the corporation. So
5 that's how we were able to get it through to entrust us by
6 taking an asset from the corporation.

7 And so today we have an area that's been
8 developed. It's a huge subdivision with a hundred
9 one-acre lots on it. And through a lottery we give those
10 lands to our tribal members, with the understanding that
11 those lands still remain in the hands of the tribe. We
12 don't own it. So if a family member passes away, it's
13 passed on through the family. And if the whole family
14 passes away, then it reverts back to the tribe. And that
15 way we have control of it.

16 So in terms of this Land into Trust issue,
17 what I see is a positive of the -- this -- I believe that
18 it will strengthen the economic opportunities for our
19 tribes. We have high unemployment in our communities. In
20 all of our villages. And through this land transfer, I
21 think it will give us that additional opportunity for
22 economic development through additional funding through
23 the borough. That's how I think about it.

24 The other thing is that I think that it will
25 strengthen our tribal governments. Because a lot of our

1 tribes right now are really landless, because the lands
2 are in the hands of our village corporations. And I don't
3 know of any tribes that have transferred their lands
4 from -- some of their lands from their village corporation
5 to the tribe. I don't know if we're the only one that has
6 done that. But I'm not sure about that.

7 No? There's others?

8 UNIDENTIFIED FEMALE SPEAKER: Yep, quite a
9 few.

10 MR. GINNIS: Okay. All right. So we kind of
11 started that trend, I think, through Fort Yukon, that you
12 do have the ability to do that.

13 So the positive, again, I think, in this whole
14 land transfer stuff is that it gives us that ability to
15 strengthen our tribal governments through economic
16 development, which is vital -- another vital part of our
17 ability to exist out there.

18 So not only that, you have control of those
19 lands that have been transferred over. We also, when we
20 did this, we gave out acre of lands, also, for subsistence
21 camp sites where people, you know, build fish camps and
22 places where they hunt. They can build cabins and this
23 type of stuff. So it's been really beneficial to our
24 tribal members in that way as well.

25 So again, this whole issue about land into

1 trusts and all those nine questions you had on those
2 documents, those, again, have already been litigated.
3 They've been -- in my view, they've been resolved. There
4 might be some question about process maybe, or
5 strengthening the process.

6 You know, in talking about the process, those
7 things should be expedited. There's no reason why a tribe
8 can't move in that direction if they wish to without a
9 late fee, bureaucratic type of a process. You know, if
10 anything, you ought to look at the process and find a way
11 to expedite these process to -- for tribes to put the Land
12 into Trust.

13 And that's all I have to say about it, you
14 know, is that I think that's where we should take this.
15 You know, earlier this morning there was a comment made
16 that you folks are our trustees, and that you have a
17 obligation to work with us on issues that we raise and not
18 work against us. You know, we're partners in this --
19 this -- anything that has to do with BIA, because we're
20 sovereign, we're a sovereign tribal government.

21 And so what we need to do is really strengthen
22 that -- look at ways to strengthen that relationship for
23 the benefit of all Indian people throughout the United
24 States. That's what we should really be focusing on, is
25 how do we strengthen those relationships in areas of

1 education, in areas of funding, in areas of housing? I
2 mean, you just name it, we ought to be working as partners
3 and then addressing those things. That's how to best
4 strengthen that relationship.

5 But I don't know where these things come from,
6 but in this particular case, it's interesting that -- I
7 think it was about two or three years ago, we were told,
8 "Okay. You all can move ahead with putting land into
9 trust." And then suddenly it's all reversed.

10 The same is true with this IRA stuff, you
11 know, that we've been exercising for all these years. And
12 we're kind of going backwards instead of moving forward
13 and working in partnership with each other.

14 So it's kind of disheartening in a way that
15 these things have been litigated, a lot of tribal member
16 resources, peoples' time, and all that have been put into
17 these efforts, and then we find ourselves sitting here
18 basically talking about something that's been reversed.
19 And that's disheartening.

20 So I will just encourage you both to help us
21 raise our voice, to help us advocate those things that
22 we're going to be talking about here as far as land and
23 the process is concerned. That's your responsibility.
24 You're trustees. We have nobody else in the government,
25 other than Bureau of Indian Affairs, to protect our

1 interests, you know. So that's where we should be headed,
2 working together.

3 So anyway. So I just want to leave it there.
4 And again, I thank you for being up here. And like others
5 have said before these -- this schedule you laid out
6 should be expanded to truly go out and meet with the
7 people that these issues impact. And, you know, bringing
8 it to a central location like Fairbanks or Anchorage or
9 Juneau, you got to keep in mind that tribal participation
10 is limited due to funding, some of the tribes. So we got
11 to -- we have to do a better job of working together on
12 those -- that issue as well as a consultation with our
13 tribes.

14 Like, for Tanana Chiefs region, it's possible.
15 And I'm not speaking on behalf of Tanana Chiefs. But if
16 we had the time, we would have been able, I think, to
17 bring the tribes here in the -- like a conference where
18 you'll get all the feedback you want, you know. But
19 that's not the case here, you know. And if people were
20 able to make it here, this room right here wouldn't be big
21 enough. You probably would have to take it over to the
22 Carlson Center or someplace like that.

23 So on that note, let's do a better job of
24 communicating with each other. This thing just went out
25 July the 2nd, this letter, and it's during the time of

1 people out fishing, people out there berry picking, doing
2 their subsistence activities. And you have to be
3 respectful of that when you're doing these things, respect
4 that we have to survive, and be respectful of that as you
5 are planning these type of things.

6 So with that, I thank you.

7 MR. JAMES: Thank you. Mr. Miller.

8 MR. MILLER: So I was asked to present
9 comments on behalf of Tanana Chiefs Conference.

10 My name, for the record, is Lloyd Miller.

11 But I would be remiss if I didn't also note
12 that I have served as cocounsel in the Akikukchiak
13 litigation that was led by my wife and senior attorney
14 Heather Campo Miller. Cocounsel Matt Newman is here also
15 from the Native American Rights Fund.

16 The department today is doing something that
17 is considerably more than following the administration's
18 direction to look at recent policy changes, which is what
19 you mentioned earlier.

20 The department has gone ahead and withdrawn
21 the solicitor's opinion. It's actually taken action
22 without any prior tribal consultation. Not only has it
23 taken action without any prior tribal consultation, but it
24 has taken action in defiance of statements made to the
25 federal courts in Washington, D.C., and upon which the

1 federal courts relied.

2 The good faith of the United States, the good
3 faith of the justice department, the good faith of the
4 Department of the Interior, the courts relied on those
5 statements from your department in determining to vacate
6 an opinion issued by the District Court in the Akikukchiak
7 litigation. Now, you know this history, and it's -- I
8 don't point to you personally. I know you were not
9 personally involved in this.

10 But it is a shock to all involved. Most
11 importantly to Akikukchiak, Chilkoot, Tuluksak,
12 Chalkyitsik, who were involved in that case. That the
13 United States would dare to tell a court that it agrees
14 with the plaintiffs; that it agrees that the authority to
15 take land into trust continues today; that it agrees that
16 no subsequent statute ever repealed the secretary's
17 authority; that it agrees to amend its regulation; that it
18 amends it's regulation after holding many hearings,
19 receiving over 100 written comments; that there is no risk
20 that the department's position will be adverse to the
21 plaintiffs, and on -- based on all of those
22 representations, the court concludes the D.C. circuit does
23 exactly what the United States asked the court to do,
24 which was declare the litigation moot, and on the basis of
25 those representations, vacated the decision below.

1 That is -- it's outrageous. And to do it
2 without any advanced tribal consultation just compounds
3 the injury.

4 You want to engage -- that the department
5 wants to engage in good faith consultation, the
6 solicitor's opinion needs to be restored. It should be
7 reinstated at once.

8 Now, in your statement today, and in the call
9 of -- the announcement for this meeting, it says that the
10 solicitor's opinion was not complete. You cannot take the
11 solicitor's opinion in isolation. The solicitor's opinion
12 refers to the positions that the department took in the
13 briefs it filed in the Akikukchiak litigation. The
14 solicitor's opinion refers to the positions that your
15 department took, including the solicitor's office, in the
16 Notice of Proposed Rule Making, and in the final Rule,
17 which laid out, at length, the legal position explaining
18 why the IRA Trust Land provision still survived, and
19 survived all of the intervening acts of Congress.

20 The solicitor's opinion wasn't incomplete.
21 The solicitor's opinion was necessary. Why did we have an
22 opinion in January 2017? The case was over. Judge
23 Contreras had ruled. The D.C. Circuit had spoken, the
24 assistant secretary had issued new regulations and gotten
25 rid of the Alaska exception. Why was there any need?

1 Well, the reason was there was one remaining
2 question that nobody had addressed. And that's the impact
3 of the Carciere decision. The U.S. Supreme Court had
4 issued Carciere versus Salazar. It interpreted one of the
5 three-part definitional sections in Section 19, I think.

6 The question in Carciere -- the determination
7 in the Carciere case was that a tribe had to be under
8 federal jurisdiction under the first prong in 1934. The
9 question was "Did an Alaska tribe have to be under federal
10 jurisdiction in 1934?"

11 "Answer: No.

12 "Why?"

13 Well, the opinion goes to great length to
14 explain why the Carciere decision doesn't apply. Reason
15 number 1 is the Supreme Court said it didn't. Right?
16 There's a footnote in the Supreme Court's decision in
17 which the Supreme Court cites the secretary had already
18 taken Land in Trust, Section 2 of the -- Section 1 of the
19 IRA incorporating Section 5 of the IRA to Alaska.

20 As an example of a situation where Congress
21 specifically said that a tribe, without regard to whether
22 it was under federal jurisdiction in 1934, could take
23 advantage of the Trust Land Acquisition provisions of the
24 IRA.

25 So there had to be an opinion written. It had

1 not been written before. I mean, we can all read the
2 Carcieri decision, we know what the footnote says, but
3 somebody had to write an opinion. And it had to be done
4 in January of 2017, because the Craig IRA, which I also
5 represent, was getting its one acre as a result of the new
6 regulation.

7 So the solicitor's office was not focused on
8 doing a comprehensive opinion and a legal assessment.
9 That had already been done. I mean, I would like to think
10 that the solicitor's office for the department watches
11 what the department is doing when it proposes regulations
12 and advises the department and the secretary's office
13 whether the regulation being proposed is lawful or
14 illegal. I gather that when the department withdrew the
15 Alaska exception was based on legal advice that to do so
16 was a lawful action.

17 So the only thing left in January 2017 was the
18 Carcieri issue. That's treated in 20 of the 22 pages with
19 130 footnotes. There was nothing incomplete about that
20 opinion. The opinion should be reinstated. So from where
21 we stand, the opinion should be reinstated, and the
22 consultations cease, and the regulations that are on the
23 books implemented. And I think the department really has
24 to worry -- and I don't say this lightly because of the
25 positions I occupy, including still counsel, cocounsel in

1 these cases.

2 The department should be worried about being
3 forced back into court if it does not undo the path it is
4 proceeding down. I mean, you really have to consider what
5 you said to the three federal judges on the Court of
6 Appeals, and the action that the trial court took based on
7 the government's representations. You do not want to be
8 in a situation, I suggest, where a federal judge holds
9 that the United States has acted in bad faith.

10 Now, I would be remiss if I didn't answer
11 quickly the six questions you posed, so let me just say
12 that with regard to the Alaska Native Claims Settlement
13 Act, that has been treated so thoroughly. ANCSA never
14 repealed Section 1, the 1936 IRA. Section 1 of the 1936
15 IRA applies Section 5 of the IRA to Alaska. Never
16 repealed in ANCSA.

17 Is that an oversight? No.

18 Did Congress think it had repealed Section 1
19 and Section 2 and the entirety of the 1936 IRA? I don't
20 think so, because in 1976 Congress enacts FLPMA, and in
21 FLPMA it repeals Section 2 of the IRA. So Congress is
22 clearly aware that the 1936 IRA still exists, and it acts
23 specifically to repeal Section 2, and it doesn't repeal
24 Section 1.

25 It's hard to think of a congressional action

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1 more reflective of an understanding that Section 1 of the
2 IRA continues than a deliberate action by Congress to
3 repeal the next section and not that section. So it
4 survived FLPMA.

5 You also ask "Well, did it survive ANILCA?"

6 ANILCA? What does ANILCA have to do with it?
7 ANILCA establishes a subsistence regime, and the
8 conservation system units has nothing to do with Lands in
9 Trust in Alaska. ANILCA sets up a land bank for ANCSA
10 lands. ANCSA lands have nothing to do with Lands in Trust
11 in Alaska.

12 The ANCSA amendments. You asked about the
13 ANCSA amendments in 1990 -- in 1988. They extend periods
14 of inalienability, address tax issues. None of these have
15 anything to do with the Trust Lands in Alaska, with
16 tribal -- and nothing to do with tribal lands.

17 And I suppose, to be fair to the department,
18 the real question is "Don't you think, Lloyd, and the
19 tribal leaders, that Congress must have intended just a
20 whole different world in Alaska that would be very
21 different from the Lower 48, and it wouldn't involve
22 tribes and tribal lands? Isn't that kind of the gist of
23 the whole thing? Don't you -- can't you admit that that's
24 what Congress actually was up to?" And I can't. I don't
25 think it's possible to do that.

1 You know, there's a million acres of trust in
2 restricted land in Alaska. All those town site lots that
3 Congress was dealing with in 1971, they're restricted lots
4 if they went to Alaska Natives. Restricted fee if they
5 went to the tribes. All the allotments, thousands of
6 allotments and restricted fee. There were specific Trust
7 Lands. All of this is detailed in the Sansonetti opinion.

8 So can it be said that Congress didn't intend
9 there to be any Trust Lands in Alaska? I don't think so.
10 Congress knew there were going to be about a million acres
11 of Trust Lands in Alaska, and there are about a million
12 acres of Trust Lands in Alaska.

13 And on top of that, it's not the business of
14 anybody in this room to write something that any of us
15 think Congress intended to do. Right? I mean, that's for
16 Congress to do. And if Congress didn't finish the job,
17 it -- we all think it started is for Congress to finish
18 the job. I would suggest to you that Congress has gone in
19 the opposite direction.

20 They passed a 1994 act to confirm the
21 federally recognized status of Alaska tribes. It's
22 obviously mindful of the Lands into Trust issue. It's
23 come up in congressional hearings.

24 Has there been one bill to undo the
25 application of the Trust Lands provision to Alaska? No.

1 So it may not fit somebody's narrative that
2 Congress intended to wipe out tribes, but the law is what
3 it is. And as federal officials, it's your duty to
4 enforce it. And as members of the public, it's our duty
5 to obey it. The law is what it is; the legal opinions
6 have been written; the regulation, excluding Alaska, has
7 been withdrawn, and it's time to move forward with the
8 remainder of the Trust Land applications.

9 Let me be sure I haven't overlooked any other
10 questions.

11 You did ask about process, and about Part 151.
12 I think it's a fair question. Certainly during the
13 comment period -- and I should pause to note, you're doing
14 these consultations. A consultation is always good. I
15 don't think this consultation on anything with tribes is
16 good enough if it doesn't involve partnership with the
17 tribes, and collaboration with the tribes.

18 I just digress for a second and say what your
19 department has done in the arena, highly specialized arena
20 called contract support cost, you may have heard about
21 that. I'm sure Josh has. He might have been on it two
22 months.

23 That's a model consultation. You've got a
24 work group of tribal leaders from around the country
25 there, so it's not Alaska specific. If you had a work

1 group of relevant bureau people, even some people outside
2 the bureau, they work really hard on this stuff, they have
3 a dialogue, it's -- they work together, then they put it
4 out for tribal comment and meetings around the country,
5 and then they come back together as a work group. That's
6 working together. That's consultation. This is not that.

7 You acted before you met with the tribes;
8 you're not organizing a group with the tribes to work with
9 you together in a collaborative process; you're telling
10 the tribes what's going to happen and asking for comments,
11 so enhanced notice and comment, but it is not tribal
12 consultation, and no one should, in the bureau side, think
13 that it is.

14 With regard to the Part 151 procedures, we
15 used those in Craig. You used those in Craig, in the
16 Craig Tribal Council situation. During the comment period
17 on the amendments to the Alaska exception where there were
18 over 100 comments submitted and three national
19 consultation sessions, or maybe it was six consultation
20 sessions, plus a large session with the National
21 Conference of America, they did a lot more consulting than
22 you're proposing to do here, during the course of
23 repealing the Alaska exception.

24 During that process, there were a lot of
25 comments on whether Section 151 should be supplemented,

1 revised, amended in any way, if there was going to be
2 trust land processes going forward in Alaska. And at the
3 end of the day, the department, your department decided
4 no. And I can only think it was a little bit "No, let's
5 see how it goes." I mean, I don't know that, but I think
6 it's fair to interpret the final rule and the discussion
7 of the final rules, that's what it was: "No, let's see
8 how it goes."

9 ANCSA corporations, some of them wanted veto
10 rights, some of them just wanted consultation rights, some
11 of them were fine with the trust lands. They were all
12 over the spectrum when it comes to the A&Cs.

13 We're not on reservation, we're not off
14 reservations, we don't have reservations, except for
15 Metlakatla. So it's -- you know, it's a little bit of a
16 square peg round hole, I get that. But I think the idea
17 was, "Let's see how it works a few times," and then you'll
18 learn. And you'll learn what the problems, and then maybe
19 you have an informed basis for making changes in, you
20 know, two, three, five, ten years.

21 You tried it out with Craig. You didn't run
22 into a problem. You were able to transfer one acre where
23 the tribal offices are located to the tribe. It worked.

24 So I submit to you it is not broken, and it
25 doesn't need fixing. Could it be improved? Everything in

1 life can be improved, but let's give it another five or
2 ten years. Why don't you process the half dozen
3 applications you currently have on file and see how it
4 goes.

5 Finally, I would say that the 151 process is
6 burdensome. There's no question of that. And if you are
7 not a tribe that's able to access some grant funds, don't
8 have your own funds, aren't able to reach pro bono legal
9 counsel, it can be tough. That's true for every tribe.
10 It's true especially for Alaska tribes.

11 I don't know what you can do about that,
12 except perhaps initiate a grant program to facilitate
13 tribal preparation Trust Land applications. If you did
14 that, I think that would go a long way. The problem is
15 not the 151 process, it's the resources that the tribe
16 need to meet any process. The surveys, the title
17 insurance and the like, environmental reviews. All of
18 that requires retaining people and does cost money. But
19 there's no way to get out of it. So give them some
20 financial assistance.

21 Thank you for your patience.

22 MR. JAMES: Thank you.

23 Yes, ma'am.

24 MS. ROBERTS-HYSLOP: Yes. I have to get on
25 the road, because I live -- I drive home. It takes me

1 five hours to get home.

2 Julie Roberts-Hyslop for the record, from the
3 Native Village of Tanana.

4 And I just want to start by saying in the
5 early 18 -- late 1800s, the Episcopal Diocese had a
6 mission in Tanana, a mission of our Savior. And they
7 received about 300 acres of land right around where the
8 Native people gathered, you know, previously in history.
9 And so that was where they set up the mission. And the
10 people lived around that area after that area -- that
11 time.

12 And so -- and in the late 19 -- about 1998,
13 the Episcopal Diocese gave back the land to the tribe in
14 fee simple. And right now that land is where we have our
15 cemetery, and so we bury our people there now. And it's a
16 big graveyard, we have an old church there, and it's a
17 historical church.

18 And our plan is to have full protection of
19 that area because, you know, you know, it's -- it means a
20 lot, you know, to our people there to protect that area in
21 perpetuity. And so, you know, our hope is that one day,
22 you know, we will have the bureau take that land into
23 trust for us.

24 And then also in 1940, they built an Indian
25 Health Service Hospital in Tanana. And all the people

1 from Alaska, a lot of them came to Tanana for -- to
2 receive healthcare. And in 1980 -- I think it was '83,
3 Tanana Chiefs Conference moved the hospital here to
4 Fairbanks -- or the healthcare here to Fairbanks, and so
5 they closed the hospital in Tanana.

6 And we have our tribal operations located on
7 the old hospital property. So that's where we have our
8 tribal offices, we have an elders care there, we have a
9 health clinic there. And so they're going to transfer
10 that land to us. In fact, I think it's going before the
11 House right now. Don Young, you know, is going to be, you
12 know, pushing that through a bill, you know, to transfer
13 that land to the tribe. And that's another land, you
14 know, that we want to have taken in to a trust, you know,
15 for our people.

16 And so, you know, those are two specific
17 pieces of land, you know, that we need to protect. And,
18 you know, talking about, you know, the state of Alaska and
19 the tribes, you know, we're both, you know, different
20 entities, different governments. And we don't want, you
21 know, the state coming in and taxing our land. So that's
22 another area, you know, that we're concerned about, is
23 taxation.

24 So, you know, I just want to say that, you
25 know, what -- I agree, you know, the process is

1 cumbersome. We've start -- we tried to start an
2 application, but we ran into some difficulties, you know,
3 based on the -- what do you call that? Where you have to
4 do that -- you have to go back and look at the records,
5 you know, to make sure, you know, that ownership is there.

6 UNIDENTIFIED SPEAKER: Title search.

7 MS. ROBERTS-HYSLOP: Title search. Yes, title
8 search.

9 And so that's something that we have to do.
10 But, you know, I just want to say that, you know, I think
11 it's important, you know, that what little land we have
12 left around our areas, we need that.

13 You know, Steve said we need economic
14 development. We want to start a treatment center on that
15 land at the old hospital site. That's one of the goals
16 for our tribe, is to, you know, turn that back into a land
17 where we could help our people. Not only from Tanana, but
18 from all over. So that's really important to us.

19 And so, you know, I just want to emphasize,
20 you know, the fact that our children also need to know
21 where they come from. This is -- you know, our children,
22 our grandchildren, you know, they have to know that. And
23 so when they come home, they know that they're home.
24 Because we have -- we have children living all over. I
25 have a brother who lives in California, and he has two

1 sons. Once in a while they come home, but not very often.
2 But if they have children, they need to know where they
3 come from. So it's a matter of identity, you know, for
4 our people to know where they come from. It's important.

5 And so, you know, you know, this process, you
6 know, that we're going through right now is really -- like
7 I said this morning, really burdensome to us. Because
8 like everybody said, you know, we don't want to go back in
9 time. You know, we want to move forward. We want to be
10 there to help take care of our people. And that's why we
11 were -- we were elected, you know, to do that. Our people
12 trust us, you know, to represent them there and to do the
13 best that we can to make sure that they're safe and that
14 they're healthy.

15 So anything that you could do to help us would
16 be better than working against us. Thank you.

17 MR. JAMES: Thank you.

18 MR. KINDRED: Thank you.

19 MR. JAMES: Mr. Williams.

20 MR. WILLIAMS: My name is Mike Williams. I'm
21 from the Akiak Native community.

22 First of all, I'd like to thank Heather
23 Campbell Miller with NARF for working with us to challenge
24 the Secretary of the Interior that he has the authority to
25 put lands into trust in Alaska. And I commend that, and

1 commend NARF, and also Lloyd Miller and other lawyers that
2 have been involved in this process. And I really
3 appreciate that.

4 When we took a look at that, that the
5 secretary wasn't taking any lands into trust anymore after
6 the land claims, we said, "No, that authority still exists
7 within the Secretary of the Interior to put lands into
8 trust in Alaska."

9 And I just really felt that that needs to be
10 straightened out and to -- you know, to make our lives
11 meaningful again in Alaska so we, as tribes, can have that
12 ability if we like to put our lands into trust for
13 protection in perpetuity. We want to keep our lands
14 forever, until the end of time. Because we have seen, you
15 know, loss of land over time. And we, as tribal
16 governments, you know, have lost that as well.

17 But to these acquired lands that we may
18 have -- that we have, we're trying to acquire them to put
19 them into trust so we can have a jurisdiction in our
20 community to deal with the issue of law enforcement, to
21 have that jurisdiction. And also to manage our fish and
22 wildlife, to educate our children, and all of those
23 self-determination programs that we all run that we thrive
24 off when we do that.

25 But I -- I would like to say that the

1 department must reinstate that 2017 solicitor's opinion
2 which -- which put to rest that question, and it was
3 complete. And when I read that, that it was incomplete, I
4 fully disagreed with that. I'm very disappointed that the
5 solicitor would take that action without us knowing about
6 it first. So that was kind of disappointing, and we need
7 to be told before our lives are affected by those changes,
8 or to even delay that for six months, and then six months
9 to review that. And that tells me, "Gee whiz, what the
10 heck is going on here?"

11 And it's not a good feeling when you're in
12 that position when there are questions to our status as in
13 regards to our land. And but -- but I think I really
14 believe and fully agree with what Lloyd Miller had to say.
15 And what TCC has to say is right on spot to me as we have
16 been, you know, living our lives back home trying to
17 improve the quality of life.

18 And with these -- with lands -- with the
19 ability to have those lands into trust, that one acre of
20 land in Craig meant a lot. And thanks to the Craig drive
21 for that one acre. The president has been said, and all
22 of that process, even though with that one acre, all that
23 work and money went into it.

24 Akikak, we can't afford, you know, with no
25 money, you know, to put our lands into trust as it is.

1 But I think we should not complicate it more to make it
2 even harder for Alaska tribes to put that land into trust.
3 It means quality of life, and it means hope for the
4 children. And it means future generations will thrive off
5 these.

6 It's not a bad thing. It's -- you know, it's
7 something that we need to embrace instead of being fearful
8 of it. It will help. And then, Steve, economic
9 development, yes, it will help with everything else.

10 And I just like to thank the tribes of this
11 region for allowing us to be here to make these comments.
12 And we're going to make some more comments along the way.
13 And all of those questions that were posed, I think each
14 person will answer them. But please reinstate the prior
15 solicitor's opinion ASAP. They'll take care of it.

16 Thank you.

17 MR. JAMES: Thank you.

18 MR. KINDRED: Thank you.

19 MR. JAMES: Yes, sir.

20 MR. IVAN: I'll try to make it really brief,
21 some of the comments I make. My name is Ivan M. Ivan.
22 I'm with the Akiak Native Community.

23 And I have to do a little history of our
24 community, tribal leaders, 30 to 50 to 100 years, 200
25 years ago. They control the community with the best

1 interest of keeping peace, and to look out for children,
2 those that are crippled or with (indiscernible), and make
3 sure they all survive within the community.

4 After ANCSA (cell phone interruption) the
5 problem was they couldn't do that anymore. They couldn't
6 do that anymore in -- sorry.

7 Today the life is -- like I say, we're down,
8 way down. It's sad being -- when you have -- when you're
9 a chief of a community and see the suffering. We have no
10 jurisdiction with which to administer justice for our
11 people or the outsiders that come in, on perpetrators, or
12 bootleggers or drug dealers or some that are trying to do
13 something bad for the community. We need to protect our
14 people.

15 Try to do something without jurisdiction and
16 see how far you can go. (Cell phone interruption.) This
17 effort's been -- this effort has been -- I'll turn it off.

18 This effort has been already worked on by all
19 the leaders. I think five to ten years passed, and
20 finally it became a reality. We wanted to be like the
21 Lower 48 brother-sister tribes, they had jurisdiction
22 within to administer justice and peace.

23 They have state and federal laws that protect
24 them while we can't do anything to them. What
25 sovereignty? What -- what does it do without

1 jurisdiction? It's very bad for any human race to go
2 through that.

3 So the work -- hard work that everybody --
4 these tribes Akikukchiak, Tuluksak, and all these
5 attorneys had helped us to make it a reality. But when
6 they do land transfer, and they've -- the secretary -- no,
7 no, no, the governor allowed it, did not challenge it.

8 No way. I think knowing that we need
9 jurisdiction to help take care of our own people, tribal
10 people who are off to a state citizen. And that when they
11 train and administer public safety -- I don't know how
12 many acres are in Alaska, maybe 365 million acres. When
13 they try to do that public safety, it's quite impossible
14 with weather, distance, and funding.

15 We can take care of those with jurisdiction.
16 We know our people, and we're not trying to create
17 something evil so that we could be bad. No, we just need
18 jurisdiction with which to stand on, and that will be
19 respected by my tribal citizens and everybody that's a
20 community to the community.

21 We need that. All the hard work, man hours,
22 and all those work that's been done. Please help us to
23 make it go where it -- please help us make it further and
24 make it a reality. All that good hard work.

25 And when I go back to our community, I'll have

1 to make a report to the village people, why did you
2 borrow? What happened here. They're waiting for us. I
3 was expecting a good word where we can (indiscernible)
4 drug abuse, all the bad things that happen. We've got
5 children who are confused. They can't even hunt and fish
6 besides all this. It's not a really good life when you're
7 suffering.

8 But anyway, that's all I have. And if you
9 have any questions, I'll try to answer them.

10 MR. JAMES: Thank you.

11 MR. KINDRED: Thank you.

12 MR. NEWMAN: Good afternoon, my name is Matt
13 Newman. I am a staff attorney at the Native American
14 Rights Fund. And NARF is one of the law firms that, on
15 behalf of the Akikukchiak Native Community, the Tuluksak
16 IRA Council, the Chalkyitsik Village, and the Chilkoot
17 Indian Association first brought the litigation in the
18 D.C. District Court to undo and have declaratory judgment
19 against the Alaska exception.

20 And so I'm here today, on the record,
21 testifying on behalf of those tribal clients, because the
22 facts and situations that led them to litigate the
23 Akikukchiak case beginning in 2006 remain today. And what
24 I mean by that is those tribes, those four tribes, like
25 many of their cousins throughout the state are the owners

1 in fee simple of lands that have come to them through
2 various means. Either through church donations, former
3 school lands that have been transferred to them, or lands
4 transferred to them through other various means, and they
5 have a desire and a will at the choosing of their
6 governments to participate in the Lands into Trust
7 program.

8 That was the impetus for the Akikukchiak
9 litigation. But that case was part of an even longer
10 history. And I think what I -- my colleague, Lloyd, had
11 spoken about, a lot of the legal arguments and issues
12 about your proposal and your questions that are the in the
13 "Dear Tribal Leader" letter, I won't duplicate those or
14 rehash those. I think what I'd like to focus on here,
15 just because I had the privilege of being part of it, is
16 talk about a lot of the history that went into how did we
17 get to that 2017 solicitor's opinion.

18 And much more importantly than that opinion,
19 how we got to the 2014 regulation finally permitting
20 Alaska tribes to participate in the Lands into Trust
21 program. The origin of all of this, and I agree with
22 Josh, your opening statement, that was a -- this can be a
23 complex issue.

24 And certainly in 1978, when the Native Village
25 of Venetie Tribal Government petitioned the secretary to

1 have its former reservation lands put into trust, it was a
2 complicated issue. The Frederick's opinion reflects a
3 struggle to try to find an answer to that.

4 But now we fast forward. We have the benefit
5 of new legislation in the late 1970s and the 1980s where
6 Congress is affirming the tribal status of Alaska Native
7 Villages as tribes. We have 1994 IRA amendments, as well
8 as the Tribal List Act affirming those positions, and
9 tribes in Alaska began pointing out, through various
10 petitions and legal drafts submitted to the department
11 about the IRA authority.

12 Now, that question is examined, it's not
13 decided upon. We get to the Akikukchiak case. But the
14 point is, is now it's 2018. The complexity or the clarity
15 that we sought is now there. It is in the 2013 District
16 Court opinion in Akikukchiak. It is comprehensively
17 discussed in the 2014 rule making. And it is -- the final
18 Carcieri issue is settled in the 2017 solicitor's opinion.

19 So we now have the benefit of this body of law
20 demonstrating the legal issues that Alaska Native Tribes,
21 as federally recognized tribal sovereigns have the ability
22 to participate in this program. And this program was not
23 stripped or not extinguished via subsequent legislation
24 passed by Congress.

25 And with kind of that body of knowledge, it's

1 just very difficult, and it's very frustrating to see an
2 ignorance -- and I hate to use that word, but I have to in
3 this instance -- reflected in the solicitor's memorandum
4 that was issued on June 28th. There is a slicing of the
5 historical and the legal record to justify an ends.

6 The questioning of how could former Solicitor
7 Tompkins come to this realization, or come to this legal
8 conclusion in her original 2017 opinion? As Lloyd
9 discussed, that opinion was the last product of 30 years
10 of combined litigation, administrative proceedings,
11 political and policy debates. It was the last piece of a
12 puzzle.

13 In a jigsaw puzzle, one piece out of the whole
14 is going to look strange. It's not going to look right.
15 It is part of a greater whole that creates a clearer
16 picture. And a lot of the questions that are posed to the
17 tribal leaders in Alaska that are in your "Tribal Leader"
18 letter, those two, if we're just reading the Tompkins Memo
19 out of context -- but if we look at the broader record,
20 those questions have been exhaustively answered.

21 And I really want to emphasize what
22 Traditional Chief Ginnis had mentioned earlier, if we had
23 opened this up to everybody, how packed the room would be.
24 Because in 2014, the National Congress of American Indians
25 held it's midyear conference in Anchorage at the Dena'ina

1 Center, and a listening session was held at the main
2 ballroom of the Dena'ina Center. It was originally
3 scheduled for about two hours. It ended up going almost
4 four. Where hundreds of Alaska Native leaders from around
5 the state testified and discussed openly exactly the kinds
6 of questions you have posed here.

7 And I also really want to emphasize, because
8 there's an implication in this June 28th memorandum that
9 somehow the public process that went into the Alaska Trust
10 Lands rule was -- somehow short-shifted certain
11 constituents or certain stakeholders. And I really want
12 to emphasize that that, too, is not reflective of what was
13 going on in Alaska in 2014.

14 Alaska Native Corporations had full
15 consultation, full participation, both written and oral,
16 throughout the process. Alaska boroughs, Alaska
17 municipalities, and the state government itself were
18 active participants. And all of that is reflected in the
19 2014 final rules. I beg you and your colleagues at the
20 BIA and the Interior to read, not only the final rule
21 itself, but the front matter, the commentary, the
22 responses to public comments that are contained within
23 that rule. Your questions are answered in that document.

24 The concerns you raise about how can this
25 process in Part 151 apply to Alaska, they are addressed in

1 that rule. I struggle still, and I even hesitated to come
2 up here because I don't want to reflect that struggle, but
3 I truly do not understand the necessity of this exercise.

4 We are here, as you heard in the morning
5 session, people that have left their families and their
6 homes at one of the most important times of the year to
7 talk about things that we have settled, to dig up old
8 wounds. And I just fail, given the existing information
9 that you have access to, that I have access to, that all
10 of us have access to that answers these questions, that
11 reflects that this debate happened, that we settled upon
12 an answer, and now we are in the infancy of a process in
13 Alaska to put tribal lands into trust.

14 Why, after all that progress, are we here? I
15 genuinely would like to know the answer to that. Because
16 although a January '17 -- a January 2017 solicitor's
17 opinion may fall within the purview of your executive
18 order, the 2014 final rule permitting Alaska lands in
19 trust does not. That rule exists, it has not been
20 challenged, so why are we doing this?

21 I thank you for your time. I appreciate all
22 the testimony of tribal leaders in this room, and extend a
23 big thank you to the Tanana Chiefs Conference for bringing
24 us all together and hosting this meeting. Thank you.

25 MR. JAMES: Thank you.

1 Any -- yes, sir.

2 MR. ANDREW: Good afternoon again. I'm Martin
3 Andrew. I'm representing the Organized Village of
4 Kukthluk. I'm currently serving as vice president for the
5 tribe.

6 All the dialogue that you've heard, starting
7 from -- you know, all the dialogue from Chief Ginnis to
8 Mr. (indiscernible) to Mike Williams, Ivan, and the
9 gentleman over here. And I just -- you know, they hit all
10 the talking points real good, and to have the ability -- I
11 think the tribes should have the ability to put lands into
12 trust. And you've heard it, and if the tribes get that
13 ability, it would -- it would, overall, improve the
14 quality of life, in every respective town, village of the
15 229 federally recognized tribes.

16 And I just wanted to make it very brief and
17 short. They've taken all the talking points, and I didn't
18 want to take too much of your time, but let's move this
19 forward.

20 Thank you.

21 MR. KINDRED: Thank you.

22 MR. JAMES: Thank you, sir.

23 Any other comments? Yes, sir.

24 MR. OWEN: Yes. Moses Owen, Akiak Native
25 Community.

1 My message is pretty much the same as this
2 morning. We have tribes out there that need to hear this.
3 They are not aware of it. And they need to speak on it,
4 because it's their right.

5 My question is: What is the BIA down in
6 Washington, D.C., doing to protect our rights?

7 If they were doing it, you wouldn't have to be
8 here. You wouldn't waste that good money coming up here,
9 and we wouldn't waste our good money here -- coming here
10 for a couple of days.

11 And like I said before, you know, we have
12 other tribes out there. And as mentioned before, maybe
13 229 tribes that need to hear this. And you need to hear
14 them to get the good perspective of what their -- like it
15 was mentioned here, it doesn't make sense why it should
16 come to this level here when we have BIA in Washington,
17 D.C., that's supposed to be working for us, looking out
18 for us, our interest and our rights.

19 And it's not an easy feeling. Like Ivan said,
20 "We have to go home and tell our people this is what we
21 said to the Bureau of Indian Affairs. We'll wait for
22 their word."

23 But this has already happened. And as Mike
24 mentioned earlier, tribal consultations should happen
25 before anybody makes a decision as to what's going to

1 happen to any issue that's being brought before us.
2 That's tribal consultation to me. Before somebody makes
3 the decision, they've got to find out what my wishes are,
4 or what my tribe's wishes are. Not only mine, the whole
5 state of Alaska.

6 And for your tribal consultations in the
7 future, I would recommend for such a task as this and
8 looking at the number of tribes in the state of Alaska. I
9 think somebody needs to figure out how much time you need
10 to spend out here going from village to village to consult
11 with all the tribes. That way you can say, "Hey, we did
12 our consultation with the tribes." Not leaving one
13 village out. And get comments from those villages,
14 directly from them so the rest of us don't have to try and
15 speak for them. We don't know what's in their mind. They
16 could be more radical than Ivan. That's terrible.

17 But we appreciate your coming here, and I'm
18 glad you guys are listening. And I hope this word gets up
19 there, you know, and comes back better to us. You know,
20 that way we'll know somebody is taking care of us as
21 they're supposed to by law.

22 Thank you.

23 MR. KINDRED: Thank you.

24 MR. JAMES: Thank you, Mr. Owen.

25 Any other -- yes, sir. Mr. Titus.

1 MR. TITUS: My name is Charlie Titus. I'm
2 Second Chief of Minto IRA Tribal Council.

3 You talk about land. And I was born on Minto
4 Flats in a tent, a trapline. When I asked my
5 grandfather -- a discussion while we were eating, we
6 always had discussions about -- and I remember as a little
7 boy, maybe 10, 11, I -- I still remember distinctly to
8 this day, you know, when we were talking about lands, you
9 know, and this, and he said, "Well, it's tribal lands.
10 You know, it belongs to the tribe. It's our territorial
11 property. You know, we fought over this land with other
12 tribes to protect it for our youth."

13 And then we started going on, and then the
14 state came along. I testified in 2014 on the Land in
15 Trust. And I start thinking about "What are we going to
16 tell our children?"

17 Some of you here weren't even born when the
18 ANCSA was enacted. And it was kind of a terrible thing
19 for some of us. Mike and I were young guys, Steve. We
20 kind of felt what was going on. And we do, I think -- I
21 knew, and I'm sure they did. There was something wrong
22 with it because we didn't get anything. Tribes didn't get
23 anything. To this day, 40-some years, we still --
24 Minto -- the Minto IRA Council still don't have anything
25 in trust. Don't have any lands. I told them we're

1 like -- we're not tribes, floating on a cloud. We have
2 nothing on it, we don't want any -- any subsurface rights.
3 We don't have, you know, title to the land.

4 I really have problems there. You know, with
5 the federal government or the state government. Most of
6 you know -- in here know about Minto and how we moved from
7 the flooding from the Tanana River. In 1967 and all
8 through the '60s were flooding. An unhealthy situation.
9 So we moved from there, from the old Minto to new Minto.
10 In the middle of the summer. I remember helping the
11 elders move. They said, "If they're not going to help us,
12 it's our traditional lands, we'll go move ourselves." So
13 everybody just packed up and left and moved to new Minto.

14 They didn't say, "What if we freeze to death?"
15 We help each other to survive.

16 They moved over there and started clearing
17 land so they could help each other build. Then the state
18 came along and ASHA housing. They came along and helped
19 us. But that was three -- three years. It was very
20 terrible, you know, to -- housing was inadequate. It
21 probably was terrible every -- was hard over there.

22 But the thing is I'm trying to say is how are
23 they going to put it into trust when the state already
24 have it in trust?

25 I have a terrible time -- our council have a

1 terrible time sitting down with our corporation trying to
2 figure out what we're going to do about these lands.
3 Because every -- even if when you were a --
4 (indiscernible). But then when you try to build homes for
5 the tribe members, you have to go through the State and
6 get okay from the State. There's something wrong with
7 that. There's -- we just don't --

8 Oh, my goodness, how are you going to say this
9 is fair to the young people growing up? Young people,
10 ANCSA didn't do us one bit of good. Maybe they put money
11 in certain people's pockets. But with Doyon, we're lucky
12 to get \$500 of -- a year. And so is the rest of the
13 corporation. I don't know if they sit down with this
14 tribe and say, "Hey, will you leave so much land."

15 I mean, it's awful what the Gwich'in people
16 do, what we should all do.

17 Anyway, I just wanted to point that out.

18 Thank you.

19 MR. JAMES: Thank you.

20 Yes, ma'am.

21 MS. JAMES: I'm going to stand over here.

22 Nancy James with the Beaver tribe.

23 You heard me this morning when I had time to
24 make comments this land. Land, it's the biggest asset.

25 I'd like to bring up an issue when we're

1 talking land into trust. We need to remember that as
2 we're talking about ANCSA, what it also need to know that
3 a lot of those Native allotments hasn't been transferred
4 yet. And another one is that as you're looking at ANCSA,
5 they have the seven eye. And it's good that they have
6 different Indian stuff like that, because we be part of
7 it.

8 But the main thing is land sales. If you see
9 the State of Alaska within our Doyon region and Tanana
10 Chief region, you -- especially the Yukon Flats where
11 we're from, Land into Trust. It's going on right now
12 about the land sales that has gone out and who -- and find
13 out who the purchaser is. It's the Fish & Wildlife that
14 purchase a big portion. Now there's big activity in the
15 Arctic Village area.

16 So when we talk about Land into Trust, we're
17 talking about for our descendant rights as you say
18 (indiscernible) this state. We don't want to get rid of
19 our land, because that's a key. But we also want to
20 protect it. As you can see, within the Chalkyitsik area,
21 they joined forces.

22 So we still have issues. And you need to
23 remember that the lands sales that's happening and that's
24 being done by the Fish & Wildlife in our home. So -- and
25 then the Native allotments.

1 Thank you.

2 MR. KINDRED: Thank you.

3 MR. JAMES: Thank you.

4 MS. WILLIAMS: Hi. I'm Kristie Williams. And
5 to follow our chief. I'm a tribal member of the Zhee
6 Gwich'in Tribal Government. Our tribe has a pending
7 application before the department, and I believe the
8 department has about seven pending applications.

9 I really have more questions than comments at
10 this point.

11 What will the department be doing with the
12 pending applications it has before it? We have tribal
13 governments who have business before the department, and
14 you haven't even noticed those tribes personally that an
15 action has been taken that may affect them.

16 Why weren't those tribes notified? Why wasn't
17 action taken prior to notifying tribes that have pending
18 actions before you?

19 And the M-Opinion. Why now? The timing is
20 very strange. You know, the action of the secretary to
21 take land into trust for a tribe is discretionary. So why
22 upset tribes and upset the balance and potentially hurt
23 the relationship, the federal-tribal relationship when
24 there isn't a need to do it? You know, the action is
25 discretionary.

1 So I'm just wondering what the motivation is?
2 One, to rescind the M-Opinion. And two, not to notify
3 tribes of what was happening prior to taking action.

4 Thank you.

5 MR. JAMES: Thank you.

6 Yes, ma'am.

7 MS. PITKA: Hi. Rhonda Pitka, chief of the
8 Village in Beaver, and vice chair of the Council of
9 Athabascan Tribal Governments. I had to wait for Nancy to
10 speak too. I've been waiting a while, which is fine. But
11 it's fishing season in the Yukon River right now. This is
12 pretty much our last opener before we get the fall
13 silvers. And tomorrow is our last opener. The fishing
14 has been kind of not very great this summer.

15 But I'm sure that you've heard all about that
16 already. Charlene Fisher, the executive director of CATG,
17 actually had a white fish net this summer instead of a
18 salmon net. We're going to learn how to make a gouda.

19 So, you know, I struggle this whole session to
20 really kind of get a feel about what this was all about,
21 and to kind of put my anger in check. Because I'm really
22 rather annoyed that this is happening during, you know,
23 these crucial subsistence fishing times. That's
24 ridiculous.

25 And, you know, number two, all of this has

1 been litigated. It's been litigated time and time again.
2 If you guys need some research materials, all of our
3 attorneys have given us reams of paper. And the Council
4 of Athabascan Tribal Governments is also going to submit a
5 whole ream of paper of paper comments.

6 You know, the Akikukchiak District Court
7 opinion answers all of these questions in length. You
8 know, our tribes, they don't need any more listening
9 sessions on things that have been litigated for seven
10 years. What we need is technical assistance. We need
11 technical assistance to bring our lands into trust. You
12 know, we need to go fishing. We need Chalkyitsik, which
13 should have been here, to have their power back on. We
14 don't need to sit in another listening session for things
15 that have already been litigated. It's just beyond
16 ridiculous.

17 I don't know what is going on with the Bureau
18 of Indian Affairs or government at this point. But it's a
19 travesty to have to revisit this, especially on things
20 that have been litigated.

21 The Native American Rights Fund listed several
22 good reasons, you know, why this shouldn't even be
23 happening. What is the point of this, other than taking
24 the last days of my fishing away. But I do have those
25 same questions that Kristi Williams brought up. And I'm

1 sure Dr. Fisher has several more questions of her own.

2 Thank you.

3 MR. JAMES: Thank you.

4 Anyone -- yes.

5 MR. IVAN: I just asked these girls that phone
6 that was ringing, it rang twice, that Akikukchiak Native
7 Community Tribal Council in their office trying to call in
8 to this session.

9 UNIDENTIFIED SPEAKER: They contacted me too.

10 MR. JAMES: Okay.

11 UNIDENTIFIED SPEAKER: Should have had a phone
12 number.

13 MR. MILLER: Jim and Josh, can you tell us if
14 the current trust land applications are still being
15 processed?

16 MR. JAMES: They are still being processed.

17 MR. MILLER: Is there a bar right now of
18 getting -- approving them until this process is over?

19 MR. JAMES: I don't believe so.

20 MR. MILLER: Thank you.

21 MR. JAMES: Ms. Jaeger.

22 MS. JAEGER: Lisa Jaeger, and I'm speaking on
23 behalf of the Huslia Tribal Council. I also work for
24 Tanana Chiefs Conference. I'm a tribal government
25 specialists.

1 I spoke, this morning, a little bit about our
2 activities in terms of assisting tribes and getting the
3 IRA applications during the '80s and '90s. We were also
4 very busy trying to help tribes get land in a variety of
5 ways. Everything from village corporation transfers,
6 gifts from churches, purchases, 14(c)(3) transfers,
7 transfers from the cities to -- city governments to the
8 tribal governments.

9 There is almost 3 million acres of fee land
10 owned by tribes just in the Interior. Does the BIA have
11 any idea how much fee land there is statewide?

12 No? Well, probably not. There is a lot.

13 Chief Pitka talked about technical assistance.
14 The Bureau of Indian Affairs with federal trust
15 responsibility, you know, does assist in terms of Native
16 allotments and restricted town sites, but there's no
17 assistance at all in terms of land owned in fee, you know,
18 by the tribes. And there's a lot of issues, you know,
19 that occur.

20 They need land use planning; they need
21 ordinances, or land assignments; they need all kinds of
22 different things on that. So it's kind of lowly tribal
23 government operations people that kind of get stuck with,
24 you know, trying to help here and there, you know, kind of
25 a thing.

1 But the one thing that they need is they need
2 for those lands to be protected. You got two shots at it.
3 One is if you got the IRA and you got that protection
4 there. Another shot is if you could put it into trust,
5 you know. Otherwise, you're kind of gambling with the
6 idea that the status of being a tribe, you can have your
7 land taken away, you know, for failure to pay taxes or
8 accommodation or something like that.

9 You also need to have internal controls within
10 the tribe. So a lot of the tribes will have passages in
11 their constitutions or their ordinances that say, "Hey,
12 Tribal Councils, you don't have the authority to sell our
13 land without our vote; you don't have the authority to
14 waive your sovereign immunity without -- and put our land
15 at risk."

16 So there's a lot of technical assistance that
17 needs to happen with these lands in terms of fee lands.
18 And there's a lot of fee lands.

19 So I also have trouble controlling my anger
20 because it has been litigated. We appreciate the people
21 that have fought these battles. They are in a
22 (indiscernible) position for 40 years almost. All right?
23 It's so ridiculous to see things come up, deal with it;
24 come up and deal with it again, you know, over and over
25 and over again. So I think you can understand the

1 frustration, maybe, of folks in the (indiscernible).

2 So I think you should -- I'm glad to hear
3 you're still processing the applications and going forward
4 with that. That's a good sign. But really, there's
5 nothing more important to the Alaska Native people than
6 their children and then their land. And so I just ask you
7 to reconsider reinstating that attainment.

8 MR. JAMES: Thank you.

9 Any other comments? Yes.

10 MR. GINNIS: You know, I -- you know, this --
11 these issues we've talked about, both this morning and
12 today, now, are issues that I think shouldn't create this
13 kind of an atmosphere: You against us, us against you.
14 You know, and that's what these type of things lead to,
15 this mistrust.

16 You know, I've been involved since 1974, and
17 there's always -- as a Native, I'm always cautious about
18 government, whether it's state government or whether it's
19 federal government, and what's being presented to us. And
20 my experience with that consultation stuff over the years
21 is we lay out our concern, we lay out our recommendations,
22 et cetera, and it seem like it all fall on deaf ears. And
23 that's very frustrating when you're in a position like a
24 chief, or you're on a tribal council, or you're a head of
25 a nonprofit organization that are there to try to help

1 their people.

2 And the folks we're consulting with don't seem
3 to really give a damn, to put it very bluntly. I've been
4 through a negotiator (indiscernible) game, all these
5 things related to government. And, you know, when you go
6 home and you feel like you've done the best you can and
7 not able to go back to your people and say, "You know
8 what, they heard me, and they're going to follow through
9 in this way." That's a frustrating part about these
10 things.

11 They said, "We can't go back to our own people
12 and say, 'You know, this was a really helpful, useful
13 thing that we just went through. And these things are
14 going to change. They heard us.'"

15 But you all, I also understand that, you know,
16 there's other people above you that make the cut. But
17 you -- I think you also have the responsibility to go back
18 to those same people and say, "This is -- they were
19 adamant about this. You need to change this damn thing."
20 And be very adamant about it.

21 It might cost you your job, but you're doing
22 your job when you go back and tell these people, "This is
23 what I heard. This is the direction they want to go in,
24 and we need to change course here."

25 And if those type of things happen, then I

1 think we would have less suspicion about government
2 people. And so my hope is that, you know, you've heard
3 about this Land into Trust stuff, that it's already been
4 litigated. Why are we here? What are we doing here?

5 The same thing with this whole IRA issue.
6 And, you know, like I said this morning, we don't want to
7 be going backwards and hashing the same things over and
8 over and over and over again. You know, it's like
9 somebody that takes over an organization and they're
10 headed in a certain direction, but this new person come in
11 decides to "Well, I'm going to get rid of that person and
12 that person and that person," and pretty soon we're going
13 backwards instead of going forward.

14 And it just seems to me that we're just kind
15 of going around in a circle, you know. And as we're going
16 around in the circle, our people are suffering, our people
17 are the ones that's hurt, getting hurt. And we got to be
18 a little more sensible about these things, you know. Like
19 somebody had to say, "Wait a minute, why do we want to do
20 this? What's the purpose behind it?"

21 And nobody seemed to be able to explain what
22 that purpose is. Why are we doing this? And so they say,
23 "Well, it's about this particular law or this policy."

24 Well, that law or that policy have already
25 been litigated. It's been made clear through the courts

1 of where these things should go, what direction they
2 should go in.

3 So I leave here with real doubts in my mind
4 about where it's going to eventually end up. And most of
5 the time it don't end up in our interest. It's somebody
6 that's making policy decisions many miles away from here
7 that has no notion as to the policy they're making of how
8 it's going to affect people on the ground.

9 And so I hope that, you know, we're heard loud
10 and clear, and that this type of stuff comes to a stop and
11 just say that, you know, "No, we don't need to do that."
12 You know, review some of this information prior to putting
13 out these questions that came out on this letter that
14 have -- like I say, have already been pretty much
15 resolved.

16 Now, if you want to talk to us about "What do
17 you think about the process? Do you think we ought to --
18 is there a need to change up the process?" that's a good
19 discussion to have. Not to have a discussion around, like
20 I say, things that have already been litigated.

21 Now, there's a couple tribes that was
22 mentioned that are still going through the hoop. I mean,
23 some of that began 17 years ago. I mean, there's
24 something wrong with -- there's a bottleneck somewhere in
25 this whole process. So let's identify that bottleneck.

1 What is it? How can we improve it? How can we expedite
2 these things?

3 Because tribes, I'm sure, are really
4 interested in Land into Trust. And so we've got to
5 streamline the bureaucracy to, you know, get these things
6 accomplished. That's the way I think about it.

7 So again, thank you for being here. And I
8 certainly hope that you -- between these dialogues, that
9 you can take a strong message back to whoever you're going
10 to convey these things to that this is what these folks
11 want. And this is -- and we're adamant about it. Let's
12 change the damn thing, and let's do it.

13 Thank you.

14 MR. JAMES: Thank you, Chief.

15 Yes, ma'am.

16 MS. BELL-JONES: My apologies to those of you
17 who are behind me. It's kind of rude of me, but . . .

18 My name is Jenny Bell-Jones. And I am a
19 retired professor from the Department of Alaska Native
20 Studies and Rural Development at UAF.

21 And it has been my job for a number of years
22 to teach about this very subject, to teach about Indian
23 law; to teach about land rights; to teach about Land into
24 Trust. And I have worked with many young Alaska Native
25 students who are very interested in the subject. It is

1 very important to them.

2 And when the notification of the withdrawal of
3 that solicitor's opinion by Solicitor Tompkins came out
4 and I read the reasons for the withdrawal, and then I went
5 back and re-read Solicitor Tompkins opinion.

6 And I have to tell you gentlemen, that I do
7 not know how I am going to explain your actions to my
8 students when I go back to work in September. I do not
9 know how I'm going to be able to take that very articulate
10 22-page piece of legal writing put out by Solicitor
11 Tompkins and compare it with that second withdrawal of
12 that opinion and explain to them the logic behind it. I
13 am not going to be able to tell them why. They are
14 certainly going to ask me, because they are smart,
15 intelligent young people, and they care about this. It
16 matters a lot to them. It's about their lives. It's
17 about their futures. It's about the futures of their
18 families.

19 I am not going to be able to give them an
20 answer why all of this settled law that we have discussed
21 and we've discussed many times. And I have to tell you
22 that once I get these students in my classes, I can't get
23 rid of them. They call me, they e-mail me, they're still
24 talking to me years later about these subjects because it
25 is important because it matters to them.

1 And I would like to ask you why we are here
2 today. What answer am I going to be able to give to them
3 when they say to me, "Why did the department withdraw that
4 opinion"? Because I can't figure it out. I have read it,
5 re-read it, gone back, read all the history. I have
6 prepared a long statement, which you certainly don't want
7 to hear today, but I will submit to the written comments,
8 because it's pages long. I know you don't want me to go
9 through it here.

10 But I would like to know what answer you think
11 I should give to them. Because if that opinion has not
12 been reinstated by September, I'm going to be dealing with
13 that question. And I am going to have to say to them,
14 "You know, I have no idea why they would have done that.
15 I can tell you why I think they would have done it. But
16 in a court of law, it's not of my opinion, it's on the
17 facts, it's on the rules, it's on what really has
18 happened. Not what I think about who might have been
19 talking to you guys or where you might have heard about it
20 from with the State or other entities or other people in
21 this state." I need to know why did you do this? Because
22 it makes absolutely no sense to me.

23 I know you are not the ones that did it. I
24 very much appreciate you coming here, but as many of the
25 people in this room have said, this is settled law. And I

1 really don't know why we're spending our time here. But
2 obviously we need to because every time we think we have
3 something in place, it's like we're standing on one of
4 those slippery logs when you're crossing a river and all
5 of a sudden the log starts to roll and you know you're
6 going into the water. I don't like that feeling. But I
7 appreciate you letting us speak today. (Native language.)

8 MR. JAMES: Thank you.

9 Yes, sir.

10 MR. DEMOSKI: You need to know my name again,
11 huh?

12 MR. JAMES: Actually for the record, if you
13 could.

14 MR. DEMOSKI: Okay.

15 MR. GINNIS: Peter the Great.

16 MR. JAMES: Peter the Great, yeah.

17 MR. DEMOSKI: My name is Peter Demoski. I'm
18 on the Tribal Council for Nulato. And I'm also the elder
19 adviser of Tanana Chiefs Board of Directors.

20 Okay. Listening to the conversation this
21 morning and this afternoon, I'm going to take the liberty
22 to advise Tanana Chiefs members here. The people from
23 Mike Williams' area, I won't be able to advise you, but
24 you can listen.

25 Okay. We've been hearing back-and-forth

1 discussions about your presence here, your need to be
2 here. I won't get into the legalese portions of it. We
3 have enough lawyers here who can discuss the legalese
4 issues with you.

5 But I am hearing from the tribal members who
6 are present here that your presence here is unnecessary.
7 Everything has been decided years ago, why are you
8 bringing stuff back up that's working already? We don't
9 need to hear that.

10 I can appreciate your coming all the way to
11 Alaska to listen to us. But like many of these
12 participants said, you're coming at an unfortunate time.
13 There's only what, about ten tribes represented here when
14 there's 260 tribes in Alaska, or 224. So your presence
15 here has come at an unfortunate time. It didn't give us
16 time to contact our tribes and say, "Hey, these
17 discussions are important to listen to, your response if
18 necessary," but they aren't able to do so.

19 So my advice to the TCC members that are here,
20 we respect them for showing up here, but their discussions
21 are unnecessary. Everything has already been litigated,
22 everything has been settled. Why they're rehashing it
23 again, I don't know. Like the lady who was just here, she
24 doesn't know what she's going to tell her students; I
25 don't know what I'm going to tell my tribal members in

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1 Nulato when I go back, other than it was a waste of my
2 time to stay here, to sit here and listen to you, discuss
3 with you, but I couldn't shake your presence here.

4 Thank you.

5 MR. JAMES: Thank you.

6 Yes, ma'am.

7 MS. STERN: Can I stand here? Can you hear me
8 okay?

9 MR. JAMES: Yes.

10 DR. STERN: Okay. My name is Charlene Stern.
11 I'm here representing the Native Village of Venetie Tribal
12 Government as a tribal member and as a contractor with the
13 tribal government.

14 For most folks that know Native Village, they
15 know us because we own 1.8 million acres of land here in
16 the state of Alaska, which is a sizeable amount. We have
17 a long history of advocating for tribal land rights in
18 Alaska when it comes to our traditional territories.

19 Our tribe was one of the few that successfully
20 filed for a reservation starting in the 19- -- late 1930s
21 and in the early '40s through the 1936 amendment to the
22 IRA. So we were successful in that.

23 The status of our land was threatened through
24 the ANCSA process, and we were compelled to form village
25 corporations. Within a year of those village corporations

1 being formed, our tribal leaders made the decision to
2 transfer that land back into the Native Village of Venetie
3 Tribal Government. We transferred over 1 million acres
4 for \$10. That doesn't make a lot of financial sense;
5 right?

6 So the motivation was really to have the tribe
7 make decisions for our land base, for our resources, as
8 they had for thousands of generations prior to
9 colonization here in our state.

10 We had to fight continually all the way up,
11 actually, to the Supreme Court with the help of the Native
12 American Rights Fund pushing the case for Indian country
13 in Alaska. So we have been in this battle, like many
14 others, Akikukchiak, Chalkyitsik, and all these other
15 tribes here in this room and in our state.

16 We, today, our tribe is looking at land use
17 planning for our reserve, but we are also in the process
18 of looking at land acquisitions outside of our
19 reservation, largely due to sales of our traditional
20 territories, whether it be allotments or other parcels.

21 So having the option to participate in the
22 Land into Trust program is going to be vital for us. It
23 is an option that we also want for our future generations.
24 And so we feel very strongly for the reinstatement of the
25 2017 solicitor's opinion. So we want to put that on

1 record.

2 Thank you very much.

3 MR. KINDRED: Thank you.

4 MR. JAMES: Thank you.

5 Yes, ma'am.

6 DR. FISHER: I'm going to stand back here.

7 Behind anybody -- or I don't want my back to anybody.

8 So I'm Charlean Fisher (Native language) CATG
9 director, executive director.

10 Following Dr. Stern, my name is Dr. Charlean
11 Fisher. I'm the executive director for ten tribes in the
12 Interior of Alaska.

13 We have a number of comments for the tribes
14 that couldn't be here, but also generally for the region.
15 CATG and it's member tribes do not support sudden changes
16 to the Department of Interior policy that appear to
17 question valid Federal Indian Law. And I want to also go
18 on record, as Dr. Stern just did, for reinstating the
19 solicitor's opinion.

20 So the July 2, 2018, letter from the Deputy
21 Assistant Secretary Tahsuda is unnecessary. As has been
22 stated previously, these things have already been
23 litigated. And that the department should understand,
24 support, and implement the court's decision and move
25 forward with the applications that are received.

1 A congressional intent for the 1994 IRA
2 Amendment makes clear that only one class of Indian tribes
3 with similar rights under IRA was intended so that the
4 Alaska tribes have the same rights and status as the Lower
5 48.

6 The 2014 Alaska Land into Trust final rule was
7 validly promulgated with substantial input. Meaning that
8 this has been done already, and that we should move
9 forward. So the department should also understand that
10 there is broad tribal support in Alaska for Land into
11 Trust, and that there was bipartisan support for some of
12 the jurisdictional issues that were brought forth for
13 public safety.

14 So a number of these issues related to trying
15 to establish sovereign authorities and jurisdictional
16 control really go to the issues of our tribes protecting
17 land resources, people, but also being participants
18 through self-governance in public safety, all sorts of
19 health and wellness issues related to food sovereignty and
20 all those kinds of things.

21 The Land into Trust in Alaska is absolutely
22 needed and is overdue. And we will be placing comments in
23 writing and in more detail.

24 But I'd just like to say, also, that as a
25 researcher, and in my personal work, I -- the

1 epistemological, axiological world view of our people are
2 tied to the betterment of the whole, and through
3 respecting land and resources. And it's readily apparent
4 in language, in world views, and in how they approach all
5 parts of management and expressing their own, you know,
6 subsistence lifestyles, and teaching the younger
7 generations. And the land is critical to making these
8 connections for them, for our future generations, and for
9 reestablishing and establishing a balance for the people
10 with mental health, language, health, education so that
11 they can all come together in a way that is healthy and
12 productive.

13 I appreciate you being here. We're -- we have
14 better things to be doing. And I appreciate the time to
15 speak to you, but we also need some salmon, as Rhonda
16 said, so we would really like not to discuss things that
17 have already been litigated.

18 Thank you very much.

19 MR. JAMES: Thank you.

20 So there's four minutes left. If there are no
21 other comments, I want to thank everybody for coming. And
22 I apologize that we took you away from subsistence
23 activities, fishing, gathering, important daily activities
24 that are crucial to the way of life up here, and I
25 apologize for that.

1 But I also want to thank you for being here
2 and giving us information that we will take back and try
3 to persuade those folks that are in positions higher than
4 me that these are important -- that the message you are
5 giving us is important, and it's heartfelt and it needs to
6 be taken under consider -- into consideration, and we need
7 to take some affirmative steps, you know, to either sit
8 down and have a more meaningful dialogue, or, you know, to
9 perhaps, you know, go down a road that has been suggested
10 here.

11 So I don't know what the decision is going to
12 be, but what you've offered is valuable, and so it was not
13 a waste of time. I know it was hard to pull away from
14 your activities, but I very much appreciate it. So thank
15 you for coming.

16 MR. KINDRED: And as far as some final
17 comments, you know, sir, when you mentioned will I go back
18 and tell these things, I just want to make it clear, I'm
19 the regional solicitor for Alaska, I work in Alaska, and
20 it is my duty, my job to make sure that these messages are
21 passed forward. Not just the content, but the passion in
22 them as well.

23 But there's something that to the extent that
24 any of you are going to follow this up with written
25 comments or participation and in subsequent consultations,

1 I just want to caution you on this idea I've heard
2 expressed several times that, you know, this has already
3 been litigated. And I think that's a dangerous foundation
4 to step upon, if for no other reason that nothing is ever
5 fully litigated.

6 And so I don't want to disabuse you of
7 skepticism or of anger or any other emotional response to
8 this. But I would ask that when you think about this,
9 also think about it through the lens of if we can make
10 this process stronger and less susceptible to future
11 litigation.

12 And the reason why that's important is there
13 will always be new litigants who enter the field. But we
14 can talk about fidelity of process, or we can talk about
15 fidelity of purpose, but when you think about all these
16 things, think about it through the long-term lens of
17 administrations will change. What could we do, whether
18 it's Lands into Trust, or it's in the tribal recognition,
19 what could we do to create more certainty that will
20 survive forward through future generations.

21 So if you do provide written comments, or if
22 you do participate, I would encourage you to think about
23 it in those terms as well.

24 But thank you very much. This has been --
25 I've learned a lot today, and I will be making sure that

1 all these messages make it to the people above me. So
2 thank you.

3 Yes, ma'am.

4 MS. BELL-JONES: Will you see those written
5 comments?

6 MR. KINDRED: I will see those written
7 comments, yes.

8 MS. BELL-JONES: You will. Okay.

9 MR. JAMES: Right. And we'll gather them
10 after we're done.

11 And I'm not sure, Liz, we wait until
12 everything is done and then start kind of reviewing and
13 then they'll be published.

14 MR. GINNIS: Can I say one more thing. I want
15 to just say something about your remark there, okay?

16 I understand what you're saying. But the fact
17 is, is that there is no disputing the fact that these
18 things have been litigated. The result was what it ended
19 up to be in the case of the Land into Trust. Tribes were
20 included.

21 There's a reverse in decision-making here
22 that's going on. Because I don't think it has to do with
23 litigation. I think it has to do with people's
24 perception, higher than you, higher above you, of where
25 Alaskan tribes play a role. And it's true with Lower 48

1 tribes as well.

2 This current president we have, he would
3 rather have us all go take a walk, he would rather have us
4 terminated. So yes, change in administration makes a
5 difference, a big difference. But litigation is quite
6 different from a change in administration and their
7 attitudes towards certain people. And I think that's what
8 we're dealing with here.

9 Thank you.

10 MR. JAMES: Thank you, everyone.

11 3:00 P.M.

12 (END OF PROCEEDINGS.)

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C E R T I F I C A T E

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

I, Crystal D. Thompson-Bartlett, Court Reporter and Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken electronically before me and thereafter reduced to typewriting by me or at my direction.

That the foregoing transcript is a full, true, and correct transcript of the proceedings, including questions, answers, objections, statements, motions, and exceptions made and taken at the time of the foregoing proceedings.

That all documents and/or things requested to be included with the transcript of the proceedings have been annexed to and included with the said proceedings.

That I am not a relative or employee or attorney or counsel of any of the parties in these proceedings, nor a relative or employee of such attorney or counsel, and that I am not financially interested in said proceedings or the outcome thereof.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal this 6th day of August 2018.

CRYSTAL D. THOMPSON-BARTLETT
Notary Public for Alaska
My commission expires: 9/15/2018

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