

Senator John Coghill



December 18, 2018

Via e-mail to consultation@bia.gov.

Re: Continuing Opposition to the Federal Government taking Alaskan "Native Land into Trust"

Dear Sir or Ma'am:

I continue to oppose¹ federal efforts² to take land into trust for Alaska Native Tribes. The Alaska Native Claims Settlement Act (ANCSA) is clear.³ The Act prohibits the Secretary from placing land into trust in Alaska.⁴

According to ANCSA, Alaska Natives received approximately 44 million acres of land and \$962.5 million, to be distributed through corporations owned by Alaska Native shareholders.⁵ Congress declared that the settlement:

should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, **without creating a reservation system or lengthy wardship or trusteeship**, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska[.]⁶

¹ See previous comments to the Federal Register: Document ID: DOI-2017-0003-0002, Comment Tracking Number: 1k1-8x79-8myg;

file:///C:/Users/lsncchh/Senator%20Coghill/Native%20Land%20Into%20Trust/Native%20Issue%20Leadership%20Letter%20re%20Native%20Land%20in%20Trust/Docket%20ID%20BIA-2014-0002%20-%20Public%20Comment%20From%20Alaska%20Senate%20Leadership%201076-AF23%20Final%20w%20Signatures.pdf

² See <https://www.bia.gov/as-ia/raca/regulations-development-andor-under-review/alaska-ira-and-land-trust-alaska>.

³ See Public Law 92-203, 85 Stat. 688 (codified as amended at 43 U.S.C. 1601 et seq.). "After Alaska became a state in 1959, this potential for outstanding aboriginal claims limited the U.S. government's ability to transfer land to the new state under the Alaska Statehood Act. Conflict over the State's land selections prompted Congress to pass the Alaska Native Claims Settlement Act (ANCSA) in 1971. '[D]esigned to settle all land claims by Alaska Natives,' ANCSA extinguished aboriginal claims and revoked all designated reservations, except for one: the Annette Island Reserve inhabited by the Metlakatla Indians, who, as immigrants from Canada, had no aboriginal claims to Alaska lands. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 523-24, 118 S.Ct. 948, 140 L.Ed.2d 30 (1998).

⁴ *Id.*

⁵ *Venetie*, 522 U.S. at 524, 118 S.Ct. 948 (citing 43 U.S.C. §§ 1605, 1607, 1613).

⁶ See 43 U.S.C. § 1601(b). See *Akiachak Native Cmty. v. United States Dep't of Interior*, 827 F.3d 100, 103 (D.C. Cir. 2016). (Emphasis added).

Circuit Judge Brown's dissent in *Akiachak Native Community v. United State Department of Interior* accurately focused on the effect that placing native land into trust may have on Alaska's sovereignty.⁷ Pointedly, Judge Brown disagreed with the majority's decision to dismiss Alaska's appeal for lack of jurisdiction: "While I acknowledge the power of this court to declare when a case is dead, the court today euthanizes a live dispute."⁸

There is no doubt about it: a "live dispute" continues. Powerful, political factors run deep. The state's "official position" on the issue appears to change, depending on past Governors' politics.

However, there are still many in Alaska that look for the Administration, and the federal department to follow the rule of law. I encourage the Secretary, and the new State of Alaska Administration, to give the points raised in the *Akiachak* dissent renewed consideration.

All that being said: Have we gone too far? What about the Craig trust application?

The approved Craig application⁹ remains controversial and, according to previous quoted language from ANCSA, unlawful. With the exception of Metlakatla, there was to be no more lengthy trusteeships.

The Craig application was a political "test case" in many regards... but what happens when future trust applications come in larger, urban areas?

What will be the effect on taxation and regulatory authority? Tribal members residing within "Indian Country" (a dependent sovereign) would not be subject to state or municipal taxation. In addition, with "Indian Country," tribal members would not be presumptively subject to any state regulation.

Yet tribal members would still be full citizens of the state.

Tribal members would receive all state benefits, including the permanent fund dividend.

Tribal members would vote on state and borough bonding issues (although they are under no obligation to pay borough or state taxes). Members can be elected to state or municipal office. Under trust authority, members can vote on budgets but not be concerned with the financial obligations that arise to other citizens from those decisions.

That's simply not fair. A violation of equal protection. Similarly situated Americans are being treated differently on the basis of race.

That's a scenario that should be vehemently challenged by the federal government (whose agents are charged with operating under federal constitutional protections) and by those charged with protecting state sovereignty.

⁷ *Akiachak Native Cmty. v. United States Dep't of Interior*, 827 F.3d 100, 121 (D.C. Cir. 2016).

⁸ *Akiachak*, 827 F.3d at 115.

⁹ <https://www.ktoo.org/2017/01/22/craig-tribal-associations-land-trust-application-approved/> (last visited November 6, 2018).

Letter from Alaska State Senator John Coghill

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Sincerely,



Alaska State Senator John Coghill

cc: Governor of Alaska
Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young