

Consultation on Legal Authority and Process to Take Land into Trust in Alaska

DEPT. OF THE INTERIOR

December 12, 2018

1:00 pm AKDT

Today's conference is being recorded. If there are any objections, you may disconnect at this time. I'd now like to introduce your host for today's conference, Mark Cruz. Thank you. You may begin.

Mark Cruz:

Great. Thank you. And good afternoon to everybody who is on to this afternoon's phone call. I am Mark Cruz. I am the deputy assistant secretary for policy and economic development here at the US Department of Interior. And I want to first off thank everybody for making the time to be on today's consultation phone call.

But before I get into kind of the substance and layout -- some of the housekeeping items -- I want to be sure to convey our thoughts and prayers to those of you that were impacted by the recent earthquake.

We have a ton of staff from Indian affairs out there in the Alaska region and so the Assistant Secretary, Tara Sweeney asked me to convey that to all the participants on today's call.

As many of you on the call are aware of that caused us to postpone a couple of our consultations. And so I want to give you guys a minute to grab a pen or pencil and write down when those postponed consultations will be. And as you're doing that, I want to let me know that the new comment deadline will be on January 25, 2019.

So we went ahead and extended the comment period for you to either submit written comments or you can always email your comments to us. And that email is consultation@bia.gov.

And the new dates on the land and the trust consultation, the first one will be on Wednesday, January 16 in Bethel, Alaska. And the second one will be Thursday, January 17 in Kotzebue, Alaska. So and the time on those are to be determined. And so please visit our website to get the latest on those times.

But I wanted to be sure that you guys had those dates in case you're able to meet our staff out there to offer the - that last opportunity for consultation. So as most of you that are on the call this is our - was supposed to be our last meeting consultation, but we are wrap - this is one of many steps in a series of consultations and the deed of trust decision that we have.

And so I want to make sure that folks on the line understand that, that this is a formal consultation, and that everything is being recorded, and that we are doing the transcript for this meeting, that will be made a part of the record. So comments made today or comments submitted afterwards will go into the ongoing record on this issue.

And so it worked pretty well for those of you on the call earlier, but what I'll do is go ahead and give some kind of preliminary introduction remarks to kind of set the stage for our discussion.

But before I do that I want to let you know that I have a number of colleagues here on the call that will be here to kind of help assist me on the legal side. So we have a counselor to the Assistant Secretary, Tyler Fish. We have our colleague from the solicitor's office, Eric Shepard, and Matt Kelly, and then Liz Appel from the Assistant Secretary in the office here.

So just to kind of begin, earlier this year, because a reminder and to set the stage. Earlier this year we had the solicitors take a look under the direction from the White House that all legal opinions issued recently, just to confirm the legal sufficiency of those.

And so we've been engaged in this process and specifically as it relates to today's conversation the deed of trust and opinion that was issued in 2017 regarding deed of trust in Alaska. So this is similar to prior calls and prior meetings that we're seeking your comments on.

The department feels that there are significant legal issues here. Similar to prior conversation there are laws that we have to comply with that have been enacted over several decades.

There were also amendment to the laws that have caused confusion. We also have several court cases and a number of other legal issues that have created a thicket for interior as we evaluate these applications. And so what we want to do is as we move forward and make - have future discussion, there's our hope to provide good input as we take all facts under consideration.

And part of that for us is the policy side as well. And that's why I asked the solicitors to be here in assisting us with the legal side of that conversation. But it is important for the office of the assistant secretary to be here for the policy side of things, so we can adequately consider how these issues affect (unintelligible) either positively or negatively or for us to evaluate what ways we can improve upon these processes.

We'd appreciate hearing all sides of this matter because it's important as we prepare a comprehensive record moving forward any potential actions we may

decide to take. But ten of the top line and what I want to leave you with is that your input today is critical so that we have the best foundation, so that we're able to best make a decision on behalf of all tribes.

There are a number of different supreme court decisions in recent years that have had impacts across Indian country, unintended or intended. And so we want to make sure that we as the department or creating the most defensible policy and also the most defense - having the most defensible legal analyses.

And so with that I want to kind of open up the floor for comments. And so if (Dory), if you can please explain to folks how they can submit questions and we'll just begin. And if you guys could for us, please state your name clearly and your association.

Coordinator: And thank you. If you'd like to ask a question or make a comment, please press star then 1. You will be prompted to record your first and last name. To withdraw your request, press Star 2.

Once again, to ask a question, please press star then 1 now. Once again, to ask a question, press Star then 1.

And as a reminder to ask a question, you may press Star then 1, you will be prompted to record your first and last name. Please stand by for our first question.

Our first question comes from Craig Jacobson:. Your line is open.

Craig Jacobson: Hello Mr. Cruz, and folks there that are part of this session.

Mark Cruz: Hey Craig.

Craig Jacobson: My name is Craig Jacobson. I commented earlier in the first consultation session. I work with the law firm Hobbs, Straus, Dean & Walker in the Portland, Oregon office. We represent a number of tribes and tribal organizations in the state of Alaska.

I just wanted to open up with a question. I know there will be a number of questions that will probably come up in this session, but a question just on sort of the substance of this rulemaking. Number of tribes that we deal with in the state of Alaska are exceedingly concerned and frustrated with the fact that you've essentially set for a notice and comment rulemaking a topic that settled law.

This case the Akiachak case decided and settled whether or not tribes have the authority under the Indian Reorganization Act Place, land in trust in the state of Alaska. A very exhausted record was developed with a rulemaking process that was completed following Akiachak in 2014.

The department then took action on some new and also existing pending applications for placement of land in trust. Actually took an action to place a personal land and trust in the State of Alaska.

So for the administration to say that what they want to do is open up for notice and comment rulemaking this question based on the premise that there's a recent M opinion I think that that is a very narrow look at this issue.

This issue's been - was litigated over the course of a lot of years to result in the final decision and was considered a through multiple opportunities for all the stakeholders in the state of Alaska and elsewhere to weigh in on a final rule that already came into being. So I guess as just an element opening

comment and a question to you all is, does the Department of Interior acknowledge all of those steps that led to the Akiachak decision?

Does it acknowledge that a rulemaking authority approved on this? And is there some other justification that the department has for reopening for rulemaking this set of questions other than a recent M opinion from 2017 that essentially all it did was just reconfirm all of what was included in the Akiachak decision and all of what was included in both the preamble in the substance of the final rule that came out in 2014.

Thank you.

Mark Cruz: Yes, there's a lot there, Craig, and I appreciate you taking the time to come back and be a part of this discussion as well. Just to be clear, you know, this isn't a formal rulemaking or regulation.

This is simply an attempt by a new administration to come in and review at the direction of the White House all recent decisions on the outgoing administration. And so that's kind of where this got caught up, you know, it being made set one week prior to the end of an administration.

And so that's how that evaluation began, but I think on kind of the broader point, you know, we're not taking any definitive action right now other than saying let's reassess. This is a complicated legal matter and using this as an opportunity to have the conversation with on the ground stakeholders about the - about these complexities in - with the ultimate goal of making sure that any decision that we as a department take is the most defensible.

And when you kind of take a step back, and look at how there's a number of current statutes that complicate this, you know, whether it's the Federal Land

Policy Management Act or an ELCA or the 1994 amendments to the IRA. It just created a convoluted and complicated legal environment.

And so what we're doing is trying to best foster a system in which we can defend Alaska Native tribes and villages.

Craig Jacobson: This is Craig and just responding to that. I mean, I think the - understand your comments there. I think the concern again is you're saying that there's a lot of laws that need to be taken into account like AMILCA and any 90 - 1994 amendment.

A lot of those logs were dealt with in the Akiachak case, and in terms of how they match or don't match up with the rights of tribes in Alaska under the IRA. And a lot of those laws were dealt with in the final rulemaking in 2014.

So if essentially the new administration that is saying, well, we have a M opinion we want to take a second look at. Obviously the administration has a whole suite of options available to it that are less disruptive than what you've chosen to do, including allowing the final rule to stay in place, and continue to be implemented so that applications continue to move forward.

If there's question of reconsidering a solicitor's opinion, oftentimes I know from prior steps by Interior that opinions will stay in place until the analysis is done internally to make a determination as to whether or not it need - either needs to be revised or revamped or stay in place so that you don't have a situation where you just pull an opinion and then as a result you pull an opinion and say, well, let's not just pull in opinion. Let's pull a regulation and final rule that's already in place.

And that in this case, Alaska tribal governments have relied upon, and were a part of, and were in the process of commenting on. So I think the point I would come back to is that if your efforts were intended to focus on the M opinion, and any steps you could take to review it or revisit it, even if you're a new administration and looking at existing law, there were and continue to be far less disruptive ways to relook at that opinion.

But from the perspective of someone who's looked at this issue and tribal governments that have looked at this issue, they looked at it and they say it's not a confusing legal landscape. It's pretty clear, especially following Akiachak. Thank you.

Mark Cruz: Yes, I definitely appreciate your comments, Craig. And definitely it will be made a part of the record. But I just want to make sure everyone understands that the withdraw does not mean there is a change in the existing regulations.

And, you know, this effort in our, you know, actions are not retroactive, but rather looking only looking forward and with the intent of getting your thoughts, and comments, and questions a part of the record as we consider potential interactions. So thank you for that.

Craig Jacobson: Yes. And well, just one other point, I guess. If the point is that it hasn't changed the regulation or the final rule then, isn't it - it's our understanding that the department has frozen processing any land into trust applications in Alaska. Is that correct?

Mark Cruz: That - that's not correct, and I'm not aware of anything being frozen.

Coordinator: This is the operator. Does that conclude your question?

(Craig Jacobson): Yes, it does. Thanks.

Coordinator: Thank you. Our next question comes from (Benjamin P Arnold). Your line is open.

(Benjamin P Arnold): Good afternoon. How do you view the impact, if any of the ANCSA? I'm wondering the Native village of Noatak had proposed to the federal government to - for reservation status. And back in 1939, and when the war began they didn't pick up the proposal 1941 - after 1941. And that the ANCSA it seemed like it negated that or did away with the proposal for reservation for the Native village of Noatak.

That issue ANCSA did have an impact on our status to pursue reservation status. And I'm wondering with that being said where - how would we go about if we wanted to pursue that status, what would we do? What can we do?

Mark Cruz: Right. Let me just take a moment to gather my thoughts. Just one second.

(Carl Wilson): This is (Carl Wilson) from the Native village of Noatak also. And I noticed you have a lot of state programs here like the Alaska Native Claims Settlement Act, the Federal Land Policy Management Act of 1976, and thereafter national interest (Land) Conservation Act.

All these are state run organizations, and the Native village of Noatak is not a state - we're not affiliated with the State. We have not joined the state or anything. We're just total federal, and I'm wondering if these State programs would apply to us since we had not even joined the state yet.

(Benjamin P Arnold): Would you be able to comment on the impact that I stated first? ANCSA shouldn't the proposal for reservation have precedence over that issue or what

did they put in the law of that ANCSA in regards to proposing for reservation status?

(Matthew Felly): Mr. (Arnold), this is (Matthew Felly) speaking from the Solicitor's Office. You're correct that ANCSA have eliminated reservations within the State of Alaska but with one exception for (unintelligible).

(Benjamin P Arnold): Now is there a reason why that is true, because in my belief the Secretary of the Interior should at least pick up that proposal and take a look at it prior to the ANCSA coming into law.

And I'm wondering why that was never done before ANCSA was even developed or any other of the organizations that have been developed since ANCSA. You know, I'm - that's a question I've always had in reference to Native village of Noatak.

Mark Cruz: Yes, no. I definitely appreciate the question. And, you know, I'm not prepared to give you an answer right here, but sort of just so you know, that question is a part of the record and definitely something our staff will take a look at.

And so hopefully we can stay in contact and we can get you a more solid answer.

(Benjamin P Arnold): And, and for the record, its history has a - plays a part in determining all rules and regulations. The Native village of Noatek has a good history. And in part of our history is that prior to Alaska being acquired from Russia, the restaurant people came to our village and they tried to do to us as they did the (unintelligible).

But they left a legacy. The Noatak people had killed the Russian people, and their graves are still here with their guns and stuff. You know, and they came and attacked people using - that were still using bows and knows. And we overcame them and we did not let that nation take us.

So here we are still fighting for our land, but we are in a different situation now. We are with the United States, but is history - does history play a significant part in the acquisition of a people trying to take determination of their own future?

Mark Cruz: Yes. Broad level. Absolutely. And so we'll definitely make this a part of the record, and make sure that we get some sort of comment back to you. So thank you.

Man: How long would we wait for the response of these questions?

Mark Cruz: Well, the comment period is open until January 25 of next year. And so after that it takes our staff awhile to process all the comments, and questions, and queries posed from the several different consultations we've done. So I'm not able to give you a definitive date other than a couple of months.

So, but, yes, please reach out to the department, and we'll be sure to be in touch. (Hillary).

Coordinator: Thank you. Our next question comes from (Phillip Peter). Your line is open.

(Philip Peter): This is (Phillip Peter) community. And the way I understand what you guys are talking about. (Unintelligible) in the community and we (unintelligible) and become IRA Indian Reorganization Act. And the only thing we want to

control our community, the village and we got (unintelligible) and you help, you know, (unintelligible) to control our jurisdictions.

We make that jurisdictions in (unintelligible) and this is not a real complicated situation. We're dealing with the right now each community has (unintelligible). One is IRA. The other is a city. And also the land (unintelligible).

And we could work with the Secretary of Interior to take if we had (unintelligible) we could control our entire jurisdiction in our community. We got (unintelligible) two lots (unintelligible) and if we (unintelligible) make us (unintelligible) the regulation more complicated. More complicated in the jurisdiction in our community so that we could control the entire (unintelligible) boundary.

So that's why we get into land into trust and former governor was here (unintelligible) and he didn't want to (unintelligible) against what (unintelligible) or wants. So my question will be when this going to be settled?

There are so many (unintelligible) sir from the federal government and also from the state government. And it's really hard to talk to each other concerning this one. I want to make (unintelligible) so that (unintelligible) the president and I could talk concerning this one it's real important for us in our community to develop some kind - develop something, the money so that tribes can work and be a sufficient (unintelligible) tribal police. All that stuff.

And it's not really more - it's not a complicated situation. The state and the federal government make us (unintelligible) complications because some regulations are not our regulations. And we (unintelligible) developed all

(unintelligible) using our tribal culture in our community. And we (unintelligible) to our community. But we need more control. We need more control in each jurisdiction in the community.

So my question will be when it's going to be done and over with and passed? It should already been passed what we want to do in our community. Thank you.

(Mark Cruz): Yes. Thank you, sir, for your comments, and your question. So just to get to your question first. You know, this process we'll have another consultation next month, and then what we'll do is we'll take the comments from all of the consultations, and use that to create our record for solicitors to kind of evaluate and identify next steps.

And so that can be anywhere from months to and beyond. So that's the direct answer to your question. But your comments are very informative and the now part of the record as, you know, the real life on the ground experiences you're dealing with and the implications of your land status. So I appreciate that. And you taking time to comment.

(Philip Peter): Thank you.

Coordinator: And once again, if you would like to ask a question or make a comment, press star then 1 on your phone. Our next question comes from (Vergas Summers) (sic). You're line is open.

(Curtis Summers): Hello. I have a comment to make. This is (Curtis Summers), chief of (unintelligible), Native village of Tanana. (Unintelligible) was done in a rush to open up land for - to get the oil (unintelligible) flowing from the North

Slope. The people in the villages were not informed or kept up to date when (unintelligible) was rammed down the Natives' throats.

And that thing about no reservations in Alaska. I don't know if you Native leaders realize it, but everything coming from the federal and state governments is designed to take whatever land and resources that the Natives have after centuries of theft.

And that is all geared for. That is the reason federally recognized tribes are deliberately placed under the states, so the states could get what the hell they want off the Native lands before they give the rest back to the Native.

So you can see it when the federal funding go to the state that's supposed to go to the tribes. The state takes their take off the top of that. It's like a throwing a meat - throwing a bone with meat on it to a pack of dogs. The state will take the meat off the bone and then throw the dried up old bone to the tribes and watch the tribes fight over the - what legal funding or whatever little rights they have.

So everything is just geared to take away from the Natives. And I hope you leaders realize that. I don't know how many of you read the Reindeer Act or the Organic Act or even the Treaty of Session. Those three things I just named off are the basic rights that the Natives in Alaska have.

I don't know how many Native leaders have read it, but you all should read it sometime. This land into trust was going very successfully. It had its bumps, but it was being done. So like any program that tribes can utilize successfully, is deliberately undone or made over to make it more difficult for the tribes to succeed in that program or for that funding.

So this thing about land into trust is just another roadblock that's being thrown up by the federal government and I don't know how many of you Native leaders voted for Trump, but Trump is deliberately doing this and he is your president.

And I don't know how many Native leaders are on this line. Could somebody tell me how many Native leaders are taking part in this teleconference right now? Because this concept official consultation from the federal government to the tribes.

Mark Cruz: Yes sir. The answer to your question is I have 23 active individuals on the phone call.

Man: Yes, I'm here.

Mark Cruz: Yes.

(Curtis Summers): Do they know that they are part of a official consultation on behalf of 229 tribes in Alaska?

Mark Cruz: Yes. I made that clear at the beginning and that's also made clear when you get the conference line details.

(Curtis Summers): So any decisions or comments today is going to affect 229 tribes, although there are only 23 tribes taking part in this?

Mark Cruz: We're not taking any action at this time, sir. We're just creating a record. And a part of that in our effort to get to over the 200 leaders that you've identified is us holding a number of consultations throughout the state? And this is just one of several methods that we employ.

So by phone, we take written comment. We take comment by email, and I know we had staff up in different parts of the state in August and September, up at AFN, and Alaska providers.

So there are a number of opportunities, and so if you, you know, if you - if someone who wants to make a comment or provide any input, please let us know, so we're able to get that feedback from them. So I appreciate you pointing that out.

(Curtis Summers): Thank you.

Mark Cruz: Thank you, sir.

Coordinator: And once again to ask a question, press Star 1. You may also make a comment by pressing star 1 as well. Our next question comes from (Fritz George). Your line is open.

(Fritz George): (Unintelligible). First of all, I want to say thank you to (unintelligible) our council chairman (Phillip Peters) comments and questions regarding the trust land here.

Well, anyway, so after the buffalo consultation was cancelled I went ahead and emailed the comments that were requested by a couple of solicitors during that AFN consultation.

But anyways, I haven't received that - my email, the confirmation of that it was received by DOI.

Mark Cruz: (Unintelligible).

(Fritz George): And we still support we rather go with like HR 215 introduced by Representative Don Young, the American Empowerment Act Restricted Freelance Status. Like to just wanted to know if the Department of Interior have received my - that comment. Thank you.

Mark Cruz: Yes. Thank you, sir, for your questions. I'm actually - let me see if I can get a quick answer for you. And that was (Fritz). Yes.

Woman: So can you - hi, could you spell the name of your tribe for me?

(Fritz George): My tribes, I belong to Akiachak Native Community, and I'm calling from the Akiachak corporation office.

Woman: Okay. So Akiachak?

(Fritz George): Yes. Limited. I sent that email on the 5th.

Woman: On the 5th?

(Fritz George): Yes.

Woman: Oh, yes, we did get it. We just haven't gotten through.

Mark Cruz: Yes. We have received...

Woman: Yes.

Mark Cruz: ...your message, and we will be processing it as a part of the record, sir.

Woman: And you will receive an email confirmation.

(Fritz George): Okay. Thank you.

Mark Cruz: Thank you, sir.

Coordinator: Once again to ask a question or make a comment, please press star 1. Our next question or comment is from (Benjamin P. Arnold). Your line is open.

(Carl Wilson): This is (Carl Wilson) from Native village of (unintelligible). My question was in regards to the (unintelligible) federally recognized tribes in the State of Alaska.

I understand there are 226 tribes in the state of Alaska, but 30 of them are only are federally recognized. Why is that? Is it because of paperwork or is it because - or what is the reasoning behind that?

Mark Cruz: Well, there's a variety of methods that a tribe can be recognized, so, you know, our count is that 229. So I would need a minute to dig a little deeper on exactly how, you know, different tribes to get recognized.

Man: Yes. Can you - yes. Well, sir, can you a shoot us your email, and we'll try to assist you with that question.

Man: Are you talking to (Carl) send us our email?

Man: Yes, just (unintelligible).

(Benjamin P Arnold): You can send that email to my email address. It's I-G-E-P-A-S-S-T@N-A-U-T-A-A-Q.org. And this is (Benjamin Arnold) from the Native village of Noatek.

Mark Cruz: Thank you, sir. Appreciate you guys.

Coordinator: Thank you. And once again to ask a question or make a comment, press Star 1. And once again final call. If you would like to ask a question or make a comment, press Star 1.

Our next question or comment comes from (Benjamin P Arnold).

(Benjamin P Arnold): I'm just - could I get a brief maybe a little just a short synopsis of 25 CFR 151 (Land) Acquisition, just, you know, so I can make a comment regarding the challenges specific to tribes in Alaska?

Man: So you would like a synopsis of 25 151, is that correct?

(Benjamin P Arnold): Yes, 25 CFR 151.

Man: Basically those are the...

(Benjamin P Arnold): Just a brief description of - well, I guess just to understand what that issue is all about so I can make a comment on challenges specific to tribes in Alaska that makes the requirements of Part 151 particularly challenging to satisfy.

(Matthew Kelly): Sure. This is Matthew Kelly from the Solicitor's Office. 25 CFR Part 151 are the department's regulations that implement statutory authority of a secretary to take land into trust for tribes in the United States.

The questions that were included in the (dear) tribal leader letter were intended to get folks' views on whether the 151 regulations, which govern the (unintelligible) trust process have to account for circumstances unique in Alaska. I hope that helps, sir.

(Benjamin P Arnold): Well, I guess I'm wondering if we can get some type of legal assistance in reference to try and understand this issue so that we can make proper comment regarding this, because I see we as members of the community are not, you know, well educated.

We don't have lawyers in the town. We don't have people that understand the whole issue on (unintelligible), Angska those kinds of people. And, but there are IRA counsel, let alone probably don't understand the entire issues in reference to land into trust.

And I'm wondering if we can request lawyer to come up to our community and explain these issues before January - what was that final day? January...

Man: Sixteen and 17.

(Benjamin P Arnold): ...2019, so that we can understand to make comments, because if we're not making comments in the right way or how we feel about these issues, then I think what is going to happen will be overlooked of our comments and trying to resolve these issues in reference to the issue at hand, land into trust.

Mark Cruz: Got you.. Yes, I definitely see where you're coming from. It might be helpful if you take a look at our website, which is www.cia.gov/m and then forward slash A-S, type I-A, forward slash consultation.

And there are a variety of resources on that Website that maybe helpful, but I do have your email, and I'll reach out to you offline, sir.

(Benjamin P Arnold): Thank you very much.

(Mark Cruz): Thank you.

Man: All right (unintelligible)

Coordinator: And thank you. At this time I show no additional questions. I'd like to turn it back for closing remarks.

Mark Cruz: Great. Well, thank you everybody that took the time this afternoon to be on today's call. I do want to remind folks on the line that the website I just spelled out, it has the M opinion posted as well as our geared tribal leader letter that also has an accompaniment of letter or questions that you can kind of tussle with over or consider with, you know, your communities, and your councils.

And, you know, be able to provide the comments, or a letter, or a critique, any feedback you may have at our next consultation session which once again will be on Wednesday, January 16 in Bethel, and Thursday, January 17 in Kotzebue.

And then as always, you can submit written comments or comments via email at our website. And those comments are due by January 25, 2019. So I want to thank you all for being here with us today.

And you questions, comments will be made a part of the record. And we look forward to seeing you guys on the road. And please don't hesitate to reach out to our office if we can ever be of help. So thank you all and have a nice day.

Coordinator: Thank you for joining today's conference. That does conclude the call at this time, all participants may disconnect.

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