

0001

1

2

3

4

5

6

7

8

9

CARCIERI TRIBAL CONSULTATION

10

Arlington, Virginia

11

Wednesday, July 8, 2009

12

13

14

15

16

17

18

19

Job No.:1-158724

20

Pages: 1-127

21

Reported by:Liz Mingione

22

0002

1 M O D E R A T O R
2 Paula Hart

3
4 * * *

5
6 P A N E L I S T S

7 Darren Pete
8 Vicki Forrest
9 Honorable Larry Echo Hawk
10 Honorable Hilary Tompkins
11 Jerry Gidner
12 George Skibine

13
14
15 - - -

16
17
18
19
20
21
22

0003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P R O C E E D I N G S

MS. HART: Good afternoon. It's about 1:30, so we are going to try to get this started right away so we can make sure we have enough time for everybody. Thank you for your attendance at our third consultation regarding the United States Supreme Court decision in Carcieri versus Salazar, a case which was issued on February 29, 2009.

I'm Paula Hart, the Acting Director for the Office of Indian Gaming, and I'll be your moderator for today.

I would like to first call up Chairman Cedric Cromwell from the Mashpee Wampanoag Tribe to come forward to say a prayer.

- - -
(Mr. Cromwell says prayer)

- - -
MR. CROMWELL: Good Day, my brothers and sisters. Thank you for bringing all of us together as Indian people, strong nation, good medicine people. Please help us, Creator, to guide us through this stormy situation where we want land

0004

1 into trust, where we want betterment for our Indian
2 people, where we want to strive in education.

3 That land will bring us a lot of strength
4 and good medicine, economic development. Creator of
5 all, Creator, help us, guide us through the
6 situation. Bring all the strong eastern leaders
7 together, native leaders together and our legal
8 teams and lobbyists; help us be strong. Help
9 Mr. Echo Hawk. Help the Interior get us our land
10 into trust.

11 MS. HART: Thank you, Chairman. For the
12 record, we've asked everyone in attendance to sign
13 in at the door. You should also have picked up a
14 packet that contains a number of documents for your
15 information. In case you are not able to see the
16 PowerPoint on the screen, there's hard copy of the
17 PowerPoint in your packet.

18 Also enclosed in the packets are the
19 notes from the May 12 strategy session that was held
20 at the Tunica-Biloxi Tribe in Louisiana during USET,
21 the June 29 notes from the first consultation that
22 was held in Minnesota, and July 1 notes from the

0005

1 California sessions. We've enclosed these notes in
2 order to keep everyone informed and aware of the
3 issues that are being raised. All of the
4 information is also available on the DOI.gov web
5 site for your convenience.

6 I'll ask for the panelists to introduce
7 themselves, and then we'll proceed with listening to
8 comments from tribal leaders and their
9 representatives. We ask that you be respectful of
10 time in order to allow as many tribal leaders to
11 speak as possible and that your comments are
12 regarding the Carcieri decision.

13 We have a court reporter here today so
14 that we will have the official transcript of today's
15 proceedings. Therefore, I ask that when making
16 comments you come to the microphone, you state your
17 name and tribal affiliation. If you do not speak
18 into the microphone, then the court reporter cannot
19 get your comments on the record.

20 The Department of Interior including the
21 panelists here today have committed to supporting
22 the ability of federally recognized tribes to have

0006

1 lands acquired into trust. Therefore, we are here
2 today to seek consultation with tribal leaders on
3 this very important matter.

4 The Assistant Secretary for Indian
5 Affairs, Mr. Larry Echo Hawk will be our first
6 panelist to introduce himself today. Mr. Echo Hawk.

7 MR. ECHO HAWK: Thank you. I'm Larry
8 Echo Hawk. I've been serving for five weeks now in
9 the Office of Assistant Secretary for Indian
10 Affairs. And I probably ought to start by just
11 asking the members of the Office of the Assistant
12 Secretary and Bureau of Indian Affairs if you could
13 just stand or wave your hand if you are standing, to
14 be recognized. I would like to recognize the staff.

15 - - -
16 (Members stand)

17 - - -
18 HON. ECHO HAWK: And this is the third
19 consultation session that we've held. All of them
20 have been well-attended and they have been very
21 productive. I want to just mention that this is not
22 a hearing. It is a consultation session.

0007

1 When we were in Minneapolis, the way it
2 started is that tribal leaders would just approach
3 the microphone and give a statement. And that
4 seemed a little too formal and stiff, more like a
5 hearing process. And that caught our attention very
6 quickly. And we encouraged people to feel free to
7 have dialogue and exchange, to ask questions, you
8 know.

9 So I just want to apprise you this is not
10 just where you need to stand up and read a formal
11 statement, but if you want to ask some questions
12 that would be fine. That feels more like
13 consultation to me than just sitting here for three
14 hours and listening. But whatever you'd like to do,
15 that's the kind of thing that we'd like to have you
16 do. And like Paula said, our focus should be on
17 trying to just share ideas about how this problem
18 can be fixed.

19 On my first day in office, I was summoned
20 to the Office of the Secretary. And Secretary
21 Salazar wanted to have a meeting with me to not just
22 welcome me, but immediately he launched into what he

0008

1 wanted to accomplish during his tenure of service as
2 the Secretary of the Interior.

3 And I was very impressed with him when he
4 started to talk about his vision of what he wanted
5 to do in Indian Affairs because he was not speaking
6 from any talking points, not a briefing paper,
7 anything like that. I was sitting right next to him
8 and he simply had a blank piece of paper before him
9 and he simply started to talk about what he wanted
10 to do.

11 And as he would make certain points I
12 think of significance, he would make himself a
13 personal note. But one of the things that he did
14 talk about was this U.S. Supreme Court decision that
15 came down in February. And he made it very clear
16 that he wanted to fix this problem, and he wanted
17 this to be done soon.

18 He had said previously that he wanted to
19 wait until his political team was in place before
20 this process moved forward. And his political team
21 is in place, myself included, but also the Solicitor
22 who is sitting next to me, Hilary Tompkins. And

0009

1 she's in Day 12. So you can see he really didn't
2 waste any time in diving into this issue, the
3 consultation sessions were scheduled to move
4 forward.

5 So now we have this business before us.
6 And we are going to try to move very quickly after
7 this third consultation session to get the
8 transcripts that we need. We'll probably even start
9 sooner than the formal transcripts, you know, being
10 delivered to us because we are taking extensive
11 notes. So we can refer to those notes.

12 But there will be some meetings that
13 occur just immediately to begin to formulate a
14 position that will be presented to Secretary Salazar
15 as a recommendation. And then we intend therefore
16 to move forward as quickly as we can.

17 So those are my opening comments, and
18 Paula?

19 MS. HART: Okay. Thank you, Larry. Our
20 next panelist to introduce herself is the first
21 Native American woman solicitor for the Department
22 of Interior, Ms. Hilary Tompkins.

0010

1 HON. TOMPKINS: Thank you, Paula. Good
2 afternoon everybody. My name is Hilary Tompkins and
3 it's a pleasure to be here.

4 I want to first properly introduce myself
5 following that my tribe's tradition, Navajo
6 tradition. So for those of you who are native
7 Navajo speakers, bear with me. Okay.

8 - - -
9 (Ms. Tompkins speaks in native tongue)

10 - - -
11 HON. TOMPKINS: Basically I'll translate
12 as best I can. My mother is on the Salt Clan and my
13 father's side is Taos Pueblo. And I was born in the
14 Ramah, New Mexico area and adopted at birth and
15 raised in New Jersey. And it's a real pleasure to
16 be here with all of you today.

17 And I just want to first say that I am
18 very honored to be asked to serve in this position.
19 I take the position very seriously. And I know that
20 it vests me with great responsibility. So I think
21 I'm approaching the difficult issues of the Interior
22 Department with that in mind.

0011

1 I am interested to hear from all of the
2 tribal leadership here today. I am humbled and
3 honored to be in your presence. I have worked for
4 my tribe and represented other Indian nations, and I
5 have great respect for what you do and the difficult
6 decisions that you face. And I think it's critical
7 that we have open dialogue and discussion,
8 government to government.

9 I know that Secretary Salazar and
10 Assistant Secretary Echo Hawk value that
11 government-to-government relationship. So I'm
12 pleased that we are here today to have that dialogue
13 which will continue, no doubt. I did want to share
14 a little bit with you about my legal background so
15 you know what perspective I bring here today.

16 I have worked for my own tribe. I have
17 represented other tribes. And I've also worked for
18 the United States previously for the Department of
19 Justice. And I've most recently worked for the
20 state of New Mexico for Governor Bill Richardson. I
21 was his legal counsel for five years.

22 So I bring the various perspectives of

0012

1 three sovereigns in my work. And I hope that will
2 give me a balanced view of these issues and a fair
3 view. I, when I represented tribal governments, I
4 did work on fee-to-trust applications specifically.
5 And so I do have firsthand knowledge with that
6 process. And I understand the interests and value
7 that tribal governments place on being able to
8 transfer land into trust status, having represented
9 tribes myself on that very issue.

10 So that I hope gives you a little bit
11 idea about who I am. As Assistant Secretary Echo
12 Hawk mentioned, this is I believe Day 12, but it's
13 kind of all a blur at this point. And I want you to
14 know that I've been meeting internally with my staff
15 to look at that, this issue closely. It is
16 obviously complex and it presents a lot of difficult
17 decisions. So we have been actively looking at it.

18 Secretary Salazar has made this a top
19 priority. And he wants some action on this as soon
20 as possible. So that's been our directive. And so
21 it's a focus of my efforts as a solicitor. So
22 that's where we are.

0013

1 I just also want to finally emphasize
2 that I've not made any decisions on this matter.
3 And I come here today with an open mind and open
4 ears. And I am here to learn and to listen. So
5 notwithstanding what might be said out in the
6 grapevine, there's not been any final decision. And
7 I look forward to hearing from your all today.

8 And we've got a lot of bright minds in
9 the room and very experienced leaders. And I think
10 together we can try and reach some proposed
11 solutions on how to address this decision. So thank
12 you again and I look forward to hearing all your
13 comments.

14 MS. HART: Thank you, Hilary. During the
15 strategy session in USET there was a lot of
16 questions and comments regarding why do we have to
17 wait for the new administration to come on. But I
18 think that we are very fortunate to have both native
19 people in these positions. And the Secretary made
20 it a priority, and we've been moving very quickly.

21 After the USET strategy session, I came
22 back and I discussed with George and Larry that the

0014

1 tribes wanted to have consultation here on the east
2 coast. It was very important. It didn't take much
3 convincing, and they want to the powers to be and we
4 immediately turned right around and sent out a new
5 tribal leaders letter setting up this consultation.
6 So I think that is an indication of how this is a
7 priority for this administration.

8 Also at USET there were a lot of
9 questions regarding the March 12, 2009 memo that
10 George Skibine sent to regional directors requesting
11 information. That memo is included in your packet.
12 As promised, I think people were asking to see
13 actually what went out. So we've included that memo
14 in your packet.

15 And Mr. Jerry Gidner, the Director of the
16 Bureau of Indian Affairs will speak next to discuss
17 that memo. Jerry?

18 MR. GIDNER: Thank you, Paula. I am
19 Jerry Gidner, the bureau director. I know a lot of
20 you, and probably will meet some more of you later
21 on today.

22 I did want to address this letter a

0015

1 little bit. There are some concerns about whether
2 we are compiling a list, whether there would be
3 something that would be able to be received by
4 opponents of fee-to-trust transactions under the
5 Freedom of Information Act. And, you know, to be
6 honest we were thinking about creating a list at one
7 point but pretty soon realized that would not be a
8 good idea at this point. But we are looking for
9 information so that we can evaluate the impacts of
10 the decision so that we can help plot and strategy,
11 and so we can deal with fee-to-trust applications on
12 a case-by-case basis as they come forward.

13 So we were not asking the regions to
14 create anything new. So I think any information
15 that we had in hand was available under the Freedom
16 of Information Act anyway. We are -- we were trying
17 to collect some so we could have more centralized
18 data just to evaluate this. But we were not
19 developing a list of who is under federal -- who we
20 believe is under federal jurisdiction, who we
21 believe is not. We are not doing that.

22 So if you have any questions about the

0016

1 letter, I would be happy to answer them. But I just
2 want to give you that little background. Thank you.

3 MS. HART: Thank you, Jerry. Our final
4 panelist to speak so Mr. George Skibine, Acting
5 Principal Assistant Secretary for Indian Affairs.
6 He'll come up to discuss the topic of today's
7 consultation, the Carcieri decision and the options
8 that we have. But before he comes up, I would like
9 to introduce our last two panelists seated at the
10 table.

11 Miss Vicki Forrest, the Deputy Director
12 of Trust Services, and Mr. Darren Pete, the Director
13 of Office of Congressional and Legislative Affairs.
14 Vicki and Darren are here to answer technical
15 questions that you may have during the session.

16 I'll call George up now.

17 MR. SKIBINE: Good afternoon, we are
18 anxious to get going. This is the third and last
19 consultation session on the Carcieri session. I'm
20 George Skibine. I'm the Acting Principal Deputy
21 Assistant Secretary. This is my 13,357th day or
22 somewhere, but it's all becoming a blur, I guess, so

0017

1 I've stopped counting. But I don't have any excuses
2 for whatever I'm doing, that's for sure.

3 At any rate, what we have put up there is
4 what we put up at the last two consultation
5 sessions. And essentially I think the aim of the
6 Secretary is to make sure that all recognized --
7 federally recognized Indian tribes have the same
8 opportunity to acquire land into trust and to make
9 sure that the Carcieri decision of this past
10 February is not an impediment, cannot be -- is not
11 impediment for such a goal. So that's what we are
12 here today is to hear from you essentially as to
13 what your idea as to what it is that the Secretary
14 and the Department should be doing in the wake of
15 that decision.

16 So we put up there the first option which
17 is one thing that we have -- that everybody has been
18 thinking about is legislation. And I'm still
19 putting this up there. When you look at the four
20 options, the first one dealt with retroactive
21 legislation, the second one with prospective
22 legislation, the third one would be both retroactive

0018

1 and prospective. And what I can tell you is that in
2 the other two consultation sessions there is no
3 question that the tribes prefer the Number 3 option
4 is to do both a retroactive and prospective
5 legislation together.

6 Then the fourth one is what form should
7 the legislation take. And here that's still
8 something that there was some discussion on that.
9 And it's not necessarily, you know, it's a question
10 of strategizing whether we want to amend the IRA or
11 do new authority and what should the legislation
12 say. So that is what we are going to -- Larry and
13 Hilary are going to be talking to the Secretary
14 about.

15 In your package you can see you have the
16 notes is my counselor Liz Appel is sitting behind me
17 is taking those notes. I don't know how she does
18 it, but I thought these are excellent in terms of
19 the quick turnaround in what tribal leaders have had
20 to say on these matters. So those were for the last
21 two consultation, and we'll do one for this one.

22 Now the other option that we have had is

0019

1 whether we should do regulations. And essentially
2 it's not a either/or proposition. It's something
3 that we could not do, do, and we can do at the same
4 time. And that would be to revive 24 C.F.R. Part
5 151 to be found under federal jurisdiction in 1934.

6 Part 151 are land acquisition
7 regulations, or we can do regulations that are not
8 151, not touching 151, but someone suggested -- one
9 of the leaders or attorneys suggested that perhaps
10 we should do new regulations that essentially deal
11 with this topic separately so as not to open up the
12 issues surrounding the land acquisition process in
13 25 C.F.R. Part 151. And I think that there is some
14 merit to that.

15 And then of course what should the
16 revision say. If we do regulations, of course we
17 would do consultation on a draft before we do
18 anything. And we obviously I don't think we
19 would -- we would do them at all if the consensus of
20 the tribal community is that we shouldn't be moving
21 that way in the first instance while legislation is
22 being pushed forward.

0020

1 I'm not going to do a little analysis of
2 the Carcieri case because I'm pretty sure everybody
3 in this room know what the decisions say. And some
4 of you are a lot better than I, so I am not going to
5 go there.

6 And with that I think we can move to
7 start the session and so that we can get your input
8 and have a conversation about where the Department
9 is going on this issue. Thank you very much.

10 MS. HART: Thank you, George. I'd like
11 to, as we said one of our options is legislation.
12 And I wanted to point out there's a few people from
13 the Senate Indian Affairs Committee here: Denise
14 Desiderio, Jim Hall, John Harte and Rhonda Harjo.
15 Could you guys stand so people could see where you
16 are.

17 SPEAKER: And we have Brenda Shore here
18 too.

19 MS. HART: Okay. Brenda Shore. So we
20 are all taking this very seriously. We'll now take
21 comments from the audience. We have asked that you
22 sign in to speak. And that will help the court

0021

1 reporter with the spelling of your names.

2 We are going to be a bit more informal
3 and just ask you to come to the mike. But remember
4 when you come to the microphone, state your name and
5 tribal affiliation. So we'll begin comments

6 MR. VAN NORMAN: Well, I have a plane to
7 catch, so I'll jump up here. Mark Van Norman, I'm a
8 member of the Cheyenne River Sioux tribe. And I'm
9 the Executive Director for the National Indian
10 Gaming Association.

11 We held our annual meeting in Phoenix in
12 April, and we have a resolution on the Carcieri
13 issue. And we feel that a few points are pretty
14 clear. All lands that now comprise the United
15 States were originally native lands. United States
16 acquired or took lands from all Indian tribes
17 through treaty warfare or other means.

18 The United States historically took too
19 much land from tribes wrongfully and destroyed
20 tribal economies, fairness and justice require that
21 the United States provide an avenue for all tribes
22 to require lands necessary to the well being of our

0022

1 communities. The Indian Reorganization Act intended
2 to provide for that through Section 5. And the
3 Supreme Court's decision undercuts the intention of
4 Congress through Section 5 of the Indian
5 Reorganization Act.

6 We agree with NCAI that there should be
7 immediate action on legislation and that the
8 administration should immediately seek legislation
9 to redress the Carcieri issue. And Congress should
10 immediately enact legislation. And it can be done
11 through several ways.

12 Strike the word "now". Add the words "or
13 hereafter". And some tribes have said that we ought
14 to strike "tribes now under federal jurisdiction"
15 and insert the phrase "federally recognized Indian
16 tribes."

17 I think striking the word "now"
18 eliminates the temporal barrier that the Supreme
19 Court identified. Adding the words "or hereafter"
20 goes with the suggestion of the Supreme Court that
21 other language that had the words "or hereafter"
22 provided for tribes in the future. And if we were

0023

1 to have the phrase "federally recognized Indian
2 tribes," then we'd be referencing the federally
3 recognized Indian Tribe List Act, and we would have
4 some clarity that way.

5 So I think depending on what the
6 consensus of the tribes is, there are some clear
7 avenues to proceed. In the meantime, the
8 administration should continue to protect all Indian
9 lands under the Quiet Title Act which expressly
10 reserved the sovereign immunity of the United States
11 in regard to Indian lands.

12 And President Nixon recognized when that
13 act was passed that third parties should not come
14 between the United States and Indian tribes because
15 our lands are protected by treaties and formal and
16 informal agreements with the United States. And
17 these are solemn undertakings that should not be
18 disturbed.

19 So knowing that we have the defense of
20 sovereign immunity in any case involving Indian
21 trust land, many plaintiffs will lack standing.
22 They must assert an ownership interest. And if

0024

1 there's no ownership interest, then their case
2 should be dismissed. And we should be relying on
3 the statute of limitations to the full extent that
4 it will protect Indian lands.

5 And I've provided the resolution. And,
6 Jason, you want to give the folks a few copies there
7 since you have them. Do you want to just give them
8 to the folks in the panel.

9 JASON: Yeah. They have it. I gave it
10 to the staff up front.

11 MR. VAN NORMAN: Well, go ahead and give
12 it to the panel since we are doing it right now.
13 Anyway, we have a resolution. We've attached NCAI's
14 resolution. We think the action is clear, that it
15 should be immediate. It's a cause of justice. And
16 we appreciate your support.

17 MS. HART: Thank you, Mark. I believe
18 that they collected comments in the back, but Nancy
19 Pierskalla right over here, if you have comments
20 that you want to have put in the record, you can
21 give them to Nancy. We'll make sure that happens.
22 Okay, Brian?

0025

1 MR. PATTERSON: Greetings, greetings, on
2 behalf of the 25 tribes of the United South and
3 Eastern tribes, we greet you with one voice, one
4 heart and one mind. I carry with me a "gasuenta"
5 (phonetic) wampum. I bring this with me today to
6 demonstrate our ability to have over 400 years of
7 meaningful consultation, meaningful dialogue and
8 meaningful relationships. Those are the voices that
9 we represent.

10 These are the voices of the USET tribal
11 leaders. And so we greet you. We thank you for
12 holding the third consultation in the east.

13 Again my name is Brian Patterson, Bear
14 Clan representative, Oneida Indian Nation, president
15 of USET. And we want to thank the Department. We
16 want the Department to sponsor and aggressively push
17 a legislative fix to address the Carcieri decision
18 as soon as possible. The fix should encompass both
19 future land into trust applications and retroactive
20 affirmation of parcels already taken into trust.

21 Even if the Department decides at this
22 point that all federally recognized tribes under

0026

1 federal jurisdiction in 1934, a legislative fix is
2 the only resolve that will ensure that tribes can
3 avoid needless litigation over the meaning of "under
4 federal jurisdiction" and other attacks on the
5 status of tribal lands. While the legislative
6 process is moving forward, the administration needs
7 to decide in the meantime how it will deal with
8 pending trust applications.

9 The administration needs to decide in the
10 meantime how it will deal with pending trust
11 applications and the potential need to defend the
12 status of land already in trust. We recommend the
13 administration establish a task force of officials
14 from the Department of Interior, Department of
15 Justice and the White House and potentially any
16 other agencies that you could have that would have
17 an interest in tribal trust lands.

18 We are interested in a joint
19 administrative position. It is critical to have
20 Department of Justice involved in this position that
21 the administration is developing on its response to
22 Carciere, as it is an agency task with defending the

0027

1 status of tribal trust lands.

2 We are concerned about the speed of which
3 the administration may reach a conclusion on its
4 position. That sounds like irony, doesn't it.

5 After we had to wait for the administration to fill
6 the seats, we are now expressing our concern, but
7 yet we are pleased with the priority, that this
8 issue is a priority with Secretary Salazar and that
9 the BIA is anxious to set out its position for the
10 Secretary. However, trying to finalize the
11 Department's position in just a few short days after
12 the consultations have ended raises significant
13 concerns about how seriously the BIA is considering
14 tribal input and whether the BIA may have more or
15 less nearly finalized its position already.

16 While we want a swift solution to this
17 problem, BIA should make sure that it considers all
18 tribal input and not reach any conclusions before
19 doing so. This issue has the potential to affect
20 our member USET tribes far greater than any other
21 organization in the potential injustice and its
22 effects on our member tribes. We would urge that

0028

1 before any document, policy or verbiage is released,
2 that tribal leaders have an opportunity to sit and
3 have dialogue on the potential recommendations from
4 the Department.

5 That's it. Thank you.

6 MS. HART: Thank you, Brian. George?

7 MR. SKIBINE: I wanted to make one
8 comment about what Mark was saying before. The
9 Department as is defending a loss of currently
10 involving the Gun Lake Bank in Michigan. And in
11 that case the Department of Justice and the
12 Solicitor's Office of the Interior has asserted
13 defense based on the Quiet Title Act. And we are
14 vigorously defending that case.

15 This is a case where the land was taken
16 into trust after years of litigation in January
17 before the Carcieri decision came down. And we were
18 then sued based in part on the fact that we didn't
19 have the authority to do that. So because the land
20 is in trust, we are defending this case. It's in
21 the DC district, and we hopefully we will win this
22 case.

0029

1 I'm sure it will be appealed, but if we
2 win in the DC Circuit, this is going to be for us
3 it's a very important circuit. And then I think it
4 will alleviate a lot of the need for retroactive fix
5 once that happens. So that's one thing that's
6 ongoing.

7 Watch out for the decision there. It's
8 going to be definitely important, especially if
9 there is no legislative solution by then. Of course
10 a legislative solution is still preferable because
11 once this is -- if this is settled to our advantage
12 in the DC Circuit, someone may file a lawsuit in the
13 Ninth Circuit with the same issue. And so we don't
14 want to keep litigating that for the tribes around
15 the country.

16 So that's why we prefer legislative
17 action, but we are really hopeful that the brief we
18 filed in this case are going to prevail. Thanks.

19 MS. HART: Okay.

20 MR. CROMWELL: Good day and thank you.
21 Darren, Vicki, Mr. Echo Hawk, Hilary, Jerry and
22 George. Again, thank you for allowing me to be here

0030

1 and other natives to be here today to represent our
2 nations, our tribes, and talk about land into trust.

3 I am the chairman of the Mashpee
4 Wampanoag Tribe. I serve about 1700 constituents
5 that are very concerned and need land into trust and
6 want land into trust. Not only being a member of
7 the Mashpee Wampanoag Tribe, I'm also, quote,
8 unquote, an American citizen, a Massachusetts
9 citizen; good neighbors building relationships with
10 Governor Deval Patrick and Attorney General Martha
11 Coakley. And we are advancing those relationships
12 to also get them to understand why we are important
13 to the nation, to the Commonwealth.

14 A little history about our tribe. We
15 were the tribe that met the first settlers, the
16 pilgrims. And as we showed them how to survive and
17 how to live, we expected the same respect. And
18 certainly as we moved forward with land, the land
19 was allotted to our tribe and then certainly taken
20 away from us pretty quickly after that.

21 So not only are we a sovereign, but we
22 are a landless sovereign tribe. And that's a

0031

1 problem when we think about economic development,
2 health care and education, wanting to be able to do
3 these things that are important. Those are
4 stimulus. Those are things that are important to
5 our tribe.

6 And being a sovereign without land into
7 trust, that's unheard of. That makes no sense. And
8 so this is a major problem here. And when I talk to
9 you today, I want to leave you with five points.

10 I respect you all and look at you as
11 trustees to help our nation and other tribes with
12 respect to bringing land into trust. It's very
13 important for us. When I talk about our history,
14 you know, over four centuries ago we met these first
15 settlers. And we had a lot of land, tons of land.
16 And then the whole allotment situation came and
17 quickly taken away from us.

18 And the land was deeded to us in
19 perpetuity. And we still have those original deeds
20 to the land. Paula, you are aware of that. And so
21 it's sad. And so we are really looking for your
22 help in that.

0032

1 And we warrant special attention for the
2 fact that we are a landless tribe. We are a
3 sovereign. And when we were reaffirmed in 2007,
4 certainly from that aspect, you know, we are really
5 again I know I sound repetitive, but really looking
6 for your help to get that land into trust for us.

7 I touched on economic development,
8 housing, health care, very important again to have
9 that land into trust to serve those needs for our
10 people. We can't accomplish this without a Carcieri
11 fix, a national fix, a legislative fix. I'm really
12 asking you to urge that to happen for us. Very
13 important for our nation.

14 And also we ask Congress to actually seek
15 this fix within this year by the end of this month.
16 I'm being funny but, you know, sincerely we need
17 that to happen quickly. That would be a great gift
18 if that would happen soon for all of us.

19 And last but not least, when we think
20 about the administration process, the sovereign
21 process, recognizing tribes; we have our brothers
22 and sisters of the Shinnecock Nation, the Lummi

0033

1 Nation, help them out too; help them get recognized
2 so they can join the family.

3 They already are family. And then
4 certainly land into trust that same theme so, you
5 know, legislative fix, urge you to help us. And
6 also I want to follow up with a question. Is that
7 okay?

8 How will the Assistant Secretary of
9 Interior and Solicitor apply the Indian canon of
10 construction to any administrative policy solution
11 to ensure that solution is designed to provide best
12 possible interpretation of Secretary's authority on
13 behalf of the tribes.

14 MS. HART: Hilary?

15 MS. TOMPKINS: Are you referring to
16 interpreting statutes favorably?

17 MR. CROMWELL: Exactly, construing
18 statutes favorably for tribes.

19 MS. TOMPKINS: Well, in that instance the
20 Supreme Court had that argument before them. And we
21 all know how they interpreted the statute at issue,
22 the IRA. So I think the Supreme Court has decided

0034

1 it for us on how they are going to weigh that legal
2 theory.

3 So we are left with how to define under
4 federal jurisdiction. I think there might be some
5 Chevron deference to how we interpret that if we
6 were going to amend regulations given that Interior
7 is the expert in the field on Indian law. So that's
8 where we are.

9 And I think if Congress were to pass
10 legislation, then that new statute could be, if it's
11 challenged in some way in a court of law, then I
12 would presume that the Department of Justice would
13 seek to apply that canon of construction again on
14 many new Carcieri-related statutes. I don't know if
15 George will elaborate on that.

16 MR. SKIBINE: I just want to say that if
17 we propose a statute, it's not going to be
18 ambiguous. And as a result we are not going to need
19 to apply the canon. It's going to clearly say that
20 all tribes are eligible to take

21 MR. CROMWELL: Exactly.

22 MR. SKIBINE: -- land into trust.

0035

1 HON. TOMPKINS: Yes. That is a
2 possibility that there would be an unambiguous
3 statute in Congress, but I think in all of these
4 discussions I caution folks because there is --
5 there are other interested parties on this issue.
6 And I think they will want to be heard by Congress
7 as well. And I'm referring to the states and local
8 governments.

9 So it remains to be seen what that
10 statute will be like coming out of Congress.

11 MR. CROMWELL: And the gentleman that
12 spoke earlier about the language, federal
13 jurisdiction, you know, federal acknowledged tribes,
14 it's important and the language around now should
15 truly be retroactive and prospective, forward
16 looking, you know. So I guess it's a little less
17 ambiguous but supportive of the goal and need.
18 Thank you.

19 MS. HART: Thank you.

20 MR. NOKA: Good afternoon. My name is
21 Randy Noka. I am a travel councilman for the
22 Narragansett Tribe. I'm also Northeast Area Vice

0036

1 President for National Congress of American Indians
2 and the Vice President for United South and Eastern
3 Tribes. And our chief is here to speak part of the
4 Narragansett and concerns that he's going to raise.

5 President Patterson for the USET already
6 spoke on positions of USET to an extent. Jackie
7 Johnson from NCAI is here. She's the executive
8 director for NCAI. In the previous consultations, I
9 am sure what I'm going to say on the part of NCAI
10 has been brought up in one form or another. I do
11 have testimony that I'm submitting resolutions on
12 the part of NCAI, positions we've taken. And I'm
13 looking for the fix and the appropriate action on
14 the part of the administration of Congress to right
15 this wrong.

16 First off, not that it necessarily
17 matters to me, but in Rhode Island he's known as
18 Carcieri. That's how his name is pronounced. Again
19 how anyone announces his name or says his name, it's
20 of no importance to me, but he is a Rhode Island
21 governor. He led the effort to bring on this
22 terrible decision or brought it to where it was

0037

1 decided in a wrong and bad way, but nonetheless I
2 figured I would mention that.

3 I do have a quick statement or as quick
4 as I'll get to it on the part of NCAI that I would
5 like read into the record. But before that, one
6 concern that you just raised Miss Tompkins that at
7 least on my part it's a concern, not so much a
8 concern as how it was put.

9 We are well aware of how states and other
10 concerns that they have will certainly look to
11 Congress and have whatever opportunities to express
12 their side of things. If anything, I think it's
13 fair to say that more times than not they get the
14 opportunity to say things and have their side heard.
15 We don't get enough opportunity to have our side
16 heard. We don't have enough votes in Congress to
17 have our side exercised and upheld to the extent
18 that we need it, we being Indian country.

19 It's due time that Indian country had the
20 representation and the voices heard and the votes
21 counted in ways that support us. I'm not saying
22 anything that as a negative as to what you said,

0038

1 it's just we are well aware of what opportunities
2 they have. We'd like the equal opportunity.

3 Forgive me. Let me put the glasses on.
4 Statement of National Congress of American Indians
5 regarding the Supreme Court's decision in *Carcieri*
6 v. Salazar, July 8, 2009.

7 On behalf of the National Congress of
8 American Indians, we'd like to thank Secretary
9 Salazar, Assistant Secretary Larry Echo Hawk,
10 Solicitor Hilary Tompkins and everybody at the
11 Department of Interior for their efforts to consult
12 and coordinate with Indian tribal governments on
13 actions to address Supreme Court's decision in
14 *Carcieri v. Salazar*.

15 It is NCAI's goal to promote a productive
16 partnership between tribal governments and the
17 federal government as we work together to promote
18 tribal self determination and ensure fulfillment of
19 the federal trust responsibility. The fundamental
20 purpose of the IRA was to reorganize tribal
21 governments and restore land basis for the Indian
22 tribes that have been decimated by prior federal

0039

1 policies.

2 The passage of the IRA marked a dramatic
3 change in federal Indian policy. Congress shifted
4 from assimilation in allotment policies in favor of
5 legislation to revitalize tribal governments in
6 Indian culture.

7 In a decision that runs contrary to these
8 purposes, the Supreme Court held the term "now" in
9 the phrase "now under federal jurisdiction" and the
10 definition of Indian limits the Secretary's
11 authority to provide benefits the IRA to only those
12 Indian tribes under federal jurisdiction on June 18,
13 1934, to the date the IRA was enacted.

14 This Carcieri decision is squarely at
15 large with Congressional policies of tribal
16 self-determination and tribal economic
17 self-sufficiency. In particular this decision runs
18 counter to Congress intent in 1994 amendments to the
19 IRA which directs the Department and all other
20 federal agencies to provide equal treatment to all
21 Indian tribes regardless of how and when they
22 receive federal recognition.

0040

1 Points to consider regarding Carcieri v.
2 Salazar: Each tribal government may have unique
3 issues and concerns regarding the Carcieri decision.
4 And we urge the Department to carefully consider all
5 these views. The following are general positions
6 developed by NCAI member tribes pursuant to our
7 resolution process.

8 One, we need a legislative solution. If
9 the Carcieri decision stands unaddressed by
10 Congress, it will create costly and protracted
11 litigation. Indian tribes and federal government
12 should focus their efforts on the future rather than
13 attempt to reconstruct what it meant to be, quote,
14 under federal jurisdiction in 1934.

15 The Carcieri decision is elected to
16 create litigation on long settled actions taken by
17 the department pursuant to IRA as well as on the
18 Secretary's ability to make future decisions out in
19 the best interest of tribes. Tribes that make great
20 strides and caring for the needs of their people,
21 building infrastructure on reservations and
22 contributing to the local communities and economies.

0041

1 The Carciere decision threatens that process. And
2 there is attachments that I speak of.

3 Number 2, in the interim the Department
4 of Interior Department should interpret the phrase
5 "under federal jurisdiction" to embrace the full
6 constitutional role of the federal government and
7 Indian Affairs including all Indian tribes that have
8 maintained tribal relationships and relations and
9 have not been terminated by an act, treaty or an act
10 of Congress.

11 Three, the list of federally recognized
12 tribes is the only list necessary. Tribes are very
13 concerned, I know we spoke earlier with the
14 director, but very concerned about Interior
15 Solicitor's Office prematurely sorting tribes into
16 lists of those who were not under federal
17 jurisdiction in 1934.

18 We already have a list of federally
19 recognized tribes. And the federal government and
20 the tribes have made enormous investments of effort
21 and resources to support the federally recognized
22 tribes. Every tribe has successfully completed the

0042

1 federal recognition process has proven that they are
2 a historic Indian tribe and has continuously
3 maintained social and political integrity. It would
4 be an entirely regressive and discriminatory policy
5 to start making new lists.

6 This consultation should only be the
7 beginning of the decision-making process. Tribes do
8 want the Interior solicitors to develop a legal
9 opinion without the opportunity to review and
10 respond. The Department of Justice should also
11 engage -- should also be engaged in this discussion
12 it as it may be forced to defend the Interior's
13 position in court.

14 Land in the trust is extremely important
15 to all tribes. Prior to 1934, the U.S. government
16 took more than 90 million acres from tribes, nearly
17 two-thirds of all reservation lands and sold it to
18 settlers and timber, ranching and mining interests,
19 land that was guaranteed by treaty and by executive
20 order.

21 The best lands were taken, and the
22 remaining tribal lands are frequently checker

0043

1 boarded and difficult to use for agriculture or
2 housing or economic development and difficult to
3 manage for jurisdictional purposes. Many tribes are
4 left with only a few scattered parcels of land, or
5 no land at all, as we've just heard.

6 The purpose of the IRA is to restore
7 useful consolidated blocks of land that Indian
8 tribes can use as a homeland, to perpetuate tribal
9 economies, communities and cultures. This is a
10 fundamental obligation of the federal trust's
11 responsibility and moral commitment.

12 The vast majority of trust acquisitions
13 are in rural areas and are not controversial. Local
14 communities often welcome the tribes' efforts
15 because it will put land into productive use and
16 create jobs. State and local governments have a
17 role in the land that the trust process.

18 The Interior regulations provide
19 opportunities for all parties to be heard and place
20 the burden on tribes to justify the trust land
21 acquisition, particularly in off-reservation
22 contacts. Whenever issues -- whatever issues state

0044

1 governments may have with the land to trust process,
2 the Carcieri decision is not the place to address
3 it. Carcieri has created a problem that calls for a
4 narrow fix to ensure equitable treatment of all
5 tribes.

6 This isn't only about land in the trust.
7 While Carcieri addressed only land in trust, there
8 may be efforts to use the decision to unsettle other
9 important aspects of the IRA. The IRA is a
10 comprehensive legislation that provides for tribal
11 constitutions and tribal business structures and
12 serves as a framework for tribal self-government.

13 Future litigation could threaten tribal
14 organizations, contracts and loans, tribal
15 reservations and lands, and provisions of these
16 services. The ancillary attached may also come from
17 criminal defendants seeking to avoid federal and
18 tribal jurisdiction and would negatively affect
19 public safety on reservations across this country.

20 I appreciate the moment it took to read
21 that, but it was important for myself and part of
22 NCAI to have that entered in today as well as it may

0045

1 have been already. On a personal note, I do
2 appreciate this opportunity. And not to take away
3 from what our chief may say, I know as an Indian
4 person, as a tribal leader, in my mind despite the
5 hurdles and whatever that has to be cleared and
6 processes that have to be followed, to me it's a
7 simple fix. And tribal leaders have already spoke
8 about it.

9 Just put the language in there, simple
10 legislative fix that will get it back to where it
11 was perhaps, and keep stronger, make stronger what
12 provisions were there to benefit Indian country.
13 We've heard about the canons of provisions and other
14 things.

15 We look to the federal government to
16 uphold its obligation, fiduciary obligation to
17 tribes, tribal leaders, tribal people, the ancestors
18 that have gone beyond, the future generations that
19 have yet to come. Sometimes we come here with the
20 issues that have to be addressed in ways that aren't
21 comfortable to us, sometimes even foreign, if I can
22 use that word. But nonetheless there's people in

0046

1 positions that are obligated to try and uphold those
2 relationships, and so we look to you for that.

3 One thing that you mentioned,
4 Mr. Skibine, that is troubling, and that I think
5 it's a Minnesota Quiet Title Issue; I think it was
6 Minnesota --

7 MR. SKIBINE: Michigan.

8 MR. NOKA: Michigan, obviously there's
9 hope there that we or the federal government wins
10 that decision, but there is a concern on my part in
11 the reservation a few acres that we have in Indian
12 country and the quiet title that a lot of people are
13 putting a lot of trust in or hope that it's going to
14 resolve any potential other actions. But, frankly,
15 if we lose that decision, then it shows even more
16 important trying to get this fixed prior to that
17 decision perhaps. Because we can't have another
18 loss or have it go up to the Supreme Court because
19 we know we don't face good odds in the Supreme Court
20 as it sits right now.

21 So anything that will benefit or work to
22 the betterment and protection of Indian country and

0047

1 its rights, that's what we are looking for. Thank
2 you.

3 MS. HART: Thank you, Randy.

4 MS. MALERBA: Good afternoon. I'm Lynn
5 Malerba. I'm from the Mohegan Tribe. And I thank
6 you so very much for hosting this meeting and greet
7 you all today.

8 I am representing the Mohegan Tribal
9 Nation. And I do have a letter that was sent to the
10 Senate Indian Affairs Committee describing the legal
11 arguments against the decision that I'll provide to
12 you. But my comments are based on tribal history
13 alone.

14 You know better than I that when we
15 achieve federal recognition it means that we were --
16 it does not confer tribal status on us. We were and
17 are a historic tribe. We have maintained continuous
18 social and political contact since our European
19 immigrants arrived on these shores.

20 It's estimated that we lost 90 percent of
21 our tribal membership and 90 percent of our tribal
22 lands. And that was the thanks we received for kind

0048

1 of befriending the settlers, welcoming them to our
2 lands and providing them a way of life.

3 So, you know, I'm here to say that we
4 were always under federal jurisdiction. We predated
5 the constitution. We predated the formulation of
6 the federal government here. And we predated the
7 formulation of the state of Connecticut.

8 We sued the colony of Connecticut twice
9 in England. Twice England affirmed that our lands
10 had been taken illegally from us, but those lands
11 were never restored. Our Chief Mahomet went to
12 England to ask King George to restore our lands.
13 They were never restored.

14 And I think that those lawsuits were
15 mentioned in the first of the so-called Marshall
16 trilogy of Indian law Johnson versus Macintosh. In
17 the 1980s a contingent of our tribal leaders went to
18 the state of Connecticut, went to the governor of
19 Connecticut to ask that our lands not -- our royal
20 burial grounds not be dug up and not -- and to not
21 allow masonic temple to be built on our burial
22 grounds.

0049

1 We were not able to achieve that because
2 we had no funds and we had no resources to have our
3 tribal burial grounds restored to us. Our other
4 burial ground was made into a state park. So one
5 burial ground our bones were dug up, thrown into the
6 river, burned. All of the headstones were made into
7 pieces of foundations in the city of Norwich.

8 The other burial ground was made into a
9 state park. We had to actually ask the Department
10 of Environmental Protection in Connecticut to bury
11 our dead. And, you know, we used our revenues and
12 we used our trust lands to restore our burial
13 grounds to us. It's very important to us.

14 So I'm here to tell you that all of this
15 is very personal to us. Our ability to take land
16 into trust is not necessarily about economic
17 development. It's about preserving our culture.
18 It's about preserving what was left to us.

19 And it's important that you understand
20 that the tribes in the east experienced all their
21 land loss so much earlier than the tribes in the
22 west in the 1600s, in the 1700s. We started out in

0050

1 the 1600s with 20,000 acres of land, which is not a
2 lot when you think about the reservations that
3 western tribes have. They have millions and
4 millions of acres of land.

5 But those 20,000 lands were sacred to us.
6 Those 20,000 acres were sacred to us. That's where
7 our ancestors lived. That's where we learned about
8 our own people.

9 And I think that as we look at that in
10 the early 1600s we were 20,000; in the mid 1700s we
11 were down to 2,000. By the 1800s we were down to
12 half an acre of land. It was our church. And the
13 reason we had a Christian church is because we were
14 going to be relocated if we didn't decide to become
15 Christian. And some of our tribal members did
16 relocate to Wisconsin. So our history is different
17 than the history in the west. And I ask you to just
18 remember that as you look at some of these
19 decisions.

20 We believe that we've always been under
21 federal recognition. And I think a great example of
22 that is the fact that our medicine woman Gladys

0051

1 Tantaquidgeon in the very early 1930s, before 1934
2 was asked by Commissioner Collier to go throughout
3 New England and talk to all of the tribes in New
4 England and to document their preservation of their
5 culture, their preservation of their language and
6 how they still maintain their tribal governments.

7 And the reason that he asked her to do
8 that was because he felt that there were programs
9 and benefits and services that the federal
10 government should be providing to the tribes in New
11 England. And to me that's documentation and that is
12 evidence that, you know, we were under federal
13 jurisdiction then.

14 And I do have quote from her that I would
15 like to leave you with, but then I also would like
16 to ask a question and kind of weigh in on the
17 legislation. Her quote was -- and I do want to tell
18 you too that another reason that we didn't have a
19 reservation was in 1861 our tribal leaders decided
20 to abolish the reservation because the state of
21 Connecticut decided to assign overseers to manage
22 our affairs. They tried to influence our tribal

0052

1 leadership. They tried to -- they tried to affect
2 the way that our economy was based.

3 And our tribal leadership did not want to
4 be assimilated into the government of Connecticut.
5 They wanted to maintain their own government. And
6 England did recognize that we were a separate
7 government with a separate culture and a separate
8 land base and a separate people.

9 So Gladys's words in visiting the
10 Pleasant Point Passamaquoddy is, there is something
11 strangely pathetic in the closing scene as I rose to
12 my feet with the remnant of a once powerful nation
13 and the Passamaquoddy band played our national
14 anthem. This mere handful of Indians bravely
15 carrying on a battle against the culture-destroying
16 forces of a civilization that for centuries has
17 sought to crush the very sole of the Indian, and in
18 this land of the free deprived him of his natural
19 privileges.

20 And I think that that's the experience
21 that we all had in the east. And I would urge you
22 to be sensitive to that. It's a very sad history.

0053

1 And I know that probably what happened in the west
2 with the Allotment Act and with the removal of the
3 tribes in the west was more documented. We had
4 photographs, and it was much more documented, but
5 our losses are no more real than the losses there.

6 So in terms of legislation, I would
7 support number 3, both retroactive and prospective
8 legislation. I think that that's very important and
9 I think you just need to answer and fix this once
10 and for all. I think there are several ways that
11 you can write the legislation that will be fair to
12 the Indians: Remove the word "now", put now and
13 thereafter or just say any federally recognized
14 tribe because, again, all of the tribes that are
15 federally recognized have proved that there is
16 continued social and political contact.

17 In terms of regulations, I am not a big
18 fan, having gone through a few of those and know how
19 time consuming they may be. And so if you are
20 looking for a quick fix and some consensus about
21 what that may be, that's kind of a hard way to get
22 that done. So I probably wouldn't do that.

0054

1 And I do have a question for you as well.
2 And I understand that Franklin Kiel had written to
3 your department and said that he believed that the
4 tribes in the east were under federal jurisdiction,
5 all the tribes in the east. And I guess, one, is
6 that correct; and, two, did you respond to that or
7 what do you think about that?

8 MR. SKIBINE: Okay. So Franklin did
9 write.

10 MS. HART: Yes.

11 MR. SKIBINE: Okay. Yes. He has written
12 to us on this matter but no response has gone out,
13 right?

14 MS. HART: That's correct.

15 UNIDENTIFIED SPEAKER: What's your
16 position?

17 MR. SKIBINE: What's our position on
18 Frank's, well, that's part of what we are not taking
19 a position until we do the consultation and we are
20 done with the consultation. And in general we
21 are -- we look at the comments from our regional
22 directors, but we are not going to respond to them

0055

1 until we respond to the tribes.

2 MS. MALERBA: Well, thank you for your
3 time and I hope that my comments are helpful.

4 MS. HART: Thank you, Marilyn.

5 MR. PHILLIPS-DOYLE: Good afternoon. My
6 name is Rick Phillips-Doyle. I'm the sachem and
7 governor of the Passamaquoddy Tribe at Pleasant
8 Point.

9 I traveled down here on behalf of my
10 people. We are a very poor and economically
11 challenged tribe, but they thought that -- my people
12 and me thought this was important enough that we
13 would spend the little resource that we have to come
14 down here and make a comment.

15 Basically we are here to support a
16 solution to this problem by a legislative fix. We
17 support both retroactive and prospective legislation
18 and -- but I just want to tell you a little story
19 about another situation we had in regards to the
20 land.

21 Back in the 1970s the Passamaquoddy and
22 Penobscot laid claim to two thirds of the state of

0056

1 Maine. We -- that created uncertainty for the state
2 of Maine because of violations of the
3 Non-intercourse Act. And so the tribes came to the
4 table to work out a solution. The solution was a
5 settlement act in which we were assured that we
6 would be able to have some land back into trust for
7 our uses.

8 We think that this Carcieri decision or
9 Carcieri decision puts an uncertainty on our land
10 now. And we would hope people would come to the
11 table to discuss this solution with us. We don't
12 want to just be a spectator on what decisions are
13 going to affect me and my people. We would like to
14 have our voices heard. And that's that.

15 We were real concerned about this at
16 first, but after we realized what happened to our
17 Narragansett brothers who also had a settlement act
18 which I think was violated, they could do the same
19 to us with our settlement act. It doesn't seem that
20 there's any clear understanding on who's this going
21 to affect, how is this going to affect; but it could
22 have a lot of affects within -- has the potential of

0057

1 having a lot of affects within our tribe, within my
2 tribe anyway.

3 So I just wanted to know when I think of
4 consultations, that means we say stuff to you and
5 you say stuff back to us so that we understand where
6 each of us stand. And I'm just seeing this process
7 of offering public comment more as the public
8 hearing that we are just giving you guys
9 information. We have questions, like where are you
10 in this process of formulating a position? Which
11 fix up there do you guys support or are leaning
12 towards?

13 I think that what we want to do, what we
14 also support is that all tribes be treated equally
15 and that we are all -- we are all important. We all
16 have our federal recognition, which means that we
17 have certain rights. So no tribe should be any
18 different than each other in the way that the
19 federal government treats us.

20 And I guess all I just wanted to leave
21 you with is that we are also hoping for a quick
22 resolution to this matter. Thank you.

0058

1 MS. HART: Thank you. Hilary?

2 HON. TOMPKINS: In response to your
3 question about consultation, I just wanted to say we
4 want this to be an open dialogue. And I think it's
5 tricky with so many people. We are trying to have
6 microphones and the ability to hear each other and
7 so forth, but I believe Mr. Echo Hawk and I and the
8 rest of the folks up here want you to ask questions,
9 want you to -- want us to have a dialogue.

10 I think it's just tricky in these
11 settings to kind of set that tone. But we are here
12 to answer questions. In terms of the options on the
13 board, I don't believe we have a preference. I
14 think we think that a legislative fix is something
15 that needs to be explored and will bring certainty
16 to the -- to the issue that the Supreme Court case
17 has left us. But that's a tricky process.

18 And I also think a lot of it will be how
19 the White House responds because if there is a bill
20 passed through Congress, we don't know what that
21 bill will look like. But there also is, you know,
22 presidential veto power. So that's a component of

0059

1 it.

2 In terms of administratively, we don't
3 know if a regulatory amendment makes sense. We are
4 contemplating that. We don't know if a solicitor's
5 opinion makes sense. So we haven't made any
6 decision. And I hope -- that might be frustrating
7 because you don't know, you know, what -- which way
8 we are thinking of going, but I hope that gives you
9 some comfort because it means we haven't decided
10 anything.

11 We are listening. We want to hear from
12 all of you and have those views and recommendations
13 part of our decision-making process. So that's the
14 best I can do for you today. And then we can
15 quickly address -- and I don't want to delay your
16 comments, so quickly address what we are doing on
17 pending applications at this time.

18 MR. GIDNER: Yes. If I could have just a
19 moment, I forgot to mention when I spoke before in
20 the instructions to our regional directors where
21 most of these decisions are made is that they should
22 continue processing fee-to-trust applications. If

0060

1 they have a question about whether a tribe was under
2 federal jurisdiction in 1934, and since we haven't
3 defined that to give them any guidance, then they
4 should consult with the Solicitor's Office and we'll
5 review that on a case-by-case basis.

6 But otherwise they should continue
7 processing those applications and continue taking
8 land into trust. So, and we've heard these other
9 consultations, some specific parcels that tribal
10 leaders have questions about or follow up on those,
11 but the general process should still be moving
12 forward. Thank you.

13 MS. HART: Chairman Barbry?

14 MR. BARBRY: Good afternoon. I'm
15 Chairman Earl Barbry with the Tunica-Biloxi Tribe of
16 Louisiana. And I'm also the chairman of the task
17 force for USET in addressing this problem.

18 My request is very simple. United States
19 Government took all of our lands. They made
20 promises to our ancestors. I expect them to keep to
21 those promises, make good on their words like they
22 do to other nations. That's not a very -- it should

0061

1 be a very easy thing to comply with.

2 Our lands have been taken, raped; they
3 have destroyed our burial sites. And still today we
4 continue to be persecuted. It's time that it stops.
5 It's time for justice to be done for Native
6 Americans.

7 RESPONSE: Hear hear.

8 MR. BARBRY: And as far as the input from
9 the states and other interested parties, I could
10 care less about that. The United States Government
11 made promises to Native Americans in exchange for
12 the property that they stole from us. That's the
13 key thing right here today.

14 And all of you hold the future of our
15 people in your hands. And we need your help. And
16 we expect to get it.

17 As far as the Congressional fix, it's
18 something that needs to be done. Action is needed,
19 and it's needed now, not years down the road. We
20 can't allow this to continue to be done to Indian
21 people. And we cannot leave any one tribe behind.

22 We are all in this together. Because

0062

1 what happens to one tribe today, next year is going
2 to be somebody else because it's not going to stop.
3 We need you to help us protect our rights and get
4 this country to honor the promises that were made to
5 our people.

6 And I'd like you to describe the process
7 the Department is undertaking to develop its
8 position on pending and future land and trust
9 applications and defense -- I need glasses -- in
10 defense of lands already in trust and what the
11 Department's view on the legislative proposal that
12 has been received by NCAI. Thank you.

13 MS. HART: Jerry, do you want to respond
14 to that?

15 MR. GIDNER: As far as pending
16 applications, as I mentioned they should be moving
17 forward. And the regional directors need to raise
18 the issue if they think there is some question about
19 whether the tribe is under federal jurisdiction.

20 As far as future actions, I believe the
21 process is after this consultation we will get
22 together and Mr. Echo Hawk and Miss Tompkins will

0063

1 with the input of the other consultations recommend
2 a strategy to the Secretary. And that I believe is
3 going to happen in the very near future, days, not
4 weeks or months, I believe.

5 HON. TOMPKINS: Yes. We are on a very
6 high, well, this is a priority. And we are going to
7 report to the Secretary on the results of these
8 consultations and make recommendations to him. We
9 also are going to follow up with the tribal
10 leadership after this consultation and continue the
11 dialogue on this issue. This is going to involve
12 more discussion.

13 And the other point I wanted to make is
14 that I'm in communication with the Department of
15 Justice as well. And I'm meeting with them, I've
16 already talked to them, and I'm going to be
17 continuing to meet with them to discuss litigation
18 issues and defense, future defense of any challenges
19 to decisions that we make. And presently we are
20 defending a fee-to-trust decision under the Quiet
21 Title Act.

22 So we are waiting to see if the court

0064

1 rules on that. I believe that's been fully briefed.
2 So there's already one case out there where these
3 issues are live and being debated in the courts and
4 Justice is handling that. So that's where we are.

5 MR. BARBRY: If I could remind you,
6 promises were made to Indian people, not to the
7 states and not to other interested parties. Thank
8 you.

9 MR. SKIBINE: Chairman Barbry if, and
10 what I think the message is is that the United
11 States will vigorously defend the status of any land
12 that is currently held in trust. If you are -- and
13 we haven't heard that, but if there is any county or
14 state that is somehow raises this issue or then, you
15 know, we would like to be -- it to be brought to our
16 attention.

17 If any state or county has raised the
18 issue of the lawfulness of a gaming establishment on
19 land according to trust after 1934, then we would
20 like to know that too. And Paula Hart the acting
21 director of the gaming office, you know, would be
22 the contact point on that for us. I don't know

0065

1 about the GNIC, but we would talk to them about that
2 issue.

3 So the bottom line is that we are -- we
4 think we will win those challenges, but we certainly
5 stand for, you know, to defend the right of the
6 tribes to have the land in trust. Thank you.

7 MS. HART: Thank you. The lady in the
8 back?

9 MS. HAMMONS: Thank you. My name is
10 Diane Hammons. I'm the Attorney General for the
11 Cherokee Nation. The Cherokee Nation is the second
12 largest tribe in the country, second only to our
13 relatives the Dene.

14 Many of you know our history. We were
15 originally located in our homeland in Georgia, North
16 Carolina, Tennessee, Kentucky in the mountains, and
17 we were removed in the mid 19 century. We brought
18 the Marshall trilogy of cases in order to try to
19 prevent that removal and contest the state of
20 Georgia's jurisdiction over us, and we won; and we
21 were still removed.

22 We've been in Oklahoma where we were

0066

1 removed with our relatives the Choctaw, the
2 Seminole, the Creek, the Chickasaw who were also
3 removed from their home lands ever since. For a
4 time it was designed to be Indian territory. And
5 then that ended in less than 100 years and statehood
6 happened.

7 Our principal chiefs were appointed after
8 statehood up until the '70s. We always were under
9 federal jurisdiction, federal superintendents,
10 perhaps more than any other Indians in the country
11 because of the nature of Oklahoma. When the
12 Carcieri -- and we've been mispronouncing it wrong
13 all this time -- opinion came down, we thought that
14 it was unfair and it reflected an anti-Indian
15 sentiment of the court. And we were not surprised.

16 Personally, I think that legislation is
17 the only way that you can really definitively
18 correct that. Administratively, I believe that you
19 could pass regulations, but I think you are going to
20 have the same Chevron issues come up that you did in
21 the original decision. So I believe that a
22 legislative fix is necessary.

0067

1 I urge you not to try to put every tribe
2 in the country in the same boat. We believed as the
3 other four members of what used to be called the
4 five civilized tribes, we now call ourselves the
5 five tribes, although we are still civilized. We
6 believe that we were not subject to that holding
7 because we were in existence in 1934. And then two
8 weeks ago we got a letter saying that we were not,
9 that the Cherokee Nation did not exist in 1934.

10 And I wonder who my grandmother belonged
11 to and my father. And I wonder what all those
12 letters and those correspondence and those chiefs
13 were chiefs of, if not the Cherokee Nation. I'm
14 sorry. But I ask you not to try to make us into
15 something that we are not. Don't try to divide and
16 conquer us as the United States always has, always
17 has tried to divide and conquer Indian people.
18 Don't do that. But consider each tribe. Sorry.

19 Don't try to put a square peg into a
20 round hole. We support a legislative fix to this
21 issue. And we grieve with all of our brothers who
22 it's affected. But we were in existence in 1934.

0069

1 Esther Ross who fought for 50 years with the
2 government to get our tribe reaffirmed so our great
3 grandchildren and their children have a name, an
4 identity, land, health care, homes, have a future.
5 She came to Washington over and over fighting with
6 the government.

7 We got our -- the recognition, 1976. All
8 of the natives across the United States, Canada, we
9 are all family. This issue has come up and there is
10 tribes that are being in a position unlike us.
11 Conciery agreeing does not apply to the
12 Stillaguamish as Justice Briar noted. But this is a
13 issue across Indian country that we don't want our
14 children and our grandchildren to have to come back
15 here after we are gone to have to get this changed
16 at a later time if something isn't done the correct
17 way.

18 Our ancestor came, all our ancestors have
19 come and fought for the rights that we now have.
20 Because one word was put in there that shouldn't
21 have been put in but got slipped in there. That's
22 what we are all sitting here for, to protect our

0070

1 children and our grandchildren and their future.

2 We have current treaty rights because of
3 the treaty of Point Elliot from 1855. This assures
4 our existence. This proves our existence. So we
5 believe that the Department should seek a
6 legislative fix so we don't have that uncertainty,
7 so we can move on. So our tribe, our people can
8 continue to build for our children and our
9 grandchildren, so it gives us that security which is
10 what many other tribes are asking.

11 I don't want to repeat what everyone else
12 has said, but this is dear to me because this is
13 something my grandmother and my great, great
14 grandfather, they stood up for. This isn't
15 something that should have happened this late. This
16 stuff is supposed to have been done back then so we
17 wouldn't have to be coming and fighting to make sure
18 that we are going to be protected and our children
19 and grandchildren are going to be protected.

20 In addition, the Department should
21 immediately issue a solicitor's opinion and a strong
22 record soundly, reason that makes a bright line that

0071

1 treaty tribes are not impacted by a conciliary. I
2 come to you. I am honored to be here. And I am
3 honored by all my elders and our tribal leaders, and
4 I ask you to listen.

5 This is how I was raised. Listen. You
6 are part of what's going to help change Indian
7 country. You are the ones that are making the
8 difference and we are putting it in your hands and
9 we are trusting you. We are reaching out to you in
10 the hopes that you are going to go and help us.

11 Unlike the people in the past, and this
12 is a very important issue at this moment, not only
13 for economic development but for culture, for just
14 the future of all our tribes, all our people. .

15 MS. HART: Could you state your name
16 please?

17 MS. KLINEBURGER: Sandra Klineburger and
18 chairman of Stillaguamish Tribe.

19 MS. HART: Thank you. We are going to
20 take a little five-minute break right now. This is
21 kind of the halfway point. So I think we are going
22 to stop and take a little break so everybody can

0072

1 stretch. And there's drinks back there, coffee and
2 soda and water. And I'll call us back to order in
3 about five minutes.

4 - - -

5 (Recessed at 2:51 p.m.)

6 (Reconvened at 3:04 p.m.)

7 - - -

8 MS. HART: Chairman Norris, you'll go
9 first. As Darren and Vicki are making their way
10 back, Chairman Norris, go ahead.

11 MS. NORRIS: Ladies and gentlemen, good
12 afternoon. I am Christine Norris, the tribal chief
13 of the Jena Band of Choctaw Indians in Louisiana.
14 We currently have a membership of 253 members. We
15 are a very small tribe. Therefore, putting land
16 into trust and economic development is very vital to
17 my tribe in the preservation of our culture, of our
18 history, being able to continue with housing, health
19 care and so forth for our tribes.

20 Of the four federal recognized tribes in
21 Louisiana, my tribe is the only tribe that does not
22 participate in the gaming industry. That is due to

0073

1 the fact of the past governors and the present
2 governors refusing to negotiate a compact with our
3 tribe. So, therefore, we are here today to ask for
4 your support and your help.

5 Do not look at us as names on a piece of
6 paper. Please recognize us today as tribal leaders
7 here representing our people and trying to make a
8 better way of life for them. The 1994 amendment to
9 the Indian Recognition Act, Reorganization Act ended
10 Interior's practice of distinguishing between
11 classes of tribes. The Supreme Court Carcieri
12 decision places the Department in the position of
13 having once again to discriminate among tribes based
14 on the method and the timing of their recognition.

15 My question, is the Solicitor's Office in
16 the process of providing options to the Secretary
17 that would permit the Secretary to take land into
18 trust for all tribes regardless of the timing and
19 the method of their recognition, or has the
20 Department of Interior conceded to the notion that
21 it can and should discriminate against classes of
22 tribes?

0074

1 MS. HART: Hilary?

2 HON. TOMPKINS: Thank you. We have not
3 made a specific recommendation to the Secretary on
4 your specific question as to how we are going to
5 address the Carcieri decision. I think the big
6 legal question is how you define under federal
7 jurisdiction in 1934. And there are a lot of legal
8 theories and arguments that can be made. And that's
9 what my office is looking at carefully at this time.

10 So, and certainly we would not endorse a
11 policy that was discriminatory. And what we are
12 doing is trying to find sound, legal theories in
13 terms of how you interpret the Supreme Court's
14 decision and how you define those terms. And that's
15 what we are here for today is to hear
16 recommendations on that specific issue. And then we
17 will take those back and examine them and think
18 about it more, give it very careful thought. So
19 that's where we are in the process.

20 MS. NORRIS: Has there been a timeframe
21 established for this process to continue or to end
22 up? Since this is the last meeting, is there any

0075

1 kind of period that you are looking to deliver these
2 recommendations to the Secretary?

3 HON. TOMPKINS: I think we'll be having
4 myself and Mr. Echo Hawk some very in-depth
5 discussions with the Secretary on this issue this
6 month. And so it's top priority and we are moving
7 on it as quickly as we can, and based on some
8 earlier comments I want to emphasize as carefully as
9 we can. So we are not going to make any snap
10 judgments about this, but we understand the urgency
11 and the need for some decisions on it.

12 So we will be speaking with the Secretary
13 on this this month.

14 MS. NORRIS: Thank you.

15 MS. HART: State your name.

16 MR. WALLERI: My name is Michael Walleri.
17 I am general counsel for Tanana Chiefs Conference
18 out of Fairbanks, Alaska, travel consortium of 37
19 federally recognized tribes, 3 non-federally
20 recognized tribes and 2 tribal organizations.

21 I wanted to thank you for the cookies.
22 When you come to one of our villages, you are always

0076

1 given a little something to eat. It's a sign of
2 respect. And I want to thank you for the respect.

3 We are very much in favor of a simple
4 fix, a legislative fix. We think it has to be
5 legislative. And we believe that it should be the
6 third option, retroactive and prospective of course.

7 The fourth question is really a very
8 critical question though. And that is what form
9 should the legislation take, and what should it say,
10 and what language should be used.

11 We think that it should be an amendment
12 to the IRA. And we think it should be -- we have no
13 problem, let's put it that way, with a very simple
14 fix that would say take out "now under federal
15 jurisdiction" because even when it was written,
16 nobody knew what "under federal jurisdiction" meant.
17 And just simply put in there that it applies to
18 federally recognized tribes.

19 And if you want to be clear, if they were
20 federally recognized, going to be federally
21 recognized or, you know, could possibly be federally
22 recognized, that would be wonderful. But the issue

0077

1 of the Carciari decision raises a very fundamental
2 point that was raised in the Indian Policy Review
3 Commission very many years ago which suggested a
4 revision of Title 29 to update it to reflect the new
5 policies of the self-determination era.

6 The Howard Wheeler Act, we don't call it
7 that very much, but that's -- it's the IRA, was
8 written in language that was coming out of the
9 removal period. And since that time we have gone
10 through the reorganization period, which came to an
11 end by the way in Alaska when the Secretary started
12 taking, establishing reservations in the Hanes
13 reservation.

14 And it was a policy decision, not a
15 legislative decision, but a policy decision. But
16 that language in the Act comes out of that period.
17 And what we've gone through, we've gone through a
18 termination period. And we are in a
19 self-determination period. And the language that we
20 use today is very different than the language that
21 was used back then.

22 And, for example, the term "under federal

0078

1 jurisdiction," very few people know what that means
2 today. It's a different language. And we talk in
3 terms of whether or not you are federally recognized
4 or not. But the Indian Policy Review Commission
5 suggested many years an update of Title 29 to update
6 the language so we wouldn't have things like this
7 Carcieri decision.

8 MR. SKIBINE: Excuse me, can you say for
9 everybody what's Title 29? Can you explain it?

10 MR. WALLERI: Or, excuse me, Title 25.
11 Excuse me. I was talking about Title 25. Sorry. I
12 just got through talking about Title 29 at another
13 thing, so I'm sorry.

14 So we really think that you should
15 seriously revisit the Indian Policy Review
16 Commission's recommendation. And that's a very hard
17 thing to do. It's a very hard thing to do. There
18 will be lots of opposition. But while you are going
19 ahead, I think go ahead with an administration
20 proposal for a fix. And then sit down and think
21 about a comprehensive review of the Indian statutes.

22 The second part of your question with

0079

1 regards to regulation and your desire for comments
2 on that, and talking about discrimination, coming
3 from Alaska there is currently while the
4 administration had a policy and regulations
5 generally did not discriminate against or among and
6 between tribes with one exception. And that's
7 Alaska.

8 And Part 25, or Part 151 basically said
9 it doesn't apply to Alaska. And of course there is
10 a lawsuit now challenging that policy. The history
11 of that is of course that in 2001, or 1978 a
12 solicitor's opinion said that taking land into trust
13 in Alaska for tribes was contrary to the Alaska
14 Native Claims Settlement Act. That in a 2001 policy
15 review generated by a tribal regulatory request for
16 regulatory action, that opinion was withdrawn.

17 And it was -- the Department articulated
18 that the idea that the Secretary did not have
19 authority to take land into trust in Alaska was
20 highly questionable. But because of the political
21 environment in 2001, a three-year moratorium was put
22 into effect. Well, a three-year moratorium turned

0080

1 into the permanent moratorium. The issue was never
2 revised in the last administration.

3 We think that on the other end of this
4 process that the Department should seriously look at
5 settling the existing lawsuit, challenging the
6 existing regulation because those regulations are
7 probably invalid now, but review that policy and
8 take a look at it and reconsider the idea that the
9 land -- that the Secretary has always had the
10 authority to take the land into trust. Congress in
11 the 19 -- in the Alaska amendments gave specific
12 authority to Secretary to take land into trust in
13 Alaska. And the Secretary did that in a number of
14 cases.

15 Why is that important to Alaska? Well,
16 the 37 tribes that I represent, all of them have
17 land. Some of them, for example Venetie has 1.8
18 million acres of land. And we just went through 20
19 years of litigation where an individual sued the
20 tribe for the purpose of obtaining a judgment and
21 getting land from that tribe. It's in fee status.

22 And the protections that we believed to

0081

1 exist under the IRA are not well thought of in the
2 Alaska courts, even in the federal courts. And so
3 we, some of our tribes' smaller parcels of land of
4 63,000 acres, some of them only have maybe a couple
5 hundred acres. But all of our tribes have land in
6 trust. And there is litigation on a daily basis in
7 Alaska that places that land in trust in jeopardy.

8 The other part of that is that for the
9 last 20 years, Tanana Chiefs Conference and a number
10 of other tribes in Alaska have been fighting the
11 various local governments who are taxing tribal
12 lands, tribally owned lands. Tanana Chiefs
13 Conference has an appeal before the Alaska Supreme
14 Court now seeking a non-profit exemption.

15 But in that whole process is the
16 Fairbanks North Star Borough argued that the native
17 lands should be taxed even though they were doing
18 non-profit activity under state law because they
19 only provided services to native people, which
20 suggests that the hostility against native people
21 from local governments, it isn't just against the
22 Narragansett. It's against most native people

0082

1 including native people in Alaska.

2 We need the trust protections in Alaska
3 for our tribal lands. These are lands that people
4 live on. These are tribal buildings. These are our
5 tribal clinics. These are our housing projects.
6 These are the lands that people live on on a daily
7 basis.

8 So we would strongly urge you in this
9 whole process to not discriminate against and among
10 and between the tribes that Congress, that the
11 proposal should say that all federally recognized
12 tribes are eligible to take land into trust. And
13 while after this is over, really take a strong look
14 at the American Indian Policy Review Commission.

15 This is an opportunity to seriously
16 resolve future problems that come out of many of the
17 arcane and ancient language used in the American
18 Indian statutes. Thank you.

19 MS. HART: Thank you.

20 MR. BROWN: Greetings, tribal leaders,
21 Department of Interior, friends and foe that are
22 here today. I guess one point of interest for me

0083

1 from a Narragansett perspective is to assure that
2 all the hands that are in this pot of soup, and I'm
3 being redundant on this point but I think it's
4 important, that we only end up with one person that
5 eventually is going to stir it. Because the more
6 hands that are in it, the more complex it's going to
7 be for us to focus throughout Indian country.

8 Currently there's all of Indian country
9 that has taken different positions depending on what
10 region you come from. And it was very pleasing
11 being out in California last week that the
12 California tribe which is a large group of people
13 certainly has the same views and sentiment that
14 northeastern and southeastern tribes have.

15 I was a little confused as to how they
16 were addressing gaming, but they ended up bringing
17 it back to the focus of protecting tribal rights and
18 tribal sovereignty. And I think that's what the
19 crux of the matter is.

20 There also needs to be clarity in Indian
21 country as I was asked by a number of people why did
22 the Narragansetts take this to the Supreme Court.

0084

1 We didn't. We were a third party to this case. We
2 fought to have our rights upheld as any other tribe
3 would. But we did not, and I'll emphasize did not
4 take it to the Supreme Court level.

5 And that point needs to be clear to reach
6 Indian country so that people understand that we are
7 just part of the message that is being basically put
8 upon us and laid on our shoulders like every other
9 tribe. We have to defend what we believe in.

10 As we go down this path, we need to
11 focus. Back in February and March when this issue
12 first became an issue for Indian countries, it's
13 been an issue for the Narragansetts for the past
14 four years, but when this finally became an issue in
15 Indian country there was a lot of different
16 positions. And we talked about touching base with
17 the administration. And we had to wait, and wait,
18 and wait for the confirmations.

19 Finally the confirmations come about.
20 Key people are put in place. But there are other
21 areas within the administration that we haven't
22 touched yet, such as president. Whose

0085

1 responsibility is that, Indian country or Interior?
2 We also want to know from Interior's position that
3 if you support a joint task force to be able to
4 pursue this.

5 Somebody has to be in focus. Somebody
6 has to be in charge. And it's hard to have, well,
7 it's hard to put anyone out in front to speak your
8 cause or to be able to address things the way you
9 would. But right now it comes down to a trust
10 factor. Who is going to be the voice for Indian
11 country. We all can't carry the message.

12 And that's the question I have for
13 Interior, Number 1. And the second point of that
14 question is, is do you support a joint task force?

15 MS. HART: Jerry, do you want to take
16 this?

17 MR. GIDNER: What would be the purpose or
18 the role of the joint task force as you envision it?

19 MR. BROWN: I envision it as again an
20 entity that's going to bring all the pieces to
21 surface. Everything that's happened in Indian
22 country through the consultations, through the

0086

1 tribal attorneys, through the tribal leadership,
2 through the different Indian organizations, for
3 somebody to be able to dovetail this to bring it to
4 the surface, that's what I envision as a joint task
5 force.

6 And right now USET and NCAI has a
7 collaboration going together, and we are sending a
8 message throughout Indian country as has been
9 depicted in at least the first two consultations.
10 But now we are finally bringing something to the
11 surface. Something's finally coming on line and
12 Interior has to take the position at some point.

13 And I understand you are waiting in the
14 wings to determine where Indian country is coming
15 from. Well, I think we are getting very close to
16 that. So my thought is, and maybe I can be
17 corrected, but I would think that the joint task
18 force responsibility is to bring everything to
19 surface so there can be one voice out there for
20 Indian country.

21 HON. ECHO HAWK: My first thought on this
22 is that Indian sovereign nations should be able to

0087

1 communicate directly with the United States
2 Congress. And we are talking about a legislative
3 fix. That's principal number 1.

4 Second thought is it would be nice to see
5 unity in among the tribes recommending what the fix
6 to the Carciere decision should be. The United
7 States I believe looks, the President will look
8 greatly to the Secretary Salazar to provide some
9 leadership because, you know, he has been
10 traditionally the Secretary of Interior identified
11 as trustee. And I think he would like to partner
12 with Indian nations and deliver a unified voice.

13 That's why we are here today listening
14 carefully to tribal leaders. But this is not the
15 end of the consultation. This is a formal
16 consultation process, but I think we will continue
17 to have dialogue and meetings with tribal leaders as
18 we formulate the position of the United States. And
19 there is a pressing time frame upon us.

20 When I met with Secretary Salazar I
21 mentioned -- that was on June 1. He said -- he's a
22 former United States senator. And when he said with

0088

1 some emotion, he said he wanted a fix. I clearly
2 understood that myself, although he didn't, you
3 know, say the words, I clearly understood he was
4 talking about a legislative fix. But we will meet
5 within Interior, and we are going to have to -- the
6 Solicitor and myself are going to have to deliver up
7 a recommended position to the Secretary.

8 He's likely to have some exchange with us
9 before, you know, that final position is adopted.
10 But even at that point, you know, I've taken notes
11 today saying that tribal leaders feel like they
12 should be able to when the Secretary arrives at a
13 decision about what the solution should be, that we
14 should take that back to Indian country to tribal
15 leaders.

16 You know I got that message today that
17 you want to review and you want to consult again.
18 Time is of the essence. We need to move forward.
19 And I want you to just, you know, it's very
20 difficult for me to give you a clear picture of how
21 strongly Secretary Salazar feels on this. But when
22 he said "I want a fix," you know, I said, well, you

0089

1 know, we've added a third consultation session to
2 accommodate tribes in the east so that they don't
3 have to travel all the way across the country to be
4 able to interface with us.

5 And he said, "When is that session?" We
6 said, "We are looking at July 8." And he said,
7 "Well, can you get the position to me by July 10."
8 Well, I think that's problematic. You know we are
9 taking notes today. We are hoping to get a
10 transcript.

11 We need to have some meetings, you know,
12 as we start to refine our position. And we need to
13 have further input from tribes. But, you know, we
14 feel the time pressure. There's intense interest on
15 this.

16 And this is not the end of the
17 consultation. And I would, you know, just emphasize
18 that point again. Even when we go back to the
19 Secretary of the Interior and we finally are able to
20 say, "This is what we think we ought to do," that
21 that's not going to be the end of it. We are -- I
22 think I'm going to recommend to the Secretary that

0090

1 we call tribal leaders together and say, This is
2 what our feeling is. Here, you know, take the
3 language if that's what we are talking about a
4 legislative fix,

5 And I think that's probably what it's
6 going to be. This is my third session. And leader
7 after leader has stood up and said that. It's not
8 been unanimous, but it's been the strong majority of
9 feeling.

10 And even at that point where we settle
11 in, you know, I think we need to distribute it and
12 let tribal leaders tell us again, yeah. And
13 hopefully, hopefully we'll be unified. We can all
14 march to Capitol Hill together and put on the
15 strongest effort we have.

16 And this is not risk free. When you
17 enter a bill in the Congress, you know, there's an
18 amendment process. And the forces will come against
19 Indian country on whatever is recommended. It's not
20 risk free, but the advantage of a legislative fix is
21 clarity. And we can't be ambiguous about what it is
22 we want the law to read.

0091

1 And of course there's got to be backup
2 strategies. If the legislation doesn't work, well,
3 what are we going to do then? We can't wait. We've
4 got to put some things in place now and have an
5 overall strategy of how to react.

6 I'm sorry. You know you asked me a
7 simple question. I'm a law professor. I'm
8 programmed to speak 50 minutes so, you know, that's
9 my short answer.

10 MR. BROWN: Thank you, Secretary, for
11 your comment. In conclusion, there's a myriad of
12 issues throughout Indian country. And every tribe
13 has their own priorities that we are going to
14 probably be calling on the Department of Interior
15 for some type of fix across the board on many, many
16 Indian issues.

17 The general feeling is that this is going
18 to set the tone. This decision, if it turns out
19 positive in Indian country is going to set the tone
20 for at least the next four years, possibly the next
21 eight years. So we have a lot of confidence in
22 people sitting at that table to do the right thing

0092

1 on behalf of your fiduciary and trust responsibility
2 to Indian country.

3 And as you've asked before, prayers will
4 be offered to guide you in the direction that you
5 feel you need the guidance, as well as the prayers
6 that are going to be offered to our home fronts to
7 be sure that our rights are going to be upheld. But
8 also the Narragansetts also agree that there needs
9 to be a retroactive prospective type of fix. And we
10 stand waiting for your decision in assisting Indian
11 country. Thank you.

12 MS. HART: Thank you.

13 MS. ANDREWS-MALTAIS: Good afternoon. My
14 name is Cheryl Andrews-Maltais, and I'm the
15 Chairwoman of the Wampanoag Tribe of Gay Head
16 Aquinnah. And thank you very much for this
17 opportunity.

18 I stand here representing my people. We
19 are part of the original nation of Wampanoag that
20 met the pilgrims when they first came. We've
21 endured over 400 years of oppression, land stealing
22 and rights being stripped as well as our culture and

0093

1 our heritage. And it's miraculous that we tribes in
2 the northeast are still here today. But sadly
3 enough we are still fighting the same fights that
4 our parents fought, our grandparents fought, and our
5 ancestors fought.

6 And it's amazing that we are here again
7 trying to hold onto what little is left for us. We
8 stand in support of number 3 to take a retroactive
9 and proactive approach on a legislative fix and also
10 to simultaneously be working on an overall review of
11 the problematic language that has already been put
12 inside of Indian law because it is discriminatory.

13 We have several issues as mentioned by
14 the Narragansett and the Mashpee Wampanoag and the
15 Passamaquoddy about the settlement acts in the
16 northeast. We have a specific challenge because of
17 the dense population and the century's worth of land
18 encroachments and the way that the settlements have
19 been issued. So it does create cloud and concern
20 for us for all of our land that is currently in
21 trust as well as lands that we are looking to put in
22 trust.

0094

1 We are on the island of Martha's
2 Vineyard. And everybody thinks that because we live
3 there, we are wealthy. Well, we are not. Tourists
4 are wealthy. The wealthy people that come to visit
5 and elevate the tax prices and the real estate
6 prices and the cost of living; they are wealthy, but
7 the tribe is not.

8 The land base that we have is a fraction
9 of our aboriginal tribe's land and a modicum of a
10 fraction of the ancestral nation's land. The amount
11 of land that we have represents primarily naturally
12 left land because it's not possible to do any
13 development on it. So, therefore, putting land into
14 trust for additional housing, for economic
15 development and any other initiatives that the tribe
16 may seek to do to provide services of
17 self-determination for our people are stymied at
18 this point.

19 We are also in a state, the Commonwealth
20 of Massachusetts, that the Attorney General has
21 signed on from the initial Amicus brief straight
22 through to the Attorney General's letter that's

0095

1 contained within the packet. And, unfortunately,
2 their hostility towards our tribe and potentially
3 any other tribe has been demonstrated time after
4 time in their unwillingness to work and/or recognize
5 the tribe's sovereignty.

6 Assistant Secretary Skibine, you had
7 mentioned about if a state had challenged a tribe's
8 jurisdiction or authority on federal lands. The
9 Commonwealth of Massachusetts did in fact do that
10 and refused to allow our court case to be heard in
11 federal court. So, therefore, we've got a precedent
12 that the commonwealth Of Massachusetts supreme
13 judicial court overturned a lower court supporting
14 our rights to our jurisdiction on federal land.

15 Additionally, the town of Aquinnah in
16 which we -- which is incorporated around us has also
17 and continues to tax us on not only -- or tries to
18 tax us, I refuse to pay; but they try to tax us not
19 only on fee land but also on our trust land. And
20 every time we send it back, the town continues to
21 reissue bills and threatens us.

22 We are under constant barrage of them

0096

1 asserting their authority over us as a sovereign.
2 This issue of the land into trust is about economics
3 for sure, but it's clearly about sovereignty and who
4 has right to govern. We have rights to govern our
5 people as we see fit, as we have done for thousands
6 of years long before the encroachment of the
7 European.

8 We do not see this as simply a matter
9 that is an easy fix for the long term, but we need a
10 rapid fix in the short term as not to lose any of
11 the ground that we have gained so far, and to retain
12 what little rights we still keep. We did want -- I
13 did also want to say that I concurred that the
14 leadership needs to be involved with consultation
15 continuous through a process.

16 However, we would not want the
17 legislative fix or a quick act to be delayed by
18 having to have too much back and forth for the
19 legislative fix. However, when it comes to any sort
20 of regulatory statutory language or anything else as
21 far as review, I would hope that underneath the
22 relationship between the federal government and

0097

1 sovereign nations that the government agencies will
2 come to the tribes and discuss these ideas before
3 they reach the media, before they reach other
4 agencies, because we are always put in the position
5 that we hear about it on the outside and then we are
6 responding to it.

7 We have to stop being reactionary. We
8 have to start being proactive. And I look at the
9 agencies that are represented here as the agencies
10 and the federal government that are to be our
11 champions fighting for our causes and fighting for
12 our rights and not us alone or against your
13 agencies.

14 The other thing I wanted to find out is
15 that does anyone on the panel believe that an
16 executive order would also help to move this along?

17 MS. HART: Who wants to take that?

18 HON. TOMPKINS: I'm not sure that a
19 presidential executive order would be able to change
20 the impact of the Supreme Court decision in
21 Carcieri. I think that decision has been rendered
22 by the highest court in the federal court system,

0098

1 and the President wouldn't have power to change that
2 decision through an executive order.

3 MS. ANDREWS-MALTAIS: But would it help
4 the position of a legislative fix? Would it help
5 the position of recreating or review in any sort of
6 statutory or regulatory language to have the
7 President's position clearly affirming that tribes
8 have rights and that the Secretary is empowered to
9 put land into trust for tribes, all tribes?

10 HON. TOMPKINS: A statement and an
11 executive order of that nature might give clear
12 public pronouncement of a policy position. It
13 could. But I am not sure that it would get specific
14 change on the ground, so to speak. I mean, I think
15 it would be a vehicle to make a statement about this
16 administration's policy on the issue, but I think
17 you would need more than an executive order.

18 I guess my thought is that alone would
19 not resolve a lot of the confusion regarding the
20 Supreme Court's decision. So it's an option, but I
21 am not sure exactly what you would gain from that in
22 terms of real change in the fee-to-trust process.

0099

1 MS. ANDREWS-MALTAIS: Well, I guess my
2 point with that being said is as a former tribal
3 historic preservation officer, we often use the
4 executive orders of the President because actually
5 that's the boss of all of the executive branches.
6 And, therefore, if the boss says this is the
7 position of this government, each of the underlying
8 branches of the government should be following suit.

9 HON. TOMPKINS: Yes. I mean I think
10 that's true. The chief executive officer when they
11 speak they can instruct agencies how to implement
12 the laws that are on the books. That's true. But I
13 still think there would be a question about how you
14 interpret the Carcieri decision. And there would be
15 a need for more specific direction on processing
16 fee, the trust applications, interpreting under
17 federal jurisdiction.

18 So it gives -- it would provide some
19 direction to the executive agencies, but I think you
20 still would want to look at the congressional
21 legislative approach as well.

22 MS. ANDREWS-MALTAIS: Oh, absolutely. I

0100

1 wouldn't not want to have the clear law and the law
2 defined through a legislative fix, but just thinking
3 to have an opportunity to use a multi-tiered
4 approach to getting our position and getting our --
5 attaining the goal that we want, which is for all
6 tribes regardless of how or when to be treated equal
7 underneath the federal government with regard to
8 land and to trust.

9 HON. TOMPKINS: Yeah. And I guess just
10 thinking about it further, the issue of land
11 acquisition applications rests within the Department
12 of the Interior. So a lot of times an executive
13 order would be used, as you said, to direct multiple
14 executive agencies throughout the executive branch,
15 right?

16 So here our presidential executive order
17 might not be a necessary tool because the Department
18 of Interior already has the fee-to-trust process
19 within its authority. And so it would -- it's with
20 only within that department. So I'm not sure an
21 executive-wide order from the President would be
22 necessary I guess is my thought.

0101

1 MR. SKIBINE: I agree. I've never really
2 seen an executive -- a presidential executive order
3 addressing a legal interpretation of a particular
4 decision. So I think there are rules that are going
5 to be on what you can do with a presidential
6 executive order.

7 For instance we have an executive order
8 or consultation that was promulgated in the Clinton
9 administration because it applies across agencies.
10 Here this would -- the only the Secretary of the
11 Interior has the authority to take land into trust.
12 So it would be for United States. So it would be
13 strictly an Interior.

14 Now we could do a secretarial order, or
15 we could do a -- appearing from the Solicitor. That
16 would be more like it. Here the question is one of
17 strategy and whether you -- it is best to address
18 potentially issues on a case-by-case basis or come
19 up with a departmental wide position. Because if
20 that happens, then we will -- it is very likely that
21 someone will challenge it, challenge if it's let's
22 say if we take the broadest position on interpreting

0102

1 what is under the jurisdiction of the United States.

2 We know that there are many groups
3 outside that are -- that do not take that view,
4 especially in the context where there is potentially
5 gaming applications. So we will be challenged. And
6 I'm not sure that this is the best way to go about
7 it, you know, in terms of facing a frontal challenge
8 to that interpretation.

9 We'll have to talk about that some more
10 in deciding what the proper approach outside of the
11 legislation or regulation in how to go about it.
12 Now, the deal with regulations of course is that if
13 we do regulations on what it means to be under the
14 jurisdiction of the United States in 1934, then we
15 get deference on our interpretation. I'm not sure
16 we would get much deference on anything else the
17 Department does.

18 That would be helpful, although it would
19 also be challenged. So that's a question of
20 strategy that I think we need to discuss more with,
21 with tribal leaders, but it's an interesting
22 proposal.

0103

1 MS. ANDREWS-MALTAIS: Because we are also
2 wondering -- I can't see either without my glasses.

3 MR. SKIBINE: I have some if you need.

4 MS. ANDREWS-MALTAIS: I wrote big too.
5 And essentially my last question is what do you see
6 as the most comprehensive and expeditious process to
7 get the fix moving?

8 MR. SKIBINE: Well, obviously the
9 legislative fix is by far what can be the quickest
10 and the most effective. So Darren can explain what
11 -- how that would work. And we also have
12 representatives from the Senate in the house in the
13 audience. They may want to say something about
14 that.

15 MR. PETE: Well, I think quickest is
16 always a relative term. Quick could mean before the
17 August recess, or quick could mean before the next
18 112th session starts.

19 Procedurally for the Department once
20 everything is decided, that will go up through our
21 processes to have whatever letter we want signed by
22 the president of the senate who is the vice

0104

1 president to actually propose that legislation after
2 consulting with the Secretary of the Interior,
3 present that to both the majority -- both leadership
4 in the House and the Senate.

5 From there I know that we do have
6 language and comments from both chairs of not only
7 the House Natural Resources Committee but also
8 Senate Committee on Union Affairs to at least take
9 the lead once the Department has made a decision on
10 which way to go. I don't think there's any
11 disagreement on legislative fix. It's just coming
12 up with the language.

13 One of the things that obviously slows
14 down a bill is when there's disagreement not only
15 between the Department and tribes but also within
16 tribes themselves. So those are the factors that
17 would either make it a quick fix, first I like the
18 term better simple fix because that kind of narrows
19 it down to either whether they are taking "now" out
20 or anything like that, but that would be definitely
21 the process for the vice president to sign that
22 letter, draft it up, provide some reasons of why

0105

1 it's a good legislative fix proposal for both
2 leaders of the House and the Senate to bring up.

3 Timewise moving it through obviously we
4 only have a couple of weeks left in July, and they
5 are going to be gone for several weeks in August and
6 the first part of September and won't be coming back
7 until after Labor Day. And then you have
8 unscheduled anyway only a couple more months in this
9 first session, and we are going to the second
10 session of the 111th.

11 So if everyone agrees, and I mean
12 everyone agrees to move it on a quick, fast track
13 you could probably get it done before the end of the
14 year. But that would take ultimate unity on this
15 particular issue and the language because you are
16 obviously going to have those entities that would
17 actually feed on disagreement. And that actually
18 helps their causes to slow it down, have certain
19 senators take a second look.

20 Obviously you are going to have senators
21 and congressmen are going to vote the way they are
22 going to vote. And some are going to take a little

0106

1 bit more of an interest in this, of course. And I'm
2 speaking of like California and New York and things
3 like some of the senators there who have actually
4 given us their position not on this particular, but
5 obviously applications that have been in the
6 process.

7 So those are some of my comments on that.

8 MS. HART: Chairwoman, we have Denise
9 from the Hill that will address your comment also.

10 MS. DESIDERIO: Hi. I'm Denise Desiderio
11 from the Senate Committee on Indian Affairs. And I
12 can just give you a little update on what Senator
13 Dorgan, the chairman of the Senate Committee of
14 Indian Affairs has asked of us as his staff.

15 Since our hearing on May 21, we've
16 received a lot of comments from tribes and
17 interested parties. He's asked us following the
18 consultations to meet with the Department. We are
19 going to do that in the next couple of weeks. What
20 we'll do is try to come up with language that we can
21 all agree on to introduce on the Senate floor.

22 What we've asked everyone at each meeting

0107

1 that we've come to from the tribes' perspective is
2 to try to meet with your delegation. Try to educate
3 them on this issue. We don't see this as a gaming
4 issue. We do think a simple fix is going to be
5 best.

6 So what we are going to do is come up
7 with language, introduce it. We are likely to hold
8 another hearing in the fall on the legislation and
9 try to move forward. But we'll meet with the
10 administration following the consultations, and then
11 following that we'll take it to the floor. So
12 thanks.

13 MS. ANDREWS-MALTAIS: And I just wanted
14 to reiterate that both NCAI and USET, and I do sit
15 on the USET task force for this particular issue,
16 have put forward language that is almost or
17 essentially the same. So these two very large, very
18 strong entities have come to consensus as to a quick
19 fix and real simplistic or simple fix and real
20 simplistic language.

21 And, finally, I would just like to invite
22 everyone up to Massachusetts and/or the New England

0108

1 states because I think what's also important is that
2 while we have the opportunity to come to DC and to
3 go to other parts of the country to talk about our
4 issues as Indian people and as leaders, it's very
5 difficult to really comprehend the totality of the
6 impact of 400 years of encroachment when you are
7 talking about the tribes in the northeast.

8 This case started in the northeast. And
9 it's not about anything else except for one state's
10 disdain or disrespect to another fellow tribal
11 sovereign nation. And that disrespect was amplified
12 by 24 other states when they enjoined in the Amicus
13 brief. And we face specific challenges in the
14 northeast that is really very difficult to
15 comprehend from any other location except for when
16 you come up to our homelands and see how hard it has
17 been for us to sustain and to retain what we do
18 have, and see how little we have, and having that
19 try to be taken away from us. So I invite you to
20 our homes too. Thank you.

21 MS. HART: Thank you.

22 MR. MCGHEE: Good afternoon, Robert

0109

1 McGhee with the Poarch Band of Creek Indians
2 councilman, also serve on the board of directors for
3 the United Southeastern Tribes USET. I am sure I'm
4 going to echo what everybody's said in the room
5 about what are the possibilities of getting this
6 fixed and how efficiently we can do this.

7 On behalf of Poarch Creek, of course we
8 are number 3, a legislative fix retroactively and
9 going forward, but the question is, is how is that
10 feasible? I mean we've just talked about you need
11 it by July 10. We can get that done by July 10. We
12 need the legislation.

13 NCAI's already drafted that legislation.
14 USET's already drafted that legislation. NIGA's
15 already drafted that legislation. So it's there.
16 We just need you to take that legislation and move
17 it forward.

18 But I think what we need to worry about
19 or what we are concerned about in our tribe and a
20 lot of other tribes is the more that this waits, the
21 more people are coming out of the woodwork starting
22 to challenge things. You asked us if there was any

0110

1 challenges out there or know if there had been a
2 direct challenge on our lands, no. Has it been
3 mentioned in the papers, yes.

4 Has it been mentioned with us during
5 process for secretarial procedures, yes. So they
6 are thinking about it but they are waiting to
7 determine who's going to be the first one to
8 probably challenge this. And so before we ever get
9 to that point, I think we need to eradicate that
10 issue. And the best way that we can eradicate that
11 issue is you have been taking lands -- you have been
12 federally recognized tribes since 1978, roughly
13 around that time.

14 When you have recognized those tribes you
15 have given them the ability to take land into trust
16 through the Secretary's authority through the
17 Interior. That alone should be giving them the
18 recognition that they are under federal
19 jurisdiction. However, and I will quote chairman,
20 Vice Chairman Lynn Malerba regarding she said it's
21 not our fault that they don't exercise jurisdiction
22 over us. We've always been in existence.

0111

1 So my thing is I think you can do a
2 solicitor's opinion that will narrow the scope of
3 this to say, okay, everyone that has been taken
4 through the federal recognition process, those lands
5 are no longer in jeopardy. I think that will take
6 away people like Alabama, because we don't have
7 pending applications right now. If you squash them
8 they are going to, okay, we are done. They may try
9 to take it on again in the future. Until you get
10 that legislative fix, they may continue to challenge
11 it when we start submitting applications.

12 You asked us about the pending
13 applications. What my concern is what is the weight
14 you are giving to each of these bullets. Number 1,
15 how are you measuring what is under jurisdiction. I
16 think that you are necessarily creating your own
17 legislation there without, you know, you are
18 creating your own definition which is how is it
19 going to be universal to all the tribes.

20 It's going to be weighted by what I
21 submit, what is my record of information that I'm
22 going to submit on behalf of the Poarch Band of

0112

1 Creek Indians on the pending application. So that
2 kind of frightens me because you are already
3 possibly making who is under federal jurisdiction
4 and who isn't based upon what they are providing to
5 you. And I think we need to look at these issues
6 first, address them if it's either if you are under
7 federal recognition, take those lands into trust and
8 address that.

9 And I'd like to say something too on
10 behalf of you guys being here. If this would have
11 happened a year ago, meaning if we had another
12 administration sitting down there, I would be
13 terrified of what decisions would have been made.
14 They would have been made efficiently. They would
15 have -- I know what they would have done.

16 They would have taken the opportunity to
17 destroy tribes. I've already witnessed them. I've
18 already seen them try to erode the sovereignty. I
19 respect the fact that we have two individuals in
20 place now who are Native American, especially
21 Solicitor for the first time, congratulations; that
22 I think you understand sovereignty; you understand

0113

1 Indian law; and I think you are here to protect it.
2 And I think the best way that you can
3 protect it is uphold those decisions that you have
4 made since 1978 regarding recognizing tribes. And
5 under that recognition comes the authority to take
6 land into trust. And through the Secretary's
7 authority, I think you can easily draft an opinion
8 to that effect. Thank you.

9 MS. HART: Thank you, Robert.

10 MR. MARTIN: I'm Bill Martin. I'm
11 president of the Tlingit Haida Indian tribes of
12 Alaska. Mr. Secretary, Madame Solicitor, thank you
13 for taking time from your busy schedule to sit in
14 consultation with us. It's very appreciative, and
15 thank you very much for being here.

16 I want to again highlight here to support
17 the Narragansett and their quest to regain their
18 tribal -- their right to put land into trust, but
19 Tlingit Haida along with the 229 tribes in Alaska
20 lost their ability to put land into trust by a mere
21 stroke of a pen by an addition of a sentence in the
22 C.F.R. Regulation 25, 151.1, which specifically

0114

1 states and prohibits the regulation of putting land
2 into trust as applicable to Alaska tribes except for
3 Metlakatla which is the only reservation in Alaska.

4 This regulation clearly has no statutory
5 backing. It's clearly against the rule of law
6 because in the IRA Act of 1936 which gives the
7 tribes in Alaska the ability, those that were not
8 recognized before 1934 the ability to have all their
9 rights of the tribes as do in the lower 48. And so
10 that law is already there. And we should be able to
11 put land into trust.

12 When in the last years of the Clinton
13 Administration that sentence was about to be removed
14 but it was put back in immediately afterwards, and
15 for a period of three years. But in those three
16 years we know of no time that that was addressed,
17 that was looked at, nor do we see it in the eight
18 and a half years since then.

19 So clearly the regulation 25 C.F.R. 151.1
20 is a violation of the code of law. And so what we
21 are asking is that the Interior Department retract
22 that, to take that language out that prohibits

0115

1 Alaska tribes from putting land into trust because
2 there is already statutory law that says that we
3 have the ability to do this.

4 The tribes in Alaska are suffering from
5 unemployment. And in many villages it's 75 percent.
6 By having the ability to put land in the trust we
7 can attract businesses to come to our villages to do
8 businesses in the form of tourism or fishing,
9 hunting, things that would boost the people in
10 Alaska.

11 So a quick fix would be to just eliminate
12 that, that statement. And that would satisfy all of
13 the tribes in Alaska. If you are unable to do that,
14 then we plan on going to Congress and see if they
15 can do something to reaffirm the fact that the
16 Alaska tribes do have that right. And if it means
17 us going to Congress, we certainly would ask your
18 backing.

19 If you are not able to retract it, then
20 at least give us the backing that will help us go to
21 our Congressional delegation to see about removing
22 that restriction. I have our proposal in more in

0116

1 depth form that we've provided that so that you all
2 can have copies and I'll be happy to answer any
3 questions.

4 MS. HART: Thank you.

5 MS. MCGHEE-PRINCE: Hi. My name is Venus
6 McGhee-Prince. I'm Attorney General and member of
7 the Poarch Band of Creek Indians. And I think we
8 all agree or most of us agree that the best fix is
9 legislation, but I think we all know that that's
10 also not the quick fix and it may not happen this
11 year. We hope that it will, but if it doesn't we'd
12 like to have an interim step.

13 And I think so we would like you to
14 consider, you know, possibly two solicitors'
15 opinions to narrow the issues and hopefully serve
16 as -- give us a little bit of quicker guidance that
17 everyone needs. The solicitor's opinion could set
18 forth your position that the Quiet Title Act
19 protects lands already held in trust for all tribes.

20 I know that you are taking the defensive
21 stance of litigation, that DOI and DOJ are taking
22 that stance but that's reactive. And if you could

0117

1 set forth that position proactively, I think that
2 might help to prevent some of that unnecessary
3 litigation. And a legislative or regulatory fix may
4 also be easier as Mr. Skibine mentioned I know
5 because then the legislation may only need to be
6 prospective instead of also addressing these issues
7 retroactively.

8 And that might also help you to allow the
9 Department over your ordinary course of business to
10 continue, and allow tribes who are trying to
11 continue on these various economic development
12 projects to be able to do so with little more
13 certainty and perhaps under better financing terms
14 and all of those issues.

15 A second opinion could also set some
16 bright line rules for what under federal
17 jurisdiction means. I know that there's been
18 discussion about regulations but we could get very
19 bogged down in the regulatory process. And Congress
20 may be less willing or likely to act if you were
21 involved in a regulatory process.

22 So a solicitor's opinion could

0118

1 potentially provide some of those bright line rules
2 defining what the federal jurisdiction means until
3 we can get the legislative fix that we know everyone
4 would like. I think we know these types of opinions
5 don't have the weight of regulations or legislation,
6 but we were just hoping this might be a good interim
7 step. Thank you.

8 MS. HART: Thank you, Venus.

9 MR. BULLOCK: Good afternoon. I'm Carlos
10 Bullock, Chairman of the Alabama-Coushatta Tribe of
11 Texas. And as we go through there of course we
12 would like to see the number 3 fix along with all
13 the other tribes, but I also want to explain our
14 unique history is in for helping the state of Texas
15 fight for its independence, the state of Texas
16 allocated some money for the tribe to secure over
17 1200 acres in 1854.

18 In late 1920s we were able to get it
19 under federal jurisdiction, went through the IRA.
20 In 1954, we were terminated. During all that time
21 we were under state jurisdiction from '54 to '87.
22 In '87 we got restored as a federally recognized

0119

1 tribe. But during that time, there were some trust
2 responsibilities not held on behalf of the
3 government and on behalf of the state of Texas.

4 In 2000 we were awarded a federal court
5 of claims judgment for \$270.6 million. And we've
6 never been able to get that money allocated because
7 it would have to go through appropriations through
8 Congress, and we've never been able to get that
9 money allocated to our tribe. But also in that
10 judgment it said that we still hold aboriginal title
11 to the land. And I wanted to know what your
12 opinions were as to the federal court of claims
13 stating that we have aboriginal title to over 5.5
14 million acres, you know, where does that leave a
15 tribe that still has fee simple land. We have trust
16 lands and we have fee simple lands.

17 MR. SKIBINE: I think we would have to
18 look at that particular issue. I don't think
19 anybody here is going to be prepared to answer that
20 question.

21 MR. BULLOCK: Okay. I would just like at
22 some point to get that.

0120

1 MR. SKIBINE: All right.

2 MR. BULLOCK: Thank you.

3 MS. HART: Thank you. Is there anybody
4 else?

5 MS. KRAUS: Good afternoon. My name is
6 Bambi Kraus. I'm with the National Association of
7 Tribal Historic Preservation Officers. And I came
8 here today to listen because trust lands and the
9 definition of Indian lands has been an issue for the
10 National Historic Preservation Act.

11 And I know that in terms of what's
12 germane to the discussion on this particular Supreme
13 Court decision, I'm not here as much to talk about
14 that, but just the fact that everybody is talking
15 about the history of their tribes and the history of
16 their people just brings home to me how important
17 all of this is. And it's not all about gaming.
18 It's not all about economic development.

19 And I've worked for National Indian
20 Affairs for over 20 years, and I feel like this is
21 one of the most important things for native people
22 is to stand up in support of each other and to also

0121

1 express and share our knowledge that makes us all
2 stronger as native people. And one of the issues
3 that's currently under discussion and why I'd like
4 to bring it to your attention and perhaps get some
5 kind of initial feedback on is that the current
6 solicitor's opinion is that lands taken into trust
7 after 1934 may not be considered trust lands for the
8 purposes of implementing the National Historic
9 Preservation Act.

10 And all that technical speak means that
11 some tribe, and I have to recognize the former
12 tribal historic preservation officer the honorable
13 Cheryl Maltais, Andrews-Maltais knows what it's like
14 to preserve and protect and fight for her tribe's
15 history and culture, that it really is an important
16 issue and the only thing that really makes Indian
17 people unique, Native Americans unique.

18 And so I just want to urge you to look at
19 these issues that may not seem to be -- it's much
20 more than just gaming. It's much more than money
21 sometimes. And I'd like to get some kind of -- just
22 start the dialogue on how this particular decision

0122

1 or any decisions made by the solicitors affect the
2 programs that implement tribal sovereignty.

3 And the Tribal Historic Preservation
4 officers do believe that operating a THPO program is
5 an act of sovereignty. So I can only stay a little
6 bit longer like everybody else in the room, but I
7 wanted to bring that to your attention.

8 MS. HART: Okay. Thank you.

9 MR. HILL: Hi. My name is Clinton Hill.
10 I'm total claims representative for the Men's
11 Council of the Oneida Nation of New York. My
12 question is --

13 MR. SKIBINE: Can you speak a little
14 closer to the mike please?

15 MR. HILL: I'm sorry. My question is
16 kind of short and sweet. If you are going to put
17 words into this, can you put words that just say all
18 recognized nations and tribes are eligible for trust
19 lands, and all nations and tribes can bequest for
20 trust lands.

21 That's all we are asking is that we have
22 our -- that we get our trust lands. And that's all

0123

1 I'm asking is please just let us have our trust
2 lands.

3 MS. HART: Thank you. Is there any other
4 comments?

5 MR. THOMAS: I have one. I know that
6 some of my members have spoken.

7 MR. SKIBINE: That's going to be too low
8 for you.

9 MR. THOMAS: I'm the sachem of the
10 Narragansett Tribe where Carcieris from. And I
11 know, you know, that's the correct way to pronounce
12 it. I call him other things, not necessarily
13 Carcieris.

14 This is the same gentleman that put a
15 raid on my smoke shop. So my concern is a few
16 things. Number 1, I support a fix. And I think an
17 amendment is the way to go because a stand-alone
18 bill will just get gutted. And you'll have every
19 nut job in the world coming out telling you why I
20 shouldn't go.

21 The other concern that I have is, and I
22 heard Chairman Barbry say it, when you have a state

0124

1 consultation, and I think a lot of times we get in
2 these pickles because we allow states to come in;
3 and I can save you the time because all they are
4 going to say is give us the jurisdiction. So the
5 last thing we want is to have state dialogue or
6 state consultation when we believe our relationship
7 is with the federal government.

8 So that is certainly a concern that we
9 have as far as consultation with the state. And the
10 other thing is the ambiguity. The last thing that
11 we want is ambiguity. And Mr. Assistant Secretary,
12 was glad to hear you say that we certainly need to
13 have clarity. Because in politics, especially in
14 Rhode Island, and I've watched a lot of bills up in
15 that state house, they put a lot of words in that
16 there that create ambiguity.

17 For instance now. What's now? Is now
18 ten minutes ago or now tomorrow or now, you know.
19 So we want to make sure that there's clarity, the
20 words are clear, and there's no ambiguity and it
21 doesn't allow the states and the towns to come in
22 and do what they have been doing to us. So I just

0125

1 want to be short and sweet. And with that, I thank
2 you.

3 MS. HART: Thank you.

4 MR. SKIBINE: Can I, I wanted to make one
5 comment. I think that the consultation sessions
6 that we have conducted are consultation sessions
7 with Indian tribes pursuant to our
8 government-to-government relationship. We are not
9 separately consulting with states or communities,
10 and we don't intend to.

11 I think, and I don't want to put words in
12 the solicitor's mouth, but I think that what she was
13 referring to is that when a bill is introduced, then
14 during that process up on the Hill, then states and
15 communities are going to weigh in. But it's --
16 that's bound to happen. It's not that we are going
17 to be look at what states want. Our clients are you
18 guys, and that's where it's going to be.

19 MR. THOMAS: That's good to hear.

20 MS. HART: Okay. Are there any other
21 comments? Okay. Well, if there are no other
22 comments, I will ask Mr. Echo Hawk to make some

0126

1 closing remarks.

2 HON. ECHO HAWK: Thank you, Paula. I
3 think I probably said what I needed to say. I had
4 heard earlier about, you know, the question about
5 the timing. I think I answered that.

6 Just personally, I certainly feel the
7 weight of responsibility. A number of the speakers
8 today have talked about us here up at this table
9 having some responsibility, you know, to protect
10 rights of tribes under federal law. And I certainly
11 feel that weight of responsibility and just pledge
12 that I'll do all I can to make sure we make a strong
13 effort to fix this problem.

14 And thank you for your attendance. Just
15 reiterate we've gone through this efficient
16 consultation, but this doesn't mean it's the end of
17 communication as we move forward. Thank you very
18 much.

19 MS. HART: Solicitor Tompkins, would you
20 like to make closing remarks?

21 HON. TOMPKINS: No. That's okay. We are
22 done.

(The proceedings are concluded at 4:10 p.m.)

0127

1 CERTIFICATE OF COURT REPORTER

2

3 I, Elizabeth Mingione, Court Reporter, do hereby certify that

4

5 the foregoing transcript of the proceedings which were held on the
date

6

7 and at the time and place set out on the title page hereof and that
the

8

9 foregoing constitutes a true and accurate transcript of the same.

10

11 I further certify that I am not related to any of the parties,

12

13 nor am I an employee of or related to any of the attorneys
representing

14

15 the parties, and I have no financial interest in the outcome of this
matter.

16

17 GIVEN under my hand and Notarial seal this 8th day of

18

19 July, 2009.

20

21

22 _____
Court Reporter

