

1 U.S. DEPARTMENT OF THE INTERIOR/ANC CONSULTATION
2 ALASKA INDIAN REORGANIZATION ACT OF 1934 (IRA)

3
4 October 21, 2018

5 10:00 a.m.

6 Anchorage, Alaska
7
8

9 APPEARANCES:

10
11 BUREAU OF INDIAN AFFAIRS:

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15 U.S. DPT OF THE INTERIOR:

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4 Fritz George, Akiachak Native Corporation

5 Delice Calcote, Alaska Inter-Tribal Council

6 Abe Albert, Anchorage, Alaska

7 Bridget Anderson, ANCSA Regional Association

8 Adam Walters, Association of Village Council Presidents

9 Erik Kenning, Arctic Slope Regional Corporation

10 Daniel Cheyette, Bristol Bay Native Corporation

11 Jennifer Brooks, Bristol Bay Native Corporation

12 Ken Truitt, Central Council of Tlingit and Haida

13 Indian Tribes of Alaska

14 Rhonda Pitka, Chief of the Village of Beaver

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16 David Phillips, Chugach Alaska Corporation

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20 Charlie Sink, Chugachmiut

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7 Tony Weyiouanna, Sr., Kawerak Land Management Program

8 Joel Jackson, Ketchikan, Alaska

9 Kalani Tucker, Knik Tribe

10 Thomas Panamaroff, Koniag, Inc.

11 Lance Kramer, Kotzebue

12 Alexander Tallekpalek, Levelock Native Corporation

13 John Lincoln, NANA Regional Corporation

14 Matthew Newman, NARF/Levelock Village Corporation

15 Megan Condon, NARF/Levelock Village Corporation

16 Melissa Borton, Native Village of Afognak

17 Loretta Nelson, Native Village of Afognak

18 Eric Jordan, Native Village of Chenega

19 Maria Coleman, Native Village of Eklutna

20 John Hopkins, Native Village of Eyak

21 Raymond May, Native Village of Port Lions

22 Nancy Nelson, Native Village of Port Lions

23 LaToya Hartley, Native Village of Port Lions

24 Dorothy Shinn, Native Village of Tazlina

25 Myra Thumma, Native Village of Venetie Tribal Government

1 ALSO PRESENT: (Continued)
2 Ernest Erick, Native Village of Venetie
3 Tribal Government
4 William Albert, Northway, Alaska
5 Peter Demoski, Nulato Tribal Council
6 Jaeleen Kookesh, Sealaska Corporation
7 Ben Mallott, Senator Lisa Murkowski
8 Eric Reimers, Senator Lisa Murkowski
9 Pearl Chanar, Seth-De-Ya-Ah Village Corporation
10 Becca Patterson, Sonosky Law Firm
11 Whitney Leonard, Sonosky Law Firm
12 Pearlene Pete-Moore, Stebbins, Alaska
13 Carl Burgett, Tanana Chiefs Region
14 Victor Joseph, Tanana Chiefs Region
15 Angela Totemoff, Tatitlek Corporation
16 Rami Paulsen, Tatitlek Corporation
17 Nanci Robart, Tatitlek Village IRA Council
18 Cassandra Kroto, Tyonek, Alaska
19 Joan Johnson, Unalakleet Native Corporation

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1 P R O C E E D I N G S

2 (On record)

3 MR. TAHSUDA: Good morning. Thank you for
4 coming. Thank you for your patience with us as we get
5 started here.

6 So this morning we're having a consultation
7 session as part of a round of both public meetings and
8 Tribal consultations on the issue of the Alaska
9 portion of the Indian Reorganization Act as it applies
10 in the Tribal recognition context. And just a
11 reminder, this afternoon we're going to have a session
12 dealing with fee-to-trust issues coming out in the
13 same provision as the Alaska IRA.

14 So this is a formal consultation. We're doing
15 a transcript, that's why we have these young ladies
16 here who will help us with that. We'll also be sure,
17 then, that your comments that you make today -- and if
18 you have any written comments, you either send them
19 in -- we have a web- -- on -- on the DOI website,
20 there's a place to send it in, or you can just hand it
21 to us if you would like today. We'll make sure
22 they're part of the record as well. And, also, if you
23 -- when you -- when you speak, make sure to use the
24 microphone, that way it will be easy for them to
25 record that and make that part of the transcript as

1 well.

2 So I would like to start us off on the right
3 foot, and so I would like to ask, if there's an elder
4 here that would like to offer an invocation for us to
5 start the meeting off this morning, I -- I would
6 appreciate that.

7 MR. ERICK: (Speaking Yup'ik).

8 (Indiscernible). Let's all have good words
9 with one another and speak from the heart. We bless
10 every one of the people here today. We bless all of
11 the elders, all the young people, all of our friends,
12 and the good, and the -- (indiscernible) we have, give
13 them peace and honor them in a good way. Amen.

14 MR. TAHSUDA: Thank you.

15 All right. So we'll start off with
16 introductions. My name, if you can see my thing here,
17 is John Tahsuda, and I am the Principal Deputy
18 Assistant Secretary for Indian Affairs and Department
19 of the Interior. With me, I have Matt, who is with
20 the Office of the Solicitor, and we also have some of
21 our team -- I -- I can't remember --

22 UNIDENTIFIED SPEAKER: Amanda.

23 MR. TAHSUDA: -- Amanda -- I'm so sorry -- and
24 -- and Regina out front, and they're part of the
25 Assistant Secretary's office. They help us with these.

1 They are part of the regulatory affairs group. They
2 help us with these matters, getting -- keeping the
3 records together and producing them for -- for our
4 public records.

5 So, again, let me reiterate to help with the
6 record. When you speak -- I also didn't say this
7 earlier -- when you speak into the microphone, if you
8 could also tell us your name, your affiliation,
9 whether it's a village or a tribe, what your
10 affiliation is, that way we can also make sure that
11 that's part of the record as well.

12 The -- this -- this session, and the other
13 sessions that we've held, were noticed in a public --
14 were noticed in a "Tribal Leader" letter that
15 accompanied the withdrawal of an opinion from the
16 Solicitor's Office, and that's what leads us to this
17 discussion about Tribal recognition and particularly
18 for this session.

19 I think that -- so separate from the
20 solicitors who really focus on legal issues, our
21 office, of course, focuses on policy issues. And I'm
22 from a tribe in the Lower 48. I'm from Oklahoma, a
23 member of the Kiowa Tribe, and we certainly have a
24 much different history than you guys have up here.
25 And I think, from my part, it's really, very, very

1 important for us to hear from you and your
2 perspectives on this. Again, there are -- there are
3 legal issues that we're trying to work through, but
4 there are also policy, history, and factual issues
5 that will be very important to us as we build a
6 record.

7 Everything that we do, and through the
8 Assistant Secretary's office and through the
9 Secretary's office on behalf of tribes, is -- is part
10 of our trust responsibility to tribes and the Native
11 people. And so we have been endeavoring since I came
12 in over a year ago, and with renewed vigor, now that
13 we have Assistant Secretary Sweeney with us, to make
14 sure that the decisions that we issue are
15 well-founded, in fact, and under the law. And so that
16 is our responsibility to do that and make sure that
17 the decisions we make are not just good decisions, but
18 they're good defensible positions, and I feel,
19 personally, to me, that is part of the trust
20 responsibility, that the decisions that we make will
21 -- you'll be able to depend on those. So through all
22 of that, that is our goal, to be your best advocate,
23 to be able to put all of us in the best position to
24 represent Indian Country.

25 So that's part of this effort here, as I said,

1 to engage in a thought process on the Alaska IRA as it
2 exists today. We have overlaid with that now several
3 other pieces of legislation that have been enacted
4 over time, as well as amendments to all of those. And
5 it doesn't always make for an easy legal analysis, but
6 as we follow the law, we want to make sure that we do
7 that and consider all of the implications to that.

8 At the end of the day, we want to also be sure
9 that we have addressed the -- the intents of the law,
10 and part of that falls not just on legal grounds, but
11 also, I said, on policy grounds. And so it's very
12 important to us also to hear legal arguments, and as
13 your experiences have been if you're not a lawyer but
14 you certainly have been involved over time with your
15 villages, with your tribes.

16 But in addition to legal views, also, as you
17 have experienced over the years now, and as your --
18 your parents, grandparents, et cetera, experienced,
19 what have been the positive, negative -- what are the
20 implications of the Reorganization Act, what have been
21 the implications followed after that with ANCSA, with
22 ANILCA, some of the other laws that apply. And so I
23 think from a policy perspective in addition to a legal
24 perspective, it's important for us to gather those as
25 well.

1 Part of -- part of implementing a law is
2 making sure that the -- the intents of the law
3 actually work on the ground as a factual matter, as a
4 policy matter. So that's part of what we'd like to
5 hear as well, so -- in addition, again, to pure legal
6 arguments, we really appreciate your perspectives on
7 what's important about the law.

8 There were some questions that went out with
9 the "Tribal Leader" letter. They're relatively broad,
10 and some of those may seem very obvious to you, but as
11 part of this effort to get a, sort of, more full
12 policy in -- in historical perspective, we don't want
13 to miss anything, and so the questions are very --
14 sort of very broad, in hope that we can get a very
15 broad perspective from you, and I think that at the
16 end of the day that will be very, very important to us
17 as we develop the record moving forward on this. So I
18 appreciate that.

19 I want to give Matt a chance, from the
20 Solicitor's Office, to give a couple of thoughts from
21 his perspective as well.

22 MR. KELLY: Thanks, John.

23 Good morning, everybody. I recognize some
24 faces from folks who were here on Wednesday. It's
25 good to see you again.

1 I don't know that I have much to add to what
2 John has just said. I would like to point out,
3 though, again, that what we learned from listening
4 sessions in Juneau and in Ketchikan, the consultation
5 in Ketchikan, was that the letter that we sent out,
6 the "Dear Tribal Leader" letter, could have been
7 clearer in order to allay some of the concerns that we
8 learned about at those sessions.

9 So I just wanted to re-emphasize that the
10 purpose of this consultation and the questions we're
11 asking are directed at how we implement the IRA, the
12 Alaska IRA, going forward. It is not to revisit any
13 decisions that have already been made. It is not to
14 revisit the status or any questions relating to
15 existing constitutions or the provisions they may
16 contain. I certainly understand how that concern
17 could have arisen, and, again, that was on us, because
18 we didn't write the -- we weren't clear enough in the
19 letter.

20 Other than that, really, this session today is
21 about listening to you and to hearing what your
22 concerns are and what your desires are with respect --
23 if any -- with respect to the questions here, and
24 implementing the Alaska IRA going forward,
25 particularly with groups that may want to organize.

1 One last point, at Ketchikan's session in
2 particular, we heard from Tribal leaders, concern,
3 questions. Why were we not consulting with those
4 groups who are now -- now have petitions for
5 recognition pending before the Department? Certainly,
6 there is always an ongoing dialogue with any applicant
7 for seeking a decision by the Department; however,
8 consultation is something that the United States
9 carries out on a government-to-government basis. To
10 the extent you feel you have an interest or concern
11 related to the recognition process and extending
12 government-to-government relations to new groups, that
13 is for you to say, and that's why we're here, to hear
14 what input you have on that subject.

15 Thanks very much.

16 MR. TAHSUDA: Thanks, Matt.

17 That's a good point, just to be sure that
18 there's no concern. I mean, again -- and also in the
19 vein of wanting to have, sort of, the broadest net
20 cast as possible, we have had a couple of public
21 meetings as well so that we can try to include
22 everybody, including those unrecognized groups that
23 are currently applying, so they have a chance also to
24 -- to get some points into the record.

25 So thank you, Matt. I will open up to the

1 floor now, if you have any questions or anybody wants
2 to offer a comment.

3 MR. TRUITT: (Speaking Tlingit).

4 For the sake of the transcriber, I said I'm
5 Tlingit, and my name is "Tuksak" -- phonetic spelling
6 will do just fine for the record -- and my name is
7 "Katishan" (ph). In English, my name is Ken Truitt,
8 and I am the Chief Operating Officer for the Central
9 Council of Tlingit and Haida Indian Tribes of Alaska.

10 So we're here bright and early on this Sunday
11 morning. Just to give you a few words about Tlingit
12 and Haida and what our interest is on this particular
13 issue -- and we'll have more to say this afternoon --
14 we are not an IRA tribe, and we are also not a village
15 council. We were formed by special act of Congress
16 prior to the IRA being made applicable to Alaska.
17 Congress passed our act in 1935, and so that -- I
18 guess that -- that makes us special. We are the
19 Tlingit and Haida, and we are special.

20 But we are -- we were formed specifically to
21 pursue land claim for the historical taking of our
22 ancestral -- or the taking of our historical and
23 ancestral homeland, and we did that. And to a large
24 extent what followed, discovery of oil, statehood, it
25 was because our land claims litigation was pending at

1 the time of statehood and at the time that the State
2 of Alaska was making its statehood land selections,
3 but then the Secretary suspended all statehood land
4 selections so our lawsuit could work its way through
5 the court of claims. And then what followed,
6 obviously, was ANCSA, and then the Self-Determination
7 Act shortly after that.

8 But -- so this -- this morning session doesn't
9 really impact us, but we want to stand with the
10 applicants who have had their applications pending,
11 really, for decades now, in support of that, and we
12 would just take this opportunity with our comments to
13 remind you all that the act that you're saying is in
14 process of being implemented was passed specifically
15 in 1936. That was a long time ago. It seems to us
16 just a little bit suspect that in 2017 and 2018 you
17 would start scratching your heads and saying, "Gee,
18 this is really complicated."

19 And that's what -- I know we have one lawyer
20 sitting there. I don't know your background,
21 Mr. Tahsuda, but that's what lawyers do. They figure
22 out complicated issues of law and policy. And, yes,
23 Indian law is one of the most complicated areas of law
24 that we have, but that's why people go to law school,
25 to learn how to negotiate those things. And principal

1 among how these things get interpreted and how these
2 things get negotiated is the Canada construction that
3 -- that these laws are to be interpreted and to
4 benefit Indian people.

5 And so going back to 1934, I wanted to also
6 remind you all on the record that the purpose of the
7 Indian Reorganization Act was to put an end to the
8 allotment era, Congress specifically found in the
9 Reorganization Act that what was going on with the
10 allotment area policies was bad for Indian peoples,
11 and that the purpose of the 1934 act was to restore
12 land to Indian peoples, to their control in
13 conjunction with the government.

14 And so when you say that this is complicated
15 and you want to do this right, the right thing to do
16 is to move on these applications that have been
17 pending for all of these years now, because the
18 mistake that you're going to make, given the trust
19 responsibility that the government still has, is to
20 make a decision that disfavors Indian people. I'm
21 going to submit to you, that's going to continue to
22 not act on these applications, to continue to fail to
23 protect the Indian peoples who are seeking rights
24 under the Reorganization Act.

25 So that's all we have. Thank you.

1 MR. ERICK: My name is Ernest D. Erick. I'm
2 from the Native Village of Venetie Tribal Government.

3 In 1974, the Reorganization Act gave us a lot
4 of opportunity, and today -- back in 1934 is just like
5 today for me, because we've been exercising the
6 constitution laws that was given to us, the
7 traditional laws that was given to us by my
8 grandfather and grandmother, and all the forefather
9 has made for us. So we had it all documented within
10 traditional level until the day the Reorganization Act
11 came about.

12 The fee simple title land that I've been
13 living on, and with a membership of Venetie and Arctic
14 Village, 1.8 million acres of land that's owned by the
15 tribe, it's still there. We still -- the only thing
16 that the State of Alaska doesn't recognize under the
17 Provision 6, Title IV, the natural resources that need
18 to be given back to their tribe within the State of
19 Alaska.

20 We've been exercising Indian Country for
21 immemorial time. "Reverse your land to -- back to the
22 Native village," we said, under our cases. The best
23 interest for us, we were not part of the Lands Claim
24 Settlement Act. We didn't take the dollar. We said
25 we're going to get the land. Before 1934, my

1 grandfather, Jimmy Roberts, he walked the land, every
2 inch of it, with a tribe. "This is the rule that
3 we're going to put around our land." That's what they
4 did. It was in the middle of the river, the Chandalar
5 River and the Christian River.

6 Today, we have over 15 to 2,000 members on
7 that land, still recognized the -- their way of life.
8 They put refuge around us, and we have to deal with it
9 to protect the wildlife, but those resources that we
10 use is in the hands -- (indiscernible) -- laws.
11 That's really hurt us today, but we're still a fee
12 simple title land that's owned by the tribe. We're
13 still exercising from loose dogs, children law for the
14 children, law for members of our tribe in the
15 traditional level.

16 We have gone a long way. We've done it with
17 Native -- Native way of doing things. Lucky today, we
18 have law, lawyers, that help us, and I give them a lot
19 of credit. Our relationship, the
20 government-to-government relationship, really stands
21 clearly -- clearly that's been going on from the last
22 60, 70 years now.

23 Give it back to the Native people, those
24 natural resources. It's a very important thing that
25 we have. Those food chains out there, that serves our

1 people. The dollar's been there, but we could have
2 got into the big development if we wanted to, but we
3 care about other Native people that lives on the Yukon
4 River. We don't want to spill anything that's going
5 to cause problems, education, roads. This is the kind
6 of stuff that federal government should understand,
7 that there is people occ- -- occupy their -- law and
8 order -- whatever dollar that's coming to the land is
9 being served.

10 And I just want to make it short, but there's
11 other organizations here that want to speak
12 themselves, but we're the pure Native people that live
13 father north, and we stand our grounds all of these
14 years, and I just want to let you know that.

15 Thank you.

16 MR. TAHSUDA: Thank you, sir.

17 MR. JOSEPH: I'm Victor Joseph. First of all, a
18 Tanana Tribal member, and then Chief Chairman on the
19 Tanana Chiefs Region, where there is -- conformed of 42
20 members, and 37 of which are federally recognized
21 tribes.

22 You know, our relation to the south, Ken, he
23 was saying it's sort of suspicious what's going on
24 here, and -- you know, and I also question the
25 intentions. And, in fact, when I'm talking to the

1 people that I counsel with, the question is, "Why are
2 they doing this?" There's already been law
3 established. There's already been regulation
4 established. It's already been practiced and put in
5 place, and tribes have successfully moved through this
6 process in Alaska. And then if this is truly about
7 trying to figure out how you're going to help the two
8 tribes that have petitions in, then energy should be
9 given to that, into those tribes, using the existing
10 standards that have worked in the past.

11 When I really get looking at the heart of
12 this, I get really concerned, because over the last
13 year I have been seeing a lot of process start taking
14 a step backwards. When I look at the consultation
15 process, I'm seeing us not really having the
16 meaningful dialogue that's necessary to be discussing
17 something so important as this, if it was truly to
18 have meaningful negotiations. And where's that group
19 that can be put together and used to be -- how can we
20 satisfy and meet the petitioners to get them forward
21 and to get them into their rightful status?

22 I have seen negotiations break down because of
23 backpedaling of the federal government, and, once
24 again, breaking their promises. And so there is a lot
25 of concern I have here as we're trying to re-open

1 something that I believe that there's really no
2 intention to re-open, no reason to re-open, but to
3 start looking at it.

4 So getting back to the -- what's the real
5 intention? I think we need to get to that answer. We
6 also need to make sure that any tribe that's
7 petitioned you, any applications that you have, move
8 forward, and let's put the energy in the right spot,
9 in the right place, because I stand by them, and I
10 think you already have the stuff. It may be
11 difficult, it may be challenging, but you've already
12 done it. People before you have done it. And so
13 let's just get that part done, and let's stop trying
14 to fight the fight that we've already fought, and
15 let's just move forward.

16 Thank you.

17 MR. TAHSUDA: Okay. While other folks are
18 deciding what they want to say, I'll try to respond to a
19 couple of things, or -- or -- and not just me. Matt
20 can.

21 So I think there's -- you have good, good
22 questions and comments about why we're doing it now.
23 Let me take a step back, maybe, and say: So, first
24 off, we have an old law. So the IRA was passed in
25 1934, the Alaska amendment was in '36, and in those

1 days the federal government -- or the Congress often
2 passed laws. They didn't have a lot of detail in
3 them. They kind of had the direction to, you know,
4 "Go take land into trust for tribes"; right? And over
5 time and with some direction from the Supreme Court,
6 the government has moved in the direction of having
7 more -- a little more thought given into the laws that
8 passes, making sure that it addresses constitutional
9 concerns, issues, et cetera.

10 What that leaves us, though, we still have a
11 lot of old laws in the book like this, and so in -- in
12 general, in many different contexts, it's up to the
13 departments, the federal agencies to kind of fill in,
14 back fill, what otherwise would have been in a little
15 more detailed law, fill in with regulations so that we
16 don't have -- so that through regulation, we address
17 maybe constitutional concerns, et cetera. So we've
18 done that in the context of fee to trust and for
19 tribes that are under the IRA.

20 And in this context, we -- the federal
21 government did it -- or the Department of Interior did
22 it with regulations for acknowledgement of tribes, but
23 that only applies to tribes in the Lower 48. So in
24 this case we have this provision, the IRA, which has
25 provisions to recognize groups in Alaska for some

1 purposes, and they are slightly different, as they
2 mentioned in the law, as -- as it is for the other
3 tribes under the IRA, the '34 IRA, but there's no
4 regulations there.

5 I don't know if you're mistaken or not because
6 you said you thought there were regulations already
7 there to be used, but there are not, and that's --
8 that's actually part of this process that we're trying
9 to do, is to figure out, you know, what is relevant
10 today under this law that we should be pursuing? What
11 is relevant in your minds? And what can we do to get
12 the law in our -- our -- our regulatory process
13 together to implement that law?

14 And so in this context, I think it's -- it is
15 a bit of a unique situation. I mean, we had a flurry
16 of activity after the IRA in the first half of the
17 20th century, and then we had changes in law that
18 happened both the Lower 48 and up here, including
19 statehood. We have ANCSA. We have these laws that
20 passed, and as Congress seems to do all the time, at
21 least with Indian Country, is they -- they don't
22 re- -- revise, revoke, or do anything with older laws;
23 they just leave them there, and they just paper over
24 with new laws, and so it falls to us to figure out,
25 and that's part of the regulatory process, is figuring

1 out, "Okay. What is the intent of the old law?
2 What's the intent of the new law?" And how do we mesh
3 those and make sure we're doing it in a way that is
4 constitutionally sufficient so that the decisions that
5 we make coming out of that, then, will be able to be
6 upheld by a federal court.

7 And that's -- for better or for worse, that's
8 particularly acute these days, because it seems like
9 every decision that we make gets challenged in -- in a
10 court, whether it's State court or federal court.
11 And, again, that's kind of -- as I mentioned it in the
12 -- the outset -- in my mind, it's extremely important
13 for us to make sure that we have a good basis to make
14 the decision so that we get the best and the most
15 defensible position for you, and part of that is
16 having a regulatory structure in process.

17 We always run the risk -- and I'll -- I'll
18 maybe let Matt expand a little bit more -- but we
19 always run the risk of making decisions that we don't
20 have a standardized or a regulatory process for,
21 because then it makes it seem like it's arbitrary,
22 right, and the courts are always on the outlook for
23 arbitrary decisions. And so if we have a standardized
24 process and we work through it, our decisions have a
25 much greater chance of being upheld, and so that's,

1 again, part of what we're doing here.

2 I appreciate the comment about consultation.
3 I've got to tell you, I -- I've been consulting myself
4 to death over the last years since I've been in the
5 Department, it seems like, but this is to -- to -- to
6 follow through in this process, this is, like, the
7 early part. This is the initial consultation, in
8 which we're trying to get your thoughts and your input
9 for us to make a decision, which we will then, if --
10 if we're kind of -- if there's a consensus to do it,
11 we would move forward with the regulatory process,
12 which would, then, include some more consultation on
13 what the actual regulation would be. And so we're
14 early in the process, and I appreciate all of your
15 comments across the board, of course, but I think we
16 will have plenty of opportunity to have dialogue with
17 this and -- and see -- see where we can get it to go.

18 I'm trying to think. As far as -- so, let me
19 just reiterate, as far as the current petitioners, it
20 is a difficult process for us when we don't have
21 regulations in place. The recognition of -- of groups
22 in the Lower 48 is very difficult, and we have now a
23 40-year-old -- almost 40-year-old regulatory process
24 in place to recognize them. It's still -- still a
25 challenge. And so for us to try to proceed with

1 petitioners in which we don't have a standardized
2 process in place, makes it extremely difficult, and in
3 my mind, makes it very, very likely that there will be
4 a legal challenge, that -- and we would not be in a
5 great position to defend that, or at least not as well
6 if we had actual regulations in place to implement and
7 to play out what our basis of our decision was -- was,
8 both on fact law and policy.

9 So, Matt, do you got a thought?

10 MR. KELLY: Sure.

11 I can certainly appreciate the concern.
12 Having worked in represented tribes for 15 years
13 before joining the federal government, I understand
14 how what we do here can seem like the workings of a
15 black box, where you don't know what's happening on
16 the inside.

17 In terms of meeting regulations now or seeking
18 some kind of guidance in how to implement the Alaska
19 IRA, I think that the existing federal acknowledgement
20 regulations are a good example of where we would like
21 -- what we're trying to do here. The Department in
22 implementing the IRA from 1936 made recognition
23 decisions on an ad hoc basis. It didn't have any set
24 criteria, and it did that for about 40 years.

25 In the early 1970s, you began having

1 litigation over the status of tribes, that is whether
2 they're recognized or not, for different purposes,
3 including treaty rights. There's a significant amount
4 of treaty rights litigation in Washington state, and
5 it was as a result of those challenges, the risks of
6 having conflicting judicial decisions on how the
7 Department should recognize a tribe, what constitutes
8 a recognized tribe, that the Department undertook the
9 process of developing the federal acknowledgement
10 regulations, which are Part 83 regulations, which, as
11 John said, have now been in place for 40 years, and
12 they provided a firm and a solid basis for making
13 acknowledgement decisions that have withstood the test
14 of time, and the test of judicial scrutiny.

15 I think the Alaska regulation -- Alaska IRA
16 has not really changed since 1936 with respect to
17 recognition. We now exist in a different legal
18 landscape. There have been an awful lot of new laws
19 and court decisions about governing how the Department
20 exercises the authority that Congress delegates to it,
21 all of which arose after the IRA, the Alaska IRA, were
22 both enacted, and as John said, that puts new
23 constraints on the Department and requires the
24 Department to be able to show it does have standards
25 in place when it exercises that authority, it's been

1 delegated to it. Doing so ensures that the decisions
2 we make withstand the test of time, withstand judicial
3 scrutiny, and ultimately benefit Indian Country in the
4 way the Congress intended.

5 So that really is a major part of why we're
6 here. Before going forward on that, it's really
7 important to get your input to consult, and this, from
8 my view, as the attorney's view, is the opportunity
9 where I can learn about facts on the ground and legal
10 issues that you are closer to and more aware of that I
11 am not, that I can incorporate in my analysis of all
12 the comments and bring to the attention of the
13 policy-makers and their decision-makers, like John.

14 MR. TRUITT: Thank you.

15 This is Ken Truitt again. I guess, having
16 heard that, thank you for those responses.

17 So -- so this is now -- this is 2018. You
18 started this in 2017, this particular round of
19 consultation, and if I'm -- if I'm reading the record
20 correctly, two of the applications that we're talking
21 about have been pending for 17 and 25 years, so it's a
22 little bit difficult to understand why you're having
23 this con- -- conversation now when these applications
24 were ripe for action two decades ago. The legal
25 landscape you're talking about didn't exist when these

1 applications were submitted. Had you acted on them
2 when they were ready and ripe for executive action,
3 they would be a part of the landscape, the history
4 that you're -- we're looking back on, as instead of
5 saying let's go forward.

6 What can you say about why this department has
7 sat on these applications for all of these years, and
8 the legal landscape just gets more complicated as time
9 goes on? This would be in the history. There would
10 be no fight. There would be in litigation over this.
11 And -- and I guess I'm wondering, who -- who is this
12 phantom plaintiff that you're so afraid of? And how
13 is making -- I mean, the strongest decision that you
14 can make that can be upheld is making one in the
15 benefit of Indian peoples.

16 By refusing to act, are you not creating for
17 yourselves liability against the people you're
18 supposedly acting in their best interest for, us? Are
19 you not being arbitrary and capricious by refusing to
20 act? I'm going to submit you are. If you're a
21 federal agency and you've got statutes in the books
22 and an existing process on the books, and you're
23 refusing to act on an application that's ready for --
24 ready for a decision, but you're just sitting there
25 because you're worried --

1 I -- I kind of feel like I'm -- I'm living the
2 1984 George Orwell world, where you all are saying,
3 "We don't want to be arbitrary and capricious," but
4 your very actions are arbitrary and capricious. Which
5 -- which is it? Who are you afraid of?

6 MR. TAHSUDA: Thanks, Mr. Truitt. Good -- those
7 are great comments. I -- I can't speak to previous
8 administrations. I will say that -- that there has been
9 concern about how to proceed -- I hope that's the right
10 way to say it -- for a long time with actions or
11 decisions that may come out from -- from the Alaska IRA
12 provisions, and so this is not a new thing. There's
13 been, I think, a desire to try to understand what -- you
14 know, what would be the best path forward for a long
15 time, and that speaks to why these have been sitting for
16 a long -- now, I -- I would presume. Again, my tenure
17 is relatively short there.

18 But I think that it does -- it -- if there was
19 a structure in place to follow, it does make the
20 decision-making process easier. We unfairly, I think,
21 oftentimes depend upon the lawyers to dream up a path
22 forward for us, when we don't have a structure in
23 place, and, you know, sometimes they're able to, and
24 this -- I think in this case, you know, the challenges
25 faced by all of these different laws have been passed

1 over time have made it virtually impossible for them
2 to find a clear path forward. It may be that they're
3 eventually is one, but we've got to work through that,
4 I think. So that's our interest, so that we can
5 actually get decisions done.

6 I will say this: So my boss, the Secretary,
7 is a man of action. He -- whether it's yes or no, he
8 likes for us to make a decision and -- and get it
9 done. And so that's part of what we're doing here, is
10 to get, you know, our hands around the whole problem
11 and get something in place so that we can move forward
12 with decisions in this context.

13 MS. WILLIAMS: Good morning.

14 Excuse me. My voice is a little bit gone.
15 I've been yelling bureaucrats all week, so I apologize
16 in advance.

17 My name is Kristi Williams. I'm a consultant
18 for Hobbs, Straus, Dean & Walker, and we represent two
19 of the petitioning tribes before you, the Qutekcak
20 Native Village, and also the Knugank tribe.

21 I'm just going to speak today a little bit.
22 I've -- I've been to a few of the other sessions in
23 the past in Fairbanks and also here on Wednesday, and
24 we have submitted comments for the record, so I'm not
25 going to go into too much detail, but I do want to

1 briefly summarize some points from some of our
2 submissions.

3 I want to state, though, for the record, prior
4 to my comments about Knugank, which I'll focus on
5 today, the meeting schedule, when you're putting
6 together your consultation schedules, it would be very
7 helpful to tribes to have more notice, and also the
8 timing of this is -- is a little bit poorly
9 coordinated. The NCAI Conference is happening this
10 week, and Tribal leaders from the State of Alaska need
11 to be there. So having the ANC consultation prior to
12 the Tribal consultation this week, where Tara Sweeney,
13 the Assistant Secretary, sat and spoke with leaders at
14 that Wednesday consultation, was a little bit
15 backwards. I think it might have been helpful to have
16 the Tribal consultation on Wednesday with the
17 Assistant Secretary, and today's consultation for the
18 ANCs who aren't going to be at NCAI. So just in the
19 future, if you could think through that when you're
20 scheduling your consultations here.

21 In terms of the Knugank request, I'm going to
22 speak to the common bond standard quickly. Groups of
23 Indians -- this is the common bond standard for those
24 who are not familiar with the language right off the
25 top of your head -- but there's a common bond standard

1 that's laid out that includes occupation, association,
2 and residence within a well-defined neighborhood,
3 community, or rural district, and they may organize to
4 adopt constitutions.

5 The Department has issued guidance and
6 decisions that provide further insight regarding the
7 parameters of that standard. Assistance Secretary
8 Larry Echo Hawk testified before this at Indian
9 Affairs Committee back in 2012, and he followed that
10 up with a letter to Senator Murkowski talking about
11 the difference between the common bond standard and
12 the community standard that's applicable in the Part
13 83 process. They are very different processes, and
14 the reason they're different is because Congress
15 delegated the authority to the Department to act on
16 behalf of Alaska when it amended the IRA in 1936.

17 The reason they did that is because the Part
18 83 process doesn't fit in Alaska, as you know. It's
19 -- it's made for reservation tribes. So the common
20 bond standard was well thought out and delegated as an
21 authority to the Department to apply when tribes here
22 petition the Department for recognition. This
23 standard has been used in the past. There are a
24 number of tribes here that have already gone through
25 the common bond standard. They are also a number of

1 Native groups who have been denied recognition through
2 the standard. The Department has recognized Eagle and
3 Circle, which are two tribes in the Interior, and it
4 hasn't been challenged, to my knowledge, in court.
5 There hasn't been any kind of urgency to recreate the
6 drawing board. So it is a little bit unusual for the
7 Department to spend so much time on an issue that
8 isn't broken.

9 Regulations are great, but they're -- they're
10 complicated, and they -- you know, the promulgation
11 process takes time. These tribes have been under
12 scrutiny by the Department through the application
13 process for nearly a quarter of a century. I mean,
14 this is just -- it's -- it's absolutely ridiculous
15 that they've had to wait this many years for a
16 decision. One way or another, they deserve to have a
17 decision, and the Department should act accordingly.
18 That is a statutory duty that Congress delegated to
19 you.

20 The common bond standard, again, Knugank met
21 -- met the standard in 1936. They continue to meet
22 this standard. It's -- Knugank is -- for those that
23 don't know, it's a traditional Alaska Native village
24 that's separate and apart from its non-Native
25 residents. Census records from the 1930's show that

1 Alaska Natives resided in that geographical boundary
2 of the Knugank Village way back in -- in 1936. All
3 but one of Knugank's members were born and raised in
4 the village of Knugank. Their descendants and members
5 of the Alaska Native community have been living there
6 since 1936. Many of their elders have passed because
7 they've been waiting so long for recognition. It's --
8 it's a travesty, really, that they didn't get to see
9 recognition while they were alive.

10 So the Knugank, they're on the Nushagak River
11 near Dillingham, and they petitioned the Department to
12 organize pursuant to the Alaska IRA in 2001, so
13 they've been -- their application has been pending for
14 a very long time, and I'm not going to talk about
15 Qutekcak today, but that application has been pending
16 even longer. Knugank has been responsive to every
17 issue raised by any official within the Department,
18 and ANCSA compounded the errors, contributed to this
19 problem. There was an administrative error within the
20 Department that left Knugank, which was then called
21 Olsonville, Inc., off of the 1994 list of federally
22 recognized tribes.

23 The Department incorrectly carried out the
24 ANCSA enrollment process for the tribe, for Knugank,
25 and they undercounted the Tribe's membership by a very

1 large number. Because of this error, they incorrectly
2 labeled Knugank as a Native group instead of a Native
3 village, and as you know, Native villages, not groups,
4 were included on that Ada Deer list in 1994. So this
5 could have been alleviated through an administrative
6 correction, but that didn't happen, so they -- Knugank
7 actually has two, kind of, tracks for recognition; one
8 through the Alaska IRA process, and also for an
9 administrative correction.

10 As you can imagine, the Knugank people are
11 very frustrated. They've been waiting for the
12 Department to act on their application for an
13 extremely long time. The Department has all of the
14 evidentiary material necessary to make a determination
15 regarding whether Knugank is eligible to organize
16 under the common bond standard. And, in fact,
17 Assistant Secretary Roberts was ready to act on their
18 petition. Unfortunately, given administration change,
19 and again Knugank's application, which was a breath
20 away from approval, fell through the cracks.

21 So this is something that the tribe -- it's
22 just been a comedy of errors for this tribe over the,
23 you know, pending time period that they've been
24 waiting for acknowledgement, so it's something that
25 the Department needs to act on, and we ask that you

1 issue a decision as soon as possible for the Knugank
2 Tribe.

3 If the Department chooses to move forward with
4 promulgating regulations on the Alaska IRA process and
5 the common bond standard, we ask that Knugank and
6 Qutekcak's be grandfathered in to the current process
7 that they've been anticipating action on for 17 and
8 25 years. To require the tribes to endure additional
9 bureaucratic stagnation when the Department has
10 everything that it needs to make a determination, is
11 -- would be unjust and unfair.

12 Thank you.

13 MR. TAHSUDA: Thank you.

14 Any other comments? Yes, ma'am.

15 MS. PITKA: Hi. I'm Rhonda Pitka, Chief of
16 the Village of Beaver. It's -- it's been a very long
17 week with a lot of AFN events, and before First
18 Alaskans, Elders and Youth. And a lot of Tribal
19 leaders are headed to NCAI tonight. This
20 consultation, I think, should have -- should have been
21 taken in advance of the ANC Corporation, of -- of
22 them, because that's how Tribal consultations
23 generally work, is you do the Tribal ones, and then
24 you do the -- and then you do the ANC ones.

25 I have to find my notes. We were at the AFN

1 banquet a little bit late last night. It was a good
2 one.

3 So the July letter, I went to the Fairbanks
4 consultation -- or was it a listening session? I
5 can't even remember now -- and it just seemed odd to
6 me and really suspicious that the -- that we're
7 consulting about a 1936 law about -- and -- and
8 especially about events that took place in 1994. I
9 actually graduated high school in 1994, and I didn't
10 realize until Kristi said that, that that was 25 years
11 ago.

12 It just -- it just seems like we're going
13 backwards on -- on things when we should be moving
14 forward. Re-looking at -- at old processes and -- and
15 this stuff, it just -- it doesn't make any sense to me
16 right now. Unless you are heading into termination
17 era, you know, policies, I mean, in that case, then I
18 -- I would definitely have to strongly suggest that
19 you stop. That's deplorable.

20 So during the Fairbanks listening session, the
21 solicitors clarified that this notice seeks to assist
22 not recognized groups and would not impact already
23 recognized tribes. Given the history of the State and
24 federal agencies deferring to private interests that
25 seek to undo recognized Tribal sovereignty authority,

1 this letter raises many concerns. So if there are
2 only two groups in Alaska seeking this recognition,
3 the amount of money and resources spent holding
4 listening sessions and consultations across Alaska is
5 incredibly suspicious. The Department does not need
6 regulations for the organization of groups of Alaska
7 Native not yet recognized because Congress provided a
8 statutory standard for the Secretary to apply, and the
9 Department has already issued detailed guidance on the
10 process for the organization of these groups.

11 So in 1936, Congress amended the IRA to make
12 it applicable in Alaska. Congress made clear that
13 groups of Alaska Natives not previously recognized
14 could be organized under the IRA and then become
15 federally recognized. This statute itself contains
16 the standard the Department must apply when
17 determining whether a group of Alaska Natives is
18 eligible to organize. This standard requires a common
19 bond of occupation or association within a
20 well-defined neighborhood, community, or rural
21 district. In 1937, the Department issued detailed
22 instructions on the process that should be applied
23 when organizing a group of Alaska Natives.

24 So I think for those two groups of Alaska
25 Natives that Kristi Williams mentioned, I mean, it

1 just needs to take place. You need to make a decision
2 as quickly as possible, and, you know, probably issue
3 an apology to those two tribes. The lack of federal
4 recognition is -- is really heartbreaking for the
5 tribes in Alaska, and it is a travesty, and it is an
6 injustice to our people, and I really don't appreciate
7 it, and I especially don't appreciate coming in on a
8 Sunday to another Tribal listening session on laws
9 that have already taken place way before my
10 grandmother was even born.

11 Thank you.

12 MR. TAHSUDA: Thank you.

13 So Kristi commented, and -- and, Chief, you
14 commented as well on scheduling of consultations.
15 Trying to schedule, organize consultations is a no-win
16 proposition; right? I mean, we can never get it right
17 exactly because at no point is it convenient for
18 everybody, but -- so we had tried to schedule these
19 both in a time frame that could accommodate all of the
20 different activities that go on up here. We had input
21 in from both folks up here, as well as -- as everybody
22 from the congressional delegations. At some point
23 they thought they might want to sit in on one of
24 these. So I appreciate that it's difficult, and my
25 apologies if it makes it a challenge for anybody, but

1 we can only do our best in trying to get these
2 scheduled in -- in a manner that can try to
3 accommodate as -- as broad a perspective as well, and
4 that's why we've tried to have a number of these as
5 well around the State. And also, too, realizing that
6 it's difficult sometimes for folks to be able to get
7 around, and it's obviously more convenient when you
8 have something like AFN going on to assist us in
9 trying to have as much participation as possible.

10 So let me reiterate again as well, so I
11 appreciate 1936 is a long time ago, but it's a law
12 that we're being asked to implement -- we're being
13 asked to use, I guess I should say -- and so hence,
14 we, you know, have to put the effort in to make sure
15 we have authority to act under it and what the
16 parameters of those authorities are.

17 And, you know, 1937 was a long time ago. I
18 appreciate that guidance was issued in 1937. The
19 world is a very different place, and so it seems to me
20 a very valid question is: Is that guidance still
21 good? Does that still apply to us? Alaska was not a
22 state in 1937. Believe it or not, that makes a
23 difference to people. We didn't have ANCSA. We
24 didn't have ANILCA. We didn't have a whole host of
25 other laws that apply specifically to Alaska, apply to

1 subsistence hunting. There's a whole host of things
2 that have come in that intervening time, and so that's
3 part of -- what would be great for us to get into a
4 record to help us move forward on is, are the things
5 that were relevant then still relevant now? If they
6 are, great, let us know. Are there new things that
7 have come along? Are there things that should change
8 some of that thinking? Then you're the best people to
9 tell us that. Please help us work through that.

10 And, again, guidance is great, but I don't
11 know that we have the best track record as far as
12 guidance being, you know, reviewed by the courts in
13 supporting something that they're having questions
14 about, the -- the authority or -- or constitutionality
15 of a provision, if we have actual regulations in
16 process -- I mean, in place, that I think at least
17 there are Supreme Court cases that say that, you know,
18 they can give a little more deference to us if we've
19 gone through the regulatory process, as opposed to
20 just putting out a piece of paper that says, "Here's
21 some guidance on how to do something."

22 So I think at the end of the day, it's -- it's
23 helpful for us to actually have regulations in place
24 to do something -- something that's as important as
25 tribal recognition. I think that it's also -- it's

1 also -- let me say this, as somebody from the Lower 48
2 -- and I think -- I think Ms. Williams alluded to it,
3 or somebody else did -- you know, that -- that some of
4 the laws in the IRA itself in 1934 really contemplated
5 a different context, and so what was the intent in
6 1936? And, again, what -- what is relevant about that
7 intent now that we've had several other pieces of
8 legislation layered over it, and how should we best
9 implement that now?

10 I -- I think that, you know, there was some
11 thought process that over time the IRA provisions
12 were, you know, sort of frozen in time, and that there
13 was a new regime. There was ANCSA that came along and
14 other things, and, you know, now we have a request --
15 and we've had it for a long time. It's not new -- but
16 to say that we'll know -- that needs to be considered
17 as well, and I think that's a very -- completely
18 valid, but we have to think through that process, and
19 that's part of what we want to do here, is get that
20 thought process understood by us from your
21 perspective. We'll obviously have to have, you know,
22 a legal perspective, you know, from the Solicitor's
23 Office on what we can and can't do, and under the
24 authorities of these different laws and how they
25 impact each other.

1 So, again, I think, from our -- from our
2 perspective at least in moving forward on policy
3 decisions that are this important, having a
4 thought-through background on it, as what we're trying
5 to do now, and then having a thoughtful regulatory
6 promulgation process will be very helpful to us down
7 the road. I would say, you know, there are more than
8 two, I think. I mean, I guess -- I mean, in part, let
9 me say that, you know, this is as relayed to us by
10 groups. There -- there may be only two that formally
11 filed a position or have one pending with us, but it's
12 my understanding, anyways, that they're -- if we had a
13 process that could be moved through, that there would
14 be some other groups. So I think it's not just those
15 two. I think there are others that may be interested,
16 and so I think it's well worth the time to do that.

17 I also think it's well worth the time because
18 in some way also the thought process of "what does it
19 mean to be an IRA tribe in Alaska" also may have some
20 -- I'm not saying it does, but it may have some impact
21 on the later discussion we're going to have about fee
22 to trust, because those fee-to-trust provisions come
23 out of the same law; right? And so -- as with the
24 Lower 48, and we went all the way to the Supreme
25 Court, "What was the intent of the '34 law? What

1 tribes does that apply to?" et cetera.

2 So I think thinking through the process of
3 what recognition under the IRA for Alaska tribes
4 means, also, it can help enlighten us. So what is the
5 intent on what was meant for them to be -- once they
6 become recognized, what is meant for them, for us in
7 implementing that law? So I do think it's a
8 worthwhile endeavor for us to go through this,
9 otherwise I wouldn't be up here. I love your state.
10 I grew up in British Columbia, you know, next door,
11 and so I love the north, believe me, but I -- you
12 know, if I didn't think it was important, I -- I -- I
13 certainly wouldn't be up here and spending time with
14 you just to have fun.

15 But, anyways, thank you. I'm babbling on
16 here. Any other comments?

17 MR. JOSEPH: Okay. I appreciate your
18 comments. But with respect, and I need you to hear
19 this, is that, you know, when I think about the
20 consultation that took place earlier with the ANCs,
21 you've got to think about that, if the Assistant
22 Secretary was there and not here, where is she putting
23 her importance? And where's the fairness in that?
24 And so if she couldn't be at both of them, she
25 shouldn't have been at either one of them is what I'm

1 thinking, and so I think that's really important as we
2 look at who truly has the government-to-government
3 relationship, and that's the tribes. So I just wanted
4 to share that thought.

5 Secondly, this is an old law. We know it's an
6 old law, and we know when Alaska became a state, but
7 some of the other applicants that have been recognized
8 happened after those laws and after we became a state,
9 and so I think that's also an important statement. So
10 this process has been used. It has worked, and it
11 should be able to continue to work.

12 If there's going to be any changes because of
13 your consultations or listening sessions, you should
14 also understand that it shouldn't impact the current
15 petitioners, and those should be continued to move
16 forward, and I think that's just as important of
17 what's going on here.

18 So I don't mean no disrespect, and I'm glad
19 you like Alaska, but there is a lot of concern about
20 what's going on here, and when you walk away from
21 today, I hope you hear that, because it is that trust
22 relationship that we're trying to hold and uphold and
23 understand. And so as we move forward, I'd really
24 like to get around to this whole thing, moving on
25 beyond this and not having to rework or refight things

1 that are unnecessary. We've got other things we have
2 to be doing.

3 Also, too, I do appreciate this happening on
4 -- this happening, I guess, but just getting back to
5 the date and time, look in the room. We've got --
6 we've got almost half the tribes in the United States.
7 You've only got a handful of people here. There's a
8 problem with that. And we were all here just a few
9 days ago, and so I think if you worked with us more a
10 little bit better on the timing, I think we could work
11 out solutions where this could have been a really
12 productive time where we had many Tribal leaders here
13 talking with you about this important issue and our
14 concerns.

15 Thank you.

16 MR. SINK: Good morning. My name is Charlie
17 Sink. I work for Chugachmiut. I was here on
18 Wednesday for the ANC in the morning, not the
19 afternoon. And thank you, Matt, for the paper for the
20 M-37045.

21 I kind of want to draw a story from -- from
22 the -- an example, and I'm going to preach to the
23 choir here on this side, but a long time ago, I was --
24 I was reading some books about Alaska when I lived in
25 Washington state, and -- and I just couldn't figure

1 out, you know, how these miners got into Alaska with
2 all of the provisions on their back, and it -- and it
3 took me a while to figure it out -- because it wasn't
4 stated in the books -- that it was actually the Native
5 people that helped these people survive here in
6 Alaska.

7 Later, when I lived on the Yukon, I did a
8 study where I finally figured out that Alaska was
9 divided up by the Alaska Native groups in -- in their
10 subsistence areas, the gathering places where the fish
11 -- (indiscernible) -- in the summer, which kind of
12 consolidated into the villages of today. And when I
13 lived in Galena, we were the guests of a couple
14 families of the traditional camps there, and then the
15 -- the hunting grounds were off the rivers, and -- and
16 those areas were part of those family groups, and
17 that's -- that's the basis of the Alaska Native in
18 Alaska. Alaska is fully occupied, and so if you have
19 that baseline, that they were everywhere here, the
20 Alaska Native people.

21 And then I was reading in the M-45 example
22 where they're talking about the preliminary powers of
23 Congress over Indians, but it's also superseded by the
24 -- the grant of -- of grants to the United States by
25 the Indians, which precedes that relationship, and

1 that was an interesting thing I didn't really
2 understand and had not known before, that the
3 governing part is -- is -- is the gift of land to the
4 United States government by -- by the Native people,
5 as -- as something they had done.

6 And then we get to the -- the Alaska Native
7 claims Settlement Act, and that is exactly what
8 happened back in 1971. It was the gift of lands to
9 the United States government in return for, depending
10 on who you talk to, you know, 900-and-some million
11 dollars and 44-million acres of land giving back to
12 the tribes. Well, it's a settlement agreement. It
13 was a gift to the federal government, and I think that
14 sets a precedence here, is that the federal government
15 got a huge gift, because we're talking about all the
16 land and its resources that the Alaska Native people
17 had.

18 And then we -- we look back on to law -- you
19 talk about the law and changing the laws, the past
20 laws don't pertain. Well, that's -- that's not true,
21 otherwise you could get rid of the Declaration of
22 Independence, and yet we don't. We the People hold --
23 hold up the Bill of Rights, and these -- these other
24 institutions that were recognized. And what we see
25 over time in the -- in the paper is -- is the outright

1 acts of assimil- -- assimilation that -- that
2 occurred, and there was a period here in Alaska where
3 that pertained, the -- the 1908 Allotment Act for
4 Alaska Natives, and I didn't really understand -- I'm
5 -- I'm still learning more about the implications of
6 the 1908 Allotment Act, and that was its attempt to
7 provide Alaska Natives with -- with land to survive
8 upon.

9 This -- this understanding was -- was the --
10 the common bond that was not recognized very well at
11 that time, and the common bond is how the Alaska
12 Native people work together in their family groups and
13 -- and their associations, and that -- that is the
14 common bond of Alaska. And so when you do an
15 individual allotment act, the separation of Indians
16 from their family groups, it doesn't make real sense
17 to the local people here. And -- and so you see the
18 corrections that Congress tried to attempt in 1934 and
19 1936 for Alaska to -- to establish a -- a better trust
20 relationship with the tribes, was trying to correct
21 these actions, to kind of bring the common bond and --
22 and the people back together again.

23 And then since I represent Qutekcak that's
24 petitioning the federal government for recognition, I
25 kind of -- I went back and read a little bit of the

1 history of -- of the Seward area, and it was
2 recognized that there was a Tribal group in the area.
3 A lot of those lands that the -- were -- were given to
4 the Port Graham Village Corporation and Nanwalek
5 Village Corporation. Nanwalek sold some of their
6 lands, and the Kenai Fjords Monument, now national
7 park, back to the federal government.

8 But they did recognize that, but they didn't
9 recognize the area in Seward, and -- and some of the
10 -- the assimilation things that occurred at that time
11 was based on history. You know, in 1902, it was
12 decided to build a railroad from Seward to -- to
13 Anchorage, and this is prior to the 1908 Allotment
14 Act, and then the pressure there was to -- to be
15 assimilated.

16 And so one of my fellow employees is coming by
17 and is talking about the, kind of, coercion of labor,
18 those times where people were paid -- undervalued, and
19 they worked for these different companies and ended up
20 owing a relationship to those companies, and this --
21 this goes back to Russian times when they -- when they
22 worked for the people back then collecting hides,
23 pelts, and it carried on to when America acquired
24 Alaska. So there's this -- kind of this relationship
25 where Alaska Native people were coerced into forced

1 labor, basically, and ended up owing their soul to the
2 company store.

3 And then in the great insight, there was some
4 -- some events that occurred in 1924, probably the
5 smallpox epidemic, where they transplanted a bunch of
6 Alutiig children to Seward to an orphanage, and so now
7 -- now we're moving groups from one area to another to
8 live somewhere else, and then this is part of that
9 story that -- that -- that occurred in Qutekcak. So
10 you're bringing in people from around Alaska, Native
11 people, coercing them to live in Seward and work on
12 the railroad, bring in orphans and assimilate them on
13 the lands that belong to another group.

14 And so it's kind of an interesting story on
15 how -- how that occurred, but we -- we look at this
16 attempt of assimilation and the correction thereof,
17 and -- and then I look at your questions, when you
18 talk about common bond, and you talk about
19 neighborhood community, rural district, and then you
20 move on down to a common bond of occupancy, have the
21 ability to -- (indiscernible) -- and sovereign
22 governmental powers. I'm not sure where you guys are
23 going with -- with -- with that kind of language, but
24 we look back to the plen- -- the powers of Congress,
25 they -- they recognize Indian Canon Law, and I had to

1 look up "Canon Law" because it pertains to the
2 Catholic Church and the powers of the Catholic Church,
3 and -- and they -- they use that term as applied to
4 Indian law so -- so the Indian groups have their own
5 laws, their own ways of doing things. That's part of
6 that common bond -- bond, and -- and that -- that
7 Alaska Native peoples have carried on over time, and
8 you think it might be dated, but I run a village
9 safety officer program in our villages, but I can't
10 always get somebody to go to a village and -- and --
11 and work as a community safety officer.

12 In lieu of that, what we find is that the
13 traditional chiefs and -- and certain designated
14 people, are the ones that -- that act during times of
15 -- of -- of unfortunate events, if there's no police
16 force there, in other words. They're the ones that
17 act -- act, and they're seen traditionally as the ones
18 that act there. So what we're seeing in real life is
19 that this Indian Canon Law is still being acted around
20 the State in -- in lieu of State or federal
21 assistance, or lack thereof. And so we had this
22 strong bond, and -- and also this strong traditional
23 way of doing things at the Tribal level, you know,
24 Indian Canon Law that is recognized by the United
25 States government.

1 And so I think the probably more suspect thing
2 that I -- I don't -- I would like hear from you guys
3 is that when you ask that question of us, where are
4 you going with -- with this -- this -- (indiscernible)
5 -- of powers? I have some traditional chiefs that are
6 -- are trying to maintain their -- their sovereignty
7 as -- as best they can. For example, on our four
8 small villages, it's the tribe that is the City
9 council and is fighting very hard not to become a
10 State -- State-Recognized city council, and -- and so
11 they're trying to keep their -- their -- their Indian
12 Canon Law going and maintained.

13 And so -- and then we're talking about things
14 change over time; it's changed a lot, but is it for
15 the good, or for -- for the better? I think you're
16 asking for clarification on some things. I think the
17 clarification is possibly better suited to the things
18 that are already accorded the Alaska Native people,
19 recognition that these people need land, a great
20 amount of land and resources, the United States and
21 the obligations that Congress gave to the Alaska
22 Natives applies here, and all the decisions should be
23 in favor of the tribes. And so if there's a challenge
24 to what's in favor of the tribes, I think that's been
25 spelled out to Congress in more than just one law.

1 Thank you.

2 MR. ERICK: Thank you.

3 Ernest Erick from Venetie. Pretty much a
4 federal-recognized tribes says -- you know, I think
5 this is a little group here, like I heard it from
6 other people here, that we should take it back to the
7 federal-recognized tribe, where they're located at is
8 very important for us and our people to listen and
9 have John and Matt to be there. You're more than
10 welcome to come to Venetie or Arctic Village to have
11 the same consultation that we're having here. Other
12 tribes have to be included. This is just a little
13 group that we have here that's -- you know, we don't
14 want to get farther into law and our lawyers, to
15 identify what is really going to happen in the long
16 run, but that long run has been here for a number of
17 years, and I'd like to present that and let it be.

18 Thank you.

19 MS. PITKA: Thank you for inviting me to this
20 consultation, but I have to leave to go check out of
21 my hotel room shortly.

22 I just wanted to reiterate that it is a Sunday
23 and a lot of my elders are -- are very against having
24 meetings on the Lord's day. Our Tribal elders don't
25 -- don't need that kind of mess in their life, so I'd

1 just really appreciate it -- I would invite you to,
2 perhaps, have sessions at the BIA Providers Conference
3 at the end of November. That would make a lot of
4 sense, and it would be really good timing, I think.

5 Thank you very much.

6 MR. TAHSUDA: Thank you for coming.

7 MR. DEMOSKI: Good morning, John. I don't know
8 if I'm happy to see you again. I've seen you twice
9 already in listening sessions. This is the first
10 consultation of these issues that you're bringing
11 forward to us. I won't get into what Ms. Williams or
12 Rhonda Pitka or this gentleman over there discussed
13 about the lack of informing tribes in Alaska. We -- we
14 do comprise 40 percent of the tribes in the nation, and
15 this is not Tribal consultation, as -- as a lot of us
16 already explained.

17 I'm a little disturbed at your -- the
18 Department's wanting to define common bond and
19 occupation of community lands. I'll give you a
20 historical perspective of where I'm coming from. In the
21 1700s when the United States was still under
22 jurisdiction of King George in England, the Russians
23 came through the Yukon River into our villages. After
24 the Russians left, the English came 50 years later.
25 After the English left, the Americans came through the

1 missionaries and everything. All of these people, but
2 we're still occupying our Tribal lands. That has never
3 changed. That should be your description of common bond
4 and occupation of defined territories.

5 Nulato was not an IRA tribe, but I do respect
6 the tribes that are IRA. They took advantage of
7 wanting to be federally recognized. It didn't need to
8 happen. We were already a sovereign government way
9 before the Russians came. I'll give you an example.
10 In the mid-19 century, we were still having Tribal
11 wars in the Yukon River. In fact -- in fact, Nulato
12 was almost wiped out in the mid- -- but those were our
13 sovereign powers to declare war without any
14 intervention from any other foreign government, and I
15 believe that relationship with the United States is
16 still true.

17 We -- we don't need to reinvent IRA
18 constitutions in Alaska. It's already been working.
19 Why re- -- re-dig it up again. That's -- that's my
20 main concern, is why you people need to ask us to
21 define a common bond and occupation of community
22 lands. We already had that for thousands of years,
23 and you should just recognize it.

24 As far as the IRA -- this -- this
25 consultation, I feel it's unnecessary. Just accept

1 our views, even though we're only a small portion of
2 Alaska tribes. Accept our views, and just drop it.

3 That's what I think.

4 MR. TAHSUDA: I'm sorry, sir. Could you state
5 your name and stuff for the record, please?

6 MR. DEMOSKI: Oh, I'm sorry. I'm Peter Demoski.
7 I'm a member of Nulato Tribal Council, and I'm also the
8 Elder Advisor for Tanana Chiefs Conference.

9 MR. TAHSUDA: Thank you.

10 MR. BURGETT: Yeah, my name is Chief Burgett.
11 I'm a regional rep for -- and I speak for six tribes,
12 and I was down in Juneau for the consultation down
13 there, but even at that meeting, there wasn't one
14 support from anybody sitting in the audience of this
15 change. When we started this meeting, you said you
16 wanted to see a census of what -- what the people
17 thought. Well, we're all saying don't change it. Let's
18 not -- let's not -- let's not go there. It's -- you
19 know, too many years have gone past. Because you touch
20 this one law, then you're going to impede on your --
21 your valid existing rights and your trust responsibility
22 to us. And so, just saying that, like I say, I've never
23 seen anybody stand up in support of even addressing
24 this, and this is my second consultation.

25 Thank you.

1 MR. HOPKINS: Good morning, and thank you for
2 coming here. My name is John Hopkins. I'm from the
3 Native Village of Eyak, and you're -- you know, you're
4 talking about having a common bond, and there has been
5 nothing else spoken in here except a common bond.
6 Everybody says the same thing.

7 Thank you.

8 MS. WILLIAMS: Excuse me. I just wanted to
9 add, too, in speaking about the common bond that, when
10 you're working with Alaska tribes, we have a very vast
11 geography here with numerous cultures, very different
12 cultures across the state, and even with our vast
13 geography and our different cultures, we operate as
14 one. The common bond standard applies to all of our
15 tribes, and even though the federal government is not
16 recognizing a trust responsibility and a duty to
17 consult with tribes that are yet recognized, that
18 common bond exists with our brother and sister tribes
19 throughout the state, even if the federal government
20 has not yet acknowledged them.

21 Thank you. Kristi Williams.

22 MR. TOTEMOFF: Good morning. This is
23 Chuck Totemoff. I'm the chairman of the Chenega IRA
24 Council in Prince William Sound.

25 I think every one of the tribes in Alaska is

1 facing extinction efforts by the State of Alaska, and
2 we're constantly having to fight their jurisdiction.
3 It was brought up a few minutes ago about the State's
4 interest rate in our -- all of our core villages under
5 the Alaska Native Claims Settlement Act. We had to
6 participate in this thing with -- they created a new
7 program under State government within the Department
8 of Commerce, called the MLT Program, Municipal Lands
9 Trustee Program, and these are lands located in every
10 single village across Alaska that participated in
11 ANCSA, and it completely undermines the authority and
12 jurisdiction of every IRA council in Alaska.

13 We haven't seen much help from the federal
14 government in trying to correct this situation, and we
15 also know that the State government here in Alaska is
16 wanting all of our villages to be wards of the State
17 of Alaska, mainly with the political subdivision of a
18 municipality, so this completely undermines the Indian
19 Reorganization Act and our Tribal powers and
20 sovereignty.

21 I -- I -- again, I keep saying this, I can't
22 think of any better way to kill off a Native village
23 in the State of Alaska than to have this happen to
24 them. It completely does away with all of these
25 treaties, all of these acts that have occurred and

1 that really culminated in an Indian Reorganization
2 Act. So there's a complete injustice that has
3 occurred over time, and we are not in favor of
4 altering these IRA constitutions that were agreed to.
5 And -- and in Chenega's case, we do have a
6 constitution charter and bylaws that was approved by
7 the Secretary of the Interior. That still stands
8 today.

9 So what we need, is we need help from the
10 Bureau of Indian Affairs to try to correct this
11 problem right in our core villages. So we are under
12 direct assault on many levels; regulatory,
13 jurisdiction, enforcement, you know, it goes all the
14 way down the line to the Fish & Game resources to
15 where we basically have been almost regulated out of
16 existence right now, and as far as I know and
17 understand, the BIA has a trust responsibility to
18 stand up for our rights and responsibilities and
19 jurisdictional questions here in Alaska.

20 So that's where your energy should be focused,
21 rather than try to go figure out if this is an old and
22 outdated law, which it isn't. We are desperately
23 trying to recognize and enforce the provisions of the
24 Indian Reorganization Act, but we are being assaulted
25 on many different levels. We need the help of BIA and

1 the federal government to try to bring this act into
2 fruition.

3 Thank you.

4 MR. TAHSUDA: Thank you, Chairman.

5 Let me -- let me try to make sure, again, and be
6 clear. This discussion is not about changing IRA tribes
7 that are currently recognized, their constitutions or
8 anything like that. This morning's discussion is -- is
9 about the process to recognize new tribes under the IRA
10 prov- -- the Alaska IRA provisions. So I appreciate
11 your -- your thoughts and your comments about some of
12 the challenges you face now.

13 And Chief from the Village of Beaver had to
14 leave. She mentioned earlier a session during the
15 Providers Conference. I want to say, if you're able to
16 make it, we are looking at trying to schedule a
17 listening session during the Providers Conference
18 specifically for the IRA tribes. And it's not that
19 other people are excluded, but -- but these are some of
20 the -- I think, some of the questions and issues that
21 we'd like to hear about there, you know, for you as an
22 IRA tribe, what are the challenges you're facing now?
23 What are we not doing to support you as we should?

24 You know, kind of, I -- I -- I get this feeling
25 over time -- again, I'm not from Alaska, so, you know,

1 this is helpful to hear from you -- I get the feeling --
2 the feeling over time that -- you know, that since there
3 are several different types of entities, Native entities
4 here in Alaska, that we haven't always given attention
5 to, you know, some entities as we have with others, and
6 so -- and when we did the consultation in Juneau, I
7 thought we -- we heard very strongly that's what started
8 the process of looking at the Providers Conference, but
9 very strongly from some of the Tribal leaders there that
10 there were issues that the IRA tribes were facing that
11 maybe some of the other entities aren't, or -- but,
12 anyways, we needed to hear that voice.

13 So that's -- I -- I would encourage you, if you
14 can make it, to the Providers Conference session we have
15 there. I think it's -- I think it's going to work out.
16 I think we're going to have a meeting schedule there, so
17 I'd love to hear that, sort of, current -- current
18 challenges and issues that you face.

19 Yes, sir.

20 MR. DEMOSKI: John, I just heard you say that
21 you're hoping to be with IRA tribes during the --
22 (indiscernible - away from mic) -- Providers
23 Conference?

24 MR. TAHSUDA: Yes.

25 MR. DEMOSKI: I don't agree with that. You

1 should be meeting with all of the tribes.

2 MR. TAHSUDA: I -- I can appreciate that.
3 Unfortunately, there are only so many days on the
4 calendar, so many hours in a day, and for us to have a
5 -- a process where -- where at least our senior
6 leadership can be there to attend, it's helpful to be
7 able to do it in conjunction with some -- with an event
8 like that, where we have a lot of the folks in one
9 place, you know. And it may be that we can find, you
10 know, a way to move that further forward and meet more
11 individually later on, but I think at least that's a
12 first step for us to take, and I -- I'm really looking
13 forward. I -- I -- I'm -- I hope I can make it. I'm
14 not sure between me and the Assistant Secretary whether
15 one of the two of us will be there, though, but to -- to
16 hear that sort of kick off to this, you know,
17 discussion, I think would be great. So I appreciate
18 that thought.

19 Any other questions?

20 MR. SINK: Charlie Sink again with
21 Chugachmiut.

22 What I find is -- is that your questions are
23 limited, and you're talking about defining certain
24 things to -- to interpret it on a legal sense. So
25 maybe it would help us a lot to prepare if you could

1 look at the kinds of questions in addition to what's
2 written here that you're looking at for us to respond
3 to, because what -- what we're reacting to is the
4 vagueness of what you're asking of us, and -- and
5 something -- what -- what -- what language are you
6 looking at besides common bond and neighborhoods to
7 interpret? And so to us, it looks like a minefield
8 that we're stepping into, and we're unprepared.

9 MR. TAHSUDA: Well, again, I think, as I said in
10 the beginning, the thought process for us was to ask
11 really broad questions so that we don't exclude
12 anything, we can try to get as much information as
13 possible, so, I mean, that's -- that's the intent in
14 this.

15 I mean, again, I -- I think it's helpful for --
16 for us where there are specific -- so there's statutory
17 provisions, right, that talk about common bonds, and
18 what does that -- what has that meant historically?
19 What does that mean now? You know, but not to -- not to
20 -- (indiscernible) -- on that as if it's the only thing.
21 I mean, we, again, want sort of a broad -- as much broad
22 information as we can.

23 MR. SINK: Well, broad information, but I --
24 what I've already heard you state is that you want us to
25 look at this and then maybe reinterpret things, and so

1 -- so in Indian Country, when you say "reinterpret the
2 laws," you know, our -- our flags are flying very high,
3 going, like, "What the hell are you guys talking about?"
4 Because I'm not a lawyer, and probably most people on
5 this side are not lawyers. There's a lawyer or two on
6 our side over here looking at this stuff.

7 But when you talk about changing laws and -- and
8 vacillates with Congress between assimilation and -- and
9 protection, we are trying to protect what -- what the --
10 what the rights are of -- of the Native people of
11 America, but also the Native people of Alaska, from our
12 point of view, and if we don't understand the
13 implications of how the interpretations of these common
14 words you say, common bond or neighborhood, affiliation,
15 what the implications that you're looking at from a
16 legal standpoint, how are we going to prepare and gain
17 our knowledge to -- to -- to answer in a way that's --
18 that's from -- from our point of view? That's what I'm
19 asking.

20 (Indiscernible - away from mic). We -- we --
21 we don't know what you're -- what you guys are looking
22 at, you know, I mean, as I see the first four
23 questions on today's session, that it starts with
24 "common bond" and goes to "neighborhood" and
25 "affiliation," and then it goes to -- to "sovereignty"

1 and how -- how we wish to implement that, and it's --
2 and it's -- it's -- like, it's kind of a progressive
3 questionnaire, and it -- it leaves -- gives us pause,
4 because it looks at basically challenging who Alaska
5 Native -- Native people will be, and then also, what
6 are the powers of the Alaska Native people, the -- the
7 sovereignty issue. And I think that's fairly well
8 established, but if you're looking at that, is that
9 the discussion we're having here, the powers of -- of
10 -- of the -- of the Alaska Native people in -- in --
11 in tribes in general? Is that what's being
12 interpreted?

13 Because when you put a question down like
14 that, that's our reaction to it, and -- and we just --
15 I -- I've been feeling unprepared from the beginning
16 coming in this session, and I've had a few days to
17 study it and I'm still kind of questioning what's
18 being interpreted here. What are we facing here on
19 this interpretation that -- that -- on the listening
20 session? So it's kind of like, you know, we don't
21 know what you guys are looking for. We're afraid of
22 the challenge to -- to -- to the recognition that we
23 have now.

24 MR. TAHSUDA: Well, again, so none of this is
25 intended to challenge any recognized tribe now, and --

1 but in trying to interpret the 1936 Alaska amendments, I
2 -- I guess in part, I would say we don't know what we
3 don't know. So the more you can tell us, the more it
4 helps us understand.

5 There is -- I mean, I'm not entirely sure.
6 This, I guess, the solicitors maybe can dig up, but
7 clearly there is some difference if you have to amend
8 a '34 law with a '36 law to apply to somebody else.
9 What does that mean? I don't know. And why is there
10 different language into the IRA than there is under
11 the Alaska amendment? What does "common bond" mean?
12 All right. And so the -- the '34 IRA applied to the
13 Lower 48 tribes, and we have a -- you know, we don't
14 even have a great of an understanding of where things
15 are now with that; right? We keep getting Supreme
16 Court decisions that we have to deal with all the
17 time, but what does it mean, you know, for Alaska in
18 -- in doing something different in '36? I don't know.
19 You know, is that -- is it the same? I don't know.
20 I'm asking you guys. Is it best for it to be the
21 same? Should it be something slightly different to
22 fit your situation? Is that why they did it in '36?
23 Is that why they passed new laws in -19 --

24 When was ANCSA? '71?

25 MR. KELLY: '71.

1 MR. TAHSUDA: -- in '71? I -- I -- again, I
2 don't know what I don't know, and it would certainly be
3 helpful to get as much information and background from
4 you from that perspective, but I don't want to -- I
5 don't want to limit it to that either. I think it's
6 very helpful for us as well to hear, you know, a very on
7 the ground -- sort of, you know, what is important to
8 being a Native village or to being an IRA tribe. What
9 is important to you that you've been exercising all of
10 these years? What is it that you feel like we're not
11 doing for you? I mean, what -- what is -- what is
12 something that's important to you that you feel like we
13 haven't supported you enough? Those are -- those are
14 factual questions that go into telling us from a policy
15 perspective what is important about the law. What's
16 important to you.

17 Obviously Alaska Native folks, Alaska tribes,
18 were the intended parties by the '36 amendments, so,
19 again, what does that -- you know, what does that mean
20 today, I guess? It means something in '36. Does it
21 mean the same thing today, or does it mean something
22 different? I don't know. In your minds, what does it
23 mean?

24 MS. WILLIAMS: Hi. This is Kristi Williams
25 again.

1 Sorry. Mr. Kelly, did you want to add to that?

2 I just wanted to say that if we look back at
3 the legislative history of the time period during the
4 act and then the Ickes guidance that followed, Ickes
5 -- the Ickes guidance laid out very clear procedures
6 for how this was to be applied for federal
7 acknowledgement. There's clear evidence in the
8 record.

9 ANCSA, as you referred to, was a land
10 negotiation. It was a land deal. It wasn't about
11 tribes. It had nothing to do with Tribal government
12 or recognizing tribes. In fact, in 1971, the vast
13 majority of thought about tribes here was that we
14 didn't exist. You can't look at ANCSA as context for
15 something that predates ANCSA.

16 MR. TAHSUDA: Don't we have to look at it,
17 though -- I mean, it is something that happened. We
18 can't ignore it either; right?

19 MS. WILLIAMS: Absolutely.

20 MR. TAHSUDA: I mean, that's my whole --

21 MS. WILLIAMS: Absolutely.

22 MR. TAHSUDA: -- point, is help us think through
23 this. That's all --

24 MS. WILLIAMS: I commend --

25 MR. TAHSUDA: -- that's all we're asking.

1 MS. WILLIAMS: I commend your -- your action
2 here. I commend that you're looking at this and trying
3 to determine a path forward, but I would -- I would
4 really respectfully ask that you focus on the two
5 petitions in front of you first, and then exercise this
6 -- this thoughtful activity after you've determined what
7 the outcome for these two pending tribes will be.

8 Spending time on this effort with all of these
9 Tribal leaders who aren't really, really invested in
10 it because it's not something that affects them, is --
11 is really just an effort in futility. We really need
12 to have you focus internally on the process that's
13 been failing these petitioning applicants for 20,
14 25 years, and work out within the Department whether
15 or not the answer to approval will be yes or no.

16 You can justify the court -- you know, I know
17 you want to have a strong court argument so you can
18 back up your -- whatever decision you make for these
19 tribes. You can do that individually for the two
20 petitions, and then after you finish with the
21 decisions that have been pending for so long, you can
22 look at the broader scope of things. We really need
23 you to see the trees right now and not the forest. We
24 really need you to act on these two petitions and
25 utilize your -- your very stretched limited resources

1 within the Department to focus on getting something
2 done, and then look at this broader important
3 discussion after that's been completed.

4 Thank you.

5 MR. KELLY: What I was going to say earlier was
6 that, first of all, to your point, I think you've
7 answered two of the questions, the two questions four
8 and five, which go to the question of sovereignty.
9 You've indicated what you feel. They're not necessary.
10 Why do we have to even deal with this issue? That is
11 exactly the kind of thing that we want to hear.

12 I wasn't involved in preparing these
13 questions. I don't know where they come from, but
14 certainly I think an argument can be made that these
15 questions -- a legal argument can be made that these
16 questions have been addressed by Congress itself in
17 1994.

18 So we're not trying to hide the ball or
19 anything. We're trying to cover all of the issues
20 that can come up in our internal discussions and
21 before the courts with respect to these important
22 issues, and we want to make sure we cover all the
23 basis, and if that's your view on these questions,
24 then, you know -- (indiscernible) -- shouldn't be
25 here, they've been answered, whatever it is, we need

1 to hear that, because if everyone is saying that, then
2 the answer seems to be pretty clear.

3 With respect to the comment about ANCSA having
4 nothing to do with tribes, I think I would have to
5 respectfully disagree with that, and I think by
6 reference to this 1993 solicitor's memo from Thomas
7 Sansonetti, which discusses specifically the effects
8 of ANCSA on Tribal governmental jurisdiction over
9 territory. So in a sense, these two issues, fee to
10 trust and government powers, are connected, they do
11 overlap, and they have been impacted by these various
12 statutes and other regulatory developments.

13 However, with respect to the pending
14 petitions, I think that, as a legal matter, I can see
15 a path forward where precisely because those petitions
16 have been pending for so long -- and as you indicated,
17 you know, there is a possibility that an argument
18 could be made that one is the result of a previous
19 administrative error -- that those issues can be dealt
20 with parallel with the other issues that we're seeking
21 consultation on, because ultimately any guidance that
22 comes out of these efforts, that discussing these
23 things together will not affect or may not affect the
24 two pending petitions, but ones that groups are now
25 considering submitting, and if they are also part of

1 the Alaska common bond, notwithstanding that they may
2 not have a formal government-to-government
3 relationship, then it is important, I would imagine,
4 to address those issues on their behalf too.

5 MR. DEMOSKI: Yeah, John, if you haven't
6 attended a BIA Providers Conference before, it's a
7 week-long event the conference is scheduled, a tight
8 schedule. So if you haven't contacted the regional
9 office in Juneau to put you on the agenda, I would
10 friendly suggest that you do so.

11 MR. TAHSUDA: Yeah, we're working through that.
12 Thank you, though.

13 I didn't make the one last year.
14 Unfortunately, I have not been to one before, and I
15 really -- I was planning to come last year, and it
16 didn't work out, but I'm really hoping to come up and
17 be here for that one.

18 MR. HOPKINS: This is John Hopkins again,
19 Native Village of Eyak.

20 You asked a little while ago what was it that
21 we're asking for, and I think it states it pretty
22 clearly in this amendment here in this letter that you
23 wrote to us, so to me it's pretty clear.

24 MR. TAHSUDA: Let me just add as well to your
25 comment, Ms. Williams. We -- we have -- so we -- we do

1 have to make a policy decision ultimately here, because
2 on -- on recognition, the current policy, which was
3 established in Alaska administration and so far we have
4 carried forward, is that all Tribal recognit- --
5 recognition decisions will go through the Part 83
6 process; however, the Part 83 process is probably not
7 appropriate for Alaska, and, you know, I mean, if
8 there's something similar to that that -- that would be
9 -- (indiscernible) -- into one thing, but we still have
10 to cross that bridge as well. Is -- are we not going to
11 follow? Are we going to change the current policy? So
12 that -- that's a decision that has to be made as well.

13 MS. WILLIAMS: So, yeah, I -- I appreciate that,
14 Mr. Tahsuda, and I actually worked for Kevin Washburn's
15 counselor in -- in the Department when he was the
16 Assistant Secretary, and I was on that committee working
17 on the Part 83 process, and Alaska wasn't contemplated.
18 It was actually taken off the table because it was so
19 complicated. So we -- we did look at the Part 83
20 process as being separate from the Alaska process and
21 the statutory authority that's delegated to the
22 Secretary to, you know, acknowledge tribes in Alaska and
23 different -- different processes that's not part of the
24 Part 83 process.

25 In response to Mr. Kelly, I -- I appreciate

1 that -- that ANCSA did have to do with tribes, but in
2 terms of the sovereign power of tribes, the sovereign
3 power of tribes is anything that Congress hasn't
4 abdicated. So for us to be talking about parceling
5 out what the tribes' powers are is -- is a little bit
6 frightening to me, that we're going to put a box
7 around what the powers are, because Tribal sovereignty
8 is everything that Congress has not abdicated.

9 Thank you.

10 MR. ERICK: I'm Ernest Erick from Venetie.

11 Again, I have to go back and tell you that we
12 need to bring it back to the root level, we're come --
13 where we're coming from. We have a lot of people up
14 north. Not Fairbanks or Juneau or Anchorage, you
15 know, these are not our people, yeah.

16 And you have some bullets ready (ph). I have
17 documents since every -- since the 1800s, okay, and we
18 went by the law, how it's written. I don't understand
19 treaty where you come from. I understand Tribal ways
20 of a tribe from the immemorial time, and we're going
21 to stick with that. But the closest that my people
22 could go, they cannot listen, but we don't have our
23 lawyers here today. Thanks to Kristi for making good
24 comments and direction and identify some of the very
25 important -- for the tribe, the IRA tribe within the

1 State of Alaska.

2 Common, it's just a common tribe, that's local
3 village council, that common. It's just like Roberts
4 Rules of Order, that you created. My father, my
5 grandfather's name is Robert. Those rules, order was
6 coming from him back in the 1700s, and today it's
7 changing because I don't understand treaties.

8 And I know where you're coming from. I'm
9 coming from the roots of the land that exercises the
10 constitution of my constitution tribe within the State
11 of Alaska. We were not part of them. We went on our
12 own. All the children understand what tribe is within
13 my area, from the heart, and to make Anchorage or
14 Fairbanks making a decision for the tribe, even if
15 you're not -- it says, "Public meeting will be open to
16 anybody else," you know, that's going to hurt me, the
17 tribe. So you need to go back, bring your people up
18 to my area to discuss this, a consultation, ways of
19 doing things, Tribal, government,
20 government-to-government relationship. The State will
21 be there too.

22 Thank you.

23 MR. TAHSUDA: All right. We're getting pretty
24 close to our time frame here. Any last comments?

25 All right. Thank you, guys. I really

1 appreciate you taking the time to be here, and for
2 those of you that -- that are interested in the
3 fee-to-trust discussion, we'll start off in an hour or
4 a little over an hour, 1:00, and talk about that
5 portion of the Alaska IRA.

6 Thank you. We'll close this session.

7 (Off record.)

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