

1083 AP
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RC 063

Good afternoon board members

My name is Mary Bishop and I live in the Fairbanks area; I am representing myself

My purpose today is related to the earlier discussion by AG Lindemuth about federal acquisition of tribal lands into trust.

In that regard I enthusiastically encourage you to investigate the possibility of using the new tribal court process she mentioned in order to address problems like Lisa from the mid-Kuskokwim AC spoke about – that is in relation to use of waterfowl and game bird meat. I believe Proposal #47.

Second, I encourage you to get a 2nd opinion with regard to the issue of the state's regulation authority on tribal lands taken into trust. As is often observed, if you ask for an opinion from 3 attorneys, you will surely get at least 3 different opinions. Obviously the AG's prior to AG Lindemuth, Michael Geraghty and Craig Richards, were of a different opinion. They did not consider the state's position as weak when it came to challenging the Akiachak case.

However, I suggest that the state's position may well be weakened each time the state does not oppose an application for trust land—and evidently several more applications have been submitted to the BIA.

In a Public Law 280 state, such as Alaska, the State loses regulatory and tax authority, the tribe gains those authorities in Indian country – Regulation authority and tax authority.

SO #1. Please investigate the possibilities of using tribal courts, like the new one in Anvik [which obviously does not require Indian country status] to reduce certain fish and game violations and to encourage responsible use of our fish and wildlife resources. The young man who shot the wood bison probably had a habit of irresponsible use that would have been discouraged early in his youth if he had gone before his village tribal court. Indeed, sometimes it does "take a village to raise a child".

And #2. I encourage you to get a 2nd opinion with regard to state fish and game authority on tribal trust lands in Alaska [– perhaps via questions about "off-reservation trust lands" posed to AG's in a couple other of the PL280 states, which are California, Wisconsin, Minnesota, Oregon and Nebraska].

Specifically in this regard—I have a document in my hand in which the BIA answers questions from Senator Lisa Murkowski. The BIA repeatedly says..."Any Alaskan tribe with trust land would be able to exercise its authority over such land consistent with the manner in which Indian tribes exercise authority over trust lands in the lower 48 states...pursuant to Public Laws 83-280 and 85-615."

The BIA tells the Senator that once received in trust by the U.S., the land is considered Indian country. They say that ANCSA lands may be taken into trust and that they have experience dealing with split estates and see no problem addressing that issue with ANCSA lands – where the surface estate might be held by a tribe in trust and the subsurface by a Regional Native Corporation. In addition the BIA reports to the Senator that public easements, such as RS2477s, not yet federally recognized would be surrendered.

The AG seemed to assert that not much tribal land is owned in fee by tribal groups and thus eligible for trust status. Yet Venetie is 1.5 million acres and Tetlin is .7 million acres. I'm fairly sure that both are held in fee by the tribes after having been transferred from their respective ANCSA village corporation ownership.

In addition Alaska contains over 14,000 allotments – one document saying that the sum acreage totals 4-6 million acres. A lot of real estate and more to come.

AG Lindemuth claimed that the State's case against Akiachak was weak and therefore she advised dropping the case. Obviously former AG's disagree with that opinion. In addition, agency rules, like the BIA fee-to-trust rules are coming under greater scrutiny by Courts. Courts are looking at what Congress actually said in the enabling legislation. They want to be assured that original legislative intent (like that in ANCSA) is consistent with agency rules and regulation. A prime example of this situation is the Carcieri case decision by the SCOTUS in 2009.

My last point: The DOI fee-to-trust process is bad for Alaska – and for the rest of the U.S.

1. From a Law360 article entitled "DOI Rules Will Drastically Impact Alaska Land Management, by 3 attorneys from Perkins Coie LLP, Feb 13, 2015. "...As noted above, off-reservation requests, like those in Alaska, need a business plan and an explanation of why the trust status is justified considering local community impacts. The tribe's justification is typically taken at face value. Despite the impact to state and local governments and other parties, there is no opportunity for public comment unless an environmental impact process is required. The BIA is generally lenient in applying these rules, giving tribes an easy path to trust lands. ...tribes may be approached by investors willing to fund the acquisition of lands that could then be used for activities that would otherwise be inconsistent with state or local law... Alaska's consideration of a federal legislative solution to the question of the relationship between trust lands under the IRA versus the land allocation system under ANCSA could potentially culminate in an entirely new legal landscape for Indian Country in Alaska.
2. From an article published in the 2013 Pepperdine Law Review, written by Kelsey Waples and entitled Extreme Rubber-Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934. The BIA has a record of "rubber stamping" trust applications. "This process, known as the fee-to-trust process, is the subject of fervent opposition by many affected communities because once taken into trust for a tribe, such land is no longer subject to state and local taxation or zoning, planning, and other regulatory controls. Accordingly, the Comment explores the efficacy of the fee-to-trust process by analyzing the Pacific Region Bureau of Indian Affairs decisions on proposed trust acquisitions from 2001 through 2011. Supported by this data, which shows a 100% acceptance rate, this Comment ultimately concludes that the process is shockingly biased and toothless—merely an exercise in extreme rubber-stamping. Thus, there is a great need for comprehensive reform of the fee-to-trust process, including the creation of a meaningful role in the process for affected communities, establishment of clear and specific standards for acceptance of land into trust, and an emphasis on collaborative solutions."

- 3. From 9th Circuit Judge Fernandez, who participated in the Venetie decision and noted in 1997:
 "We have been asked to blow up a blizzard of litigation throughout the State of Alaska as each and every tribe seeks to test the limits of its power over what it deems to be its Indian country. There are hundreds of tribes, and the litigation permutations are as vast as the capacity of fine human minds can make them. They can include claims to freedom from state taxation and regulation, claims to regulate and tax for tribal purposes, assertions of sovereignty over vast areas of Alaska, and even assertions that tribes can regulate and tax the various corporations created to hold ANCSA land. The latter assertion would give the tribes the power to control, regulate and tax those corporations out of existence and would provide a fruitful area for intertribal conflict. This is no imaginative parade of horrors."

Board members, for the above and additional reasons I urge you – in whatever capacity you may have – to advise against fee-to-trust land in Alaska and for Anvik-style tribal courts in Alaska. I welcome ~~your~~ ^{your} additional questions and comments.

Thanks you.

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