

Congress of the United States
Washington, DC 20515

March 2, 2011

Mr. Stanley Speaks, Regional Director
Northwest Regional Office
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232-4169

Dear Mr. Speaks:

The Lummi Nation and Whatcom County began negotiations in February 2009 on a long-term lease for tidelands underlying the ferry dock at Gooseberry Point. Our offices have been in close communication with both parties and were recently informed that negotiations are at a standstill.

On February 10, 2011, Lummi Nation provided notice to Whatcom County to “terminate its ferry operations” by April 10, 2011. Termination of ferry operations would mean a major disruption for close to 900 Lummi Island residents who rely on the ferry to commute to the mainland for school, work and essential services.


We are concerned about this matter and support the resolution of this issue. We are forwarding the attached letters from Whatcom County and ask that the Bureau of Indian Affairs (BIA) respond to Whatcom County and provide guidance and clarification on the BIA’s role as it relates to the lease of the tidelands held in trust.

The timing is critical and we would greatly appreciate your immediate attention to this matter. We look forward to hearing from you.

Sincerely,


Patty Murray
United States Senate


Maria Cantwell
United States Senate


Rick Larsen
Member of Congress

CC: Larry Echo Hawk, Assistant Secretary of Interior
Judy Joseph, Superintendent, Puget Sound Agency, BIA.

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082



Pete Kremen
County Executive

February 23, 2011

The Honorable Rick Larsen
108 Cannon House
Washington, D.C. 20515

Dear Representative Larsen:

Recently Whatcom County notified you of its difficulty in reaching a reasonable settlement with Lummi Nation for a lease of the tidelands necessary to the operation of the ferry between Lummi Island and Gooseberry Point. The ferry, currently serving over 800 residents of Lummi Island and visitors to the island, has operated on that route for about 90 years, with the County continuously operating it for over 80 years. There are simply no feasible alternative routes available for the ferry operation such as we have, with the Fairhaven terminal lying over seven miles distant across Bellingham Bay with all of the weather-related barriers that restrict a small ferry.

While the County has offered to pay Lummi Nation \$200,000 (over three times fair market rental value) per year plus annual CPI adjustments for the Lummi-owned lands necessary for the ferry operation, including both trust and non-trust lands, the reality is that the County cannot compel Lummi Nation to agree to a lease of the tidelands, no matter what the size of its offer. In the absence of a lease approved by the Bureau of Indian Affairs (BIA), the BIA (as administrator of the trust that the U.S. government holds over the tidelands for Lummi Nation's benefit) has enforcement power and may well bring an action to evict the County and its ferry operation from the tidelands at Gooseberry Point.

The fact of the matter is, the BIA has in its possession a lease agreement for the pertinent properties executed in 1988 by both Lummi Nation and Whatcom County. Its validity is contingent upon BIA's approval of the lease agreement. For reasons that have never been provided, the BIA has not approved the lease. At the same time, given that Lummi Nation approved and signed the lease in 1988, there is no legal obstacle, or any other reason, preventing the BIA from approving it at this time, according to the terms previously agreed by the parties.

The lease provides for a term of 25 years, dated from February 15, 1985, with a renewal for a second term of 25 years thereafter. The lease price for the second term is to be negotiated by the parties, and if the parties are unable to agree, the price is to be determined by binding arbitration. The standard by which the lease cost is to be determined is "the fair market value of the leased land." In the absence of a negotiated settlement, which the parties have yet to achieve, the BIA will be put to a choice of evicting the County (which has fully provided the consideration stipulated in the lease agreement signed by Lummi Nation in 1988) or signing the agreement to which Lummi Nation previously agreed. In fact, Lummi Nation agreed to the lease

terms not only in 1988, but also in a federal consent decree in October 1982. The only remaining element for which both the consent decree and lease provided is BIA approval which to date has not been given.

In the face of possible eviction that would terminate a critical and historical transport link to a portion of its citizenry, it would be prudent and appropriate for the BIA to simply sign the lease to which the parties themselves agreed in 1988, thereby exercising its trust authority and responsibility. We respectfully request that you support the agreement, which was freely and fairly reached by the parties in 1988 and that you urge the BIA to approve that agreement. As you've been made aware the Lummi Nation has notified the County that we are to cease operations by April 10, 2011, therefore, time is of the essence.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Kremen", with a long, sweeping underline.

Pete Kremen
County Executive

cc: President Barack H. Obama

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082



Pete Kremen
County Executive

February 23, 2011

The Honorable Maria Cantwell
511 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cantwell:

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Pete Kremen
County Executive

cc: President Barack H. Obama