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2719 Donovan Ave.  
Bellingham, WA 98225  
6 July, 2010

Honorable Maria Cantwell  
United States Senator  
920 Riverside, Ste. 697  
Spokane, WA 99201  
Ref: Lummi Island Ferry

Dear Senator Cantwell,

Based upon a review of documents available in Whatcom County, it appears a disorganized combination of events has created an irrational circumstance that allows the Lummi Nation to exact discriminatory and injurious fees from the County, threaten to blockade a century old ferry system and substantially isolate the community of Lummi Island.

In 1920 the Secretary of the Interior approved a right-of-way across the Lummi Reservation to Hales Pass expressly for the purpose of a ferry to Lummi Island. The right-of-way was then described only to the shoreline. Courts subsequently established that the reservation boundary extends to the low water mark, some yards beyond the shore, leaving access across a few thousand square feet of submerged land in dispute.

However, federal authority over navigable waters extends to the high water mark. Consistent with the longstanding federal policy of navigational servitude, the right-of-way should have been administratively amended to accommodate passage across the intervening tidelands. It never was, and a dispute over the ferry landing has festered since the early 1960's when the County first entered into a tideland lease as a pragmatic solution to protracted negotiations.

Meanwhile, the adoption of 25 U.S.C. Chapter 8, § 324 now prevents the Secretary of the Interior from granting rights-of-way over tribal lands without the consent of tribal officials. Absent this permission, Congress is the only remaining authority for correcting the earlier oversight (25 U.S.C. Chapter 9, § 341). However, to date, elected representatives contacted for help have replied that the right-of-way dispute must be settled locally. That runs counter to federal policy.

25 U.S.C. Chapter 19, Subchapter 7, § 1773, states "It is the policy of the United States...to support the resolution of disputes over historical claims through settlements mutually agreed to by Indian and non-Indian parties" including "jurisdiction over...navigation, and authority and control in the areas of land use." It further recognizes that "...any final resolution of pending disputes through a process of litigation would take many years and entail great expense to all parties; continue economically and socially damaging controversies; prolong uncertainty as to the access, ownership, and jurisdictional status of issues in question; and seriously impair long-term economic planning and development for all parties." The Lummi Island ferry dispute could not be described more accurately.

Congress has the authority to either summarily grant the right-of-way over the disputed tideland margin, or to initiate a comprehensive settlement negotiation that could consider and potentially resolve many other legitimate concerns of the tribe. These include transportation planning, traffic safety, land use and harbor facilities. Negotiations are now proceeding under executive privilege, leaving the public able to only wonder which issues are being included.

Without congressional housekeeping or a settlement framework, those most affected remain completely excluded and left with only nagging uncertainties over the future of their businesses and properties, the adequacy of public safety, and how their children will get to school. Denied a role as stakeholders in the process, they have no ability to influence which potential solutions are preferred or what costs they will bear to preserve access to their community.

Lummi islanders are a politically timid lot. They even fear that petitioning Congress for assistance might anger the tribe and hurt their chances at achieving a reasonable long-term lease. But leasing has proved a questionable means of assuring the ferry's passage. Earlier this year, the tribe unilaterally terminated a lease earlier stipulated by federal consent decree in a civil action they initiated. The lease, by law and under its own terms, required the signature of the Secretary of the Interior. Neither party to the lease apparently ever submitted it for approval, despite having adhered to its other terms for 25 years.

Citing this technical defect, the tribe threatened to blockade the ferry on February 14<sup>th</sup>, forcing the County into an interim agreement with charges of over \$16,000.00 per month. Based upon a recent appraisal, payments would have been about \$5,500.00 per month under the terms of the abrogated lease. By way of comparison, the Tribe charges an adjacent tideland lease only \$150.00 per month for a similarly sized pier supporting a seafood-processing joint venture business. Normal priority for public necessity has apparently been misplaced. Continued faith in a lease as the best solution may be similarly misplaced.

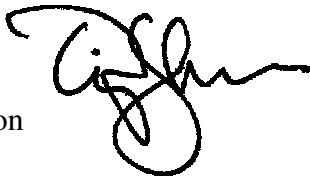
There is no reason to be optimistic about the outcome. Exorbitant rents will mean higher fares, lower levels of service and an unwelcome burden, especially on the islands poorest residents. The Lummi Nation wants the ferry terminal relocated. That would add many millions in costs the County cannot afford. There is no feasible alternative landing for the existing ferry. Bellingham and Fairhaven are long, dangerous crossings that would make service less frequent and require a much larger vessel and new docking facilities. The costs are staggering.

Lacking authority and means, the County is powerless to influence the outcome. Social relations will deteriorate rapidly when taxes must be raised, fares go up, island property values fall, businesses fail, and people are forced to move to get to work or send their children to school. If unnecessary constraints on emergency services result in preventable damages or death, timidity could turn to outrage. Many are already confused to see the Lummi Nation enjoy economic development grants, stimulus packages, normal road work, ample utilities and adequate emergency services while simultaneously tightening the screws on Whatcom County and the Lummi Island community - which receives little enough in county services for all the taxes they pay. A negotiated settlement could take all these factors into consideration much more fairly.

No one should begrudge First Nations any effort toward stronger community, more cohesive culture or a more vibrant economy. In this instance, I believe the Lummi Nation's strategy is working against their best interests. Exploiting bureaucratic technicalities to hold an entire community hostage to secret and unfettered demands is unreasonable, unfair, and can only harm the Nation's image, their investments and future prospects. Tribal members do not need more stress added to their already sometimes difficult social relations in Whatcom County.

Please take the lead in correcting and perfecting the right-of-way to Lummi Island. Its many prior approvals, a century of use and the sheer magnitude of public necessity deserve attestation and affirmation. Ancillary issues might then be publicly and reasonably discussed without one side feeling threatened and at an intractable disadvantage. Alternatively, a federal settlement could comprehensively consider all relevant issues and entertain public comment while arriving at a mutually agreed and beneficial resolution. Such a resolution is not possible locally. Please help avert this impending disaster.

Sincerely,



Tip Johnson

P.S., Please read articles available at: <http://www.nwcitizen.com> for more information and context:

"Never Enough? Enough is Enough!" Mon, Jun 21, 2010:

<http://nwcitizen.com/entry/never-enough-enough-is-enough>

"Secret Deals - Stinkier and Stinkier" Sun, May 02, 2010:

<http://nwcitizen.com/entry/secret-deals-stinkier-and-stinkier>

"Lummi Accolade: Brave, Smart and Honest" Fri, Feb 05, 2010:

<http://nwcitizen.com/entry/lummi-accolade-brave-smart-and-honest>

"The Lummi Blockade: Block Lummi Aid?" Wed, Feb 03, 2010:

<http://nwcitizen.com/entry/the-lummi-blockade-block-lummi-aid>

"The Lummi Blockade", Sat, Jan 23, 2010:

<http://nwcitizen.com/entry/the-lummi-blockade>