

Native Village of Barrow
Petition to Reassume Exclusive Jurisdiction
Under the Indian Child Welfare Act

This petition follows sequentially the requirements for information listed in 25 C.F.R. § 13.11(a). As background, however, a short factual narrative is included prior to the section 13.11(a) format.

General Background

The Native Village of Barrow is a federally recognized Native American Tribe organized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; 63 Fed. Reg. 9250 (1998); Federally Recognized Indian Tribe List Act of 1994, P.L. 103-454, 108 Stat. 4791 (Nov. 1, 1994). The Village is located on the Chukchi Sea coast, about 7.5 miles south of Point Barrow, and includes within its boundaries the City of Barrow, occupying a 21-square-mile area. Alaska Consultants, Inc. Background for Planning, Prepared for the North Slope Borough (December 1983). The only access to Barrow from the major population centers is by air. Lyn Kidder, Barrow, Alaska ... from A to Z, p. 19 (1995).

Barrow's population is approximately 4,000 of which some two-thirds (63.9%) are Alaska Native, 90% of whom are members of the Tribe. The Inupiat people of Barrow are a whaling people and have occupied the area along the Chukchi Sea since time immemorial with recent research tracing their immediate ancestors to 1530 A.D. Lyn Kidder, Barrow, Alaska ... from A to Z, p. 64.

The Village is made up of a checkerboard of Native allotments, Native townsite lots, fee lands held primarily by tribal members, and land conveyed by the federal government to the corporation established for the Native people of Barrow (Ukpeagvik Inupiat Corporation) under the Alaska Native Claims Settlement Act. The Tribe proposes to exercise exclusive jurisdiction under 25 U.S.C. §§ 1911(a), 1918(b)(2) over the physical territory that is coterminous with the City of Barrow.

The Tribe administers a wide array of Federal Indian programs for its members in coordination with the activities of various Federal agencies such as the Indian Health Service, the Bureau of Indian Affairs, the Department of Housing and Urban Development, the Administration for Native Americans, and the Department of Education.

Informational Requirements of 25 C.F.R. § 13.11(a)

(i) Full name, address and telephone number of the petitioning tribe or tribes.

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Barrow, AK 99723

Tel.: (907) 852-4411

- (2) A resolution by the tribal governing body supporting the petition and plan.

A resolution by the tribal governing body supporting the petition and plan is attached.

- (3) The proposed date on which jurisdiction would be reassumed.

It is the Tribe's position that it currently enjoys jurisdiction over child custody matters under 25 U.S.C. § 1911(b), see Native Village of Venetie I.R.A. Council v. Alaska, 944 F.2d 548 (9th Cir. 1991). However, for the purposes of this petition, the Native Village of Barrow proposes that its exclusive jurisdiction under 25 U.S.C. §§ 1911(a), 1918(b)(2) become effective upon the date of approval of this petition by the Secretary.

- (4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

The estimated current membership of the Native Village of Barrow is 2,100 members, 2,000 of whom live in Barrow. This figure is based on tribal enrollment records and records of the Arctic Slope Regional Corporation (ASRC) which is the corporation established under the Alaska Native Claims Settlement Act for members of tribes in the North Slope region of Alaska, including the Native Village of Barrow. All NVB tribal members are shareholders of the ASRC.

- (5) Current criteria for membership in the tribe or tribes.

The criteria for membership in the Tribe is determined by Article 2 of the Native Village of Barrow Constitution, and by the procedure in the Tribal Enrollment Ordinance, No. 95-01 which was adopted by the Tribal Council pursuant to Article 3, Section 5 of the NVB Constitution. Members are those persons identified on the 1940 list of Native residents of the Village of Barrow (made according to the Instructions of the Secretary of the Interior), children of members, and,

upon approval of the Tribal Council, those Native persons who set up residence in the village. .

- (6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

Any participant in an Indian child custody proceeding before the Native Village of Barrow Tribal Council may request a determination from NVB's Tribal Operations director as to whether the child is an enrolled member of the Tribe.

- (7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

As a self-governing entity from time immemorial, the Native Village of Barrow has long had the sovereign power to decide matters concerning its common good, including matters of child custody. The Tribe's jurisdiction over these matter predates the Indian Child Welfare Act and, indeed, the organization of the United States of America. Tribal jurisdiction over these matters has never been divested by the United States, therefore, the Native Village of Barrow retains such jurisdiction, as is recognized in its Tribal Constitution Article 4, section 1 which states that the Village has to power:

"To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply."

Further, Article 4, section 1 empowers the Tribe:

"To guard and foster native life, arts, possessions and native customs not against law."

The Tribe's authority to exercise jurisdiction over child custody matters involving its members is thus an enumerated power of the Tribe's constitution.

- (8) Description of the tribal court as defined in 25 U.S.C. § 1903(12) that has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds

that will become available only when the tribe reassumes jurisdiction may be included.

The tribal court that will exercise jurisdiction is the Native Village of Barrow Tribal Council. By virtue of its inherent sovereignty, the Native Village of Barrow has vested judicial authority in the Tribal Council. The Tribal Council has operated as the Village court with the recognition of the State of Alaska in the past. The NVB Tribal Council is within the definition of "tribal court" in 25 U.S.C. § 1903(12) as a "court established by the code or custom of an Indian tribe."

The regulations request an "organization chart" for the court. 25 C.F.R. § 13.11(a)(8). In the case of the Native Village of Barrow, a narrative description of the court is more appropriate, although an organization chart is also attached.

The Tribal Council exercises the legislative, executive, and judicial authority for the Village. Child custody matters may be initiated before the Tribal Council by anyone who has knowledge of the facts alleged. See Child Custody Ordinance, Part II, Section 5. Sitting in its judicial capacity, the Tribal Council hears the matter and issues appropriate orders. Compliance with orders is monitored by the Village's Social Services Director and other administrative officials of the Village, as may be appropriate.

Currently, there is no specific budget for the Tribal Council sitting as a tribal court. As needed, the Village may utilize funds from its BIA-funded Indian Child Welfare grant (\$45,800 for 1997) and from the Social Services program of its Indian Self-Determination Act contract (\$57,900 for 1997) to facilitate disposition of child custody matters. The Village has also utilized funds from its "General Fund" on an ad hoc basis to cover expenses for child custody matters. The General Fund is funded primarily by the limited commercial enterprises of the Village.

- (9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

A copy of tribal ordinance establishing rules and procedures for the exercise of jurisdiction over child custody matters is attached.

The tribal child custody ordinance establishes a comprehensive method for exercise of jurisdiction in child custody proceedings and is submitted as the "plan" required by 25 U.S.C. § 1918. It establishes rules and procedures

for initiating, investigating and resolving cases involving minors in need of care, adoption and child custody. The ordinance provides standards for shelter care for juveniles and ensures that juveniles will not be detained without adequate due process. Section 24 provides that no case shall be presented to the Council until the Social Services Director has completed a comprehensive report to determine what, if any, further proceedings should be taken. Section specifically establishes the authority of the Social Services Director to cooperate with the State and to invite the State's Division of Health and Social Services to become involved in any case deemed appropriate. The ordinance also provides for hearings to resolve adoption and custody cases. Cases that go to the Council must be handled such that the due process and equal protection rights of all parties are protected.

- (10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction is reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family - regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

There are several resources for children and families which are currently available, and will continue to be available after the Village reassumes jurisdiction over child custody matters. These services are provided by the Native Village of Barrow and by the North Slope Borough (NSB, the state municipality which encompasses the Village).

The Native Village of Barrow provides Indian Child Welfare Act services. The ICWA worker will counsel and give other services prior to and after adjudication of child custody cases. The ICWA worker will determine the need to provide substitute care or out-of-home care; will develop a system of foster homes by recruitment of foster parents within the Village; will coordinate in the planning and establishment of a tribal court; will promote family stability through counseling, foster care and adoption cases.

The NSB provides a "Children & Youth Services" program which consists of an Emergency Shelter serving children from birth to age 17 who are at risk of abuse or neglect. Residential Care services are provided for children and adolescents aged 12 to 18 years with moderate behavior disorders. Family-

based services include in-home support services; counseling day and night respite, transportation; individual parenting classes, arranging for medical treatment, housing, and food; and linking families with all potential local resources.

The NSB also administers a program called "Arctic Women in Crisis" which provides counseling for children and their mothers. If necessary, the referred families can stay for up to six weeks in the residential area. Once in their own home, the child, with the permission of the mother, can be counseled on an out-patient basis.

The NSB provides a Counseling Center. Referred adolescents with behavioral problems are evaluated by a doctor who comes to Barrow twice a month. Clients can also be evaluated by a clinician from the Center. Clients are counseled for up to six months, as needed.

The NSB administers the Village Public Safety Officer program which, when aware of possible neglect or abuse of a child, will notify the Village ICWA Director and the Division of Family and Youth Services, who will conduct investigations and act accordingly.

- (11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

The estimated number of child custody matters that would come before the Tribal Council in a given year is 48. This estimate is taken from the number of notices of state court matters involving children of tribal members which were received by the Tribe from various states (including Alaska) in a recent 12-month period. Of approximately 164 notices, it is estimated that Tribal Council actually considered 48 cases, most of which involved tribal consent for child custody actions in state courts.

- (12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

The Native Village of Barrow is currently planning agreements with the North Slope Borough, the state-chartered municipality which encompasses the Village, regarding foster care services and other child custody matters. As yet, no agreements have been finalized.

- (b)(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

The State of Alaska bases its jurisdiction over Alaska Native child custody matters on 28 U.S.C. § 1360 (commonly known as "Public Law 280"). See Native Village of Nenana v. Alaska Dep't of Health, 722 P.2d 221 (Alaska 1986).

- (b)(2) Clear and definite description of the territory over which jurisdiction will be reassumed together with a statement of the size of the territory in square miles.

The Native Village of Barrow proposes to exercise its exclusive jurisdiction over Native child custody matters arising within the territorial limits of the City of Barrow, Alaska. The City of Barrow encompasses a 21-square-mile area. All resident members of the Native Village of Barrow live within the city limits. The population of the City is approximately 4,000 of which some two-thirds (63.9%) are Alaska Native, 90% of whom are members of the Tribe.

- (b)(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

Not applicable.

- (b)(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

The ICWA defines "Indian children" as one who is under 18 years of age and is either a member of the Tribe or is eligible for membership and has a biological parent who is a Tribal member. The Native Village of Barrow Enrollment Coordinator states that the total number of Alaska Native children residing in the Village is 825. This estimate is derived from the 1997 enrollment records kept by the NVB and coordinated with the Arctic Slope Regional Corporation (ASRC), the Native corporation established under the Alaska Native Claims Settlement Act (ANCSA) for tribal members. Since almost all Native Alaskan residents of the Village are NVB tribal members, and since virtually every member immediately enrolls eligible newborns for the purposes of eligibility for ASRC dividends, this estimate of the number of children in the Village is considered extremely accurate.

NATIVE VILLAGE OF BARROW

ORGANIZATIONAL CHART

