

Congress of the United States
Washington, DC 20510

March 10, 2021

Mr. Rob Fairweather
Acting Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503
Via Facsimile: 202-395-3729

Dear Mr. Fairweather:

We strongly support the decision made by the United States District Court for the Western District of Washington to temporarily stop the sale of the National Archives and Records Administration (NARA) Federal Archives and Records Center in Seattle, Washington. We ask that the Office of Management and Budget (OMB) acknowledge the Court's ruling and support the plaintiff's position that the Seattle NARA facility cannot be sold and these vital records must remain in the Pacific Northwest. The process leading to the proposed sale of the facility under the Federal Assets and Transfer Act (FASTA) was legally flawed and importantly, OMB failed to consult with Tribal governments and organizations in violation of its own Tribal consultation policies.

On January 24, 2020, the Members of the Congressional delegations for Alaska, Washington, Oregon, and Idaho sent the enclosed letter to your predecessor, Russell Vought, urging that he reject the Public Buildings Reform Board (PBRB) recommended list of properties to be sold pursuant to FASTA due to a number of concerns related to the proposed sale of NARA's Seattle facility. A top concern was the failure by the PBRB to consult with Tribal representatives.

We are not aware of any effort by OMB, the PBRB, NARA or the General Services Administration (GSA) to consult with Tribal representatives at any stage of the process. It was only after OMB's decision to approve the PBRB's list of facilities proposed for sale that Tribes and Tribal organizations were notified of the sale and NARA offered the opportunity discuss its future plans with them. This is not an acceptable degree of Tribal consultation, and clearly, the sale of this facility greatly impacts Native Americans and Alaska Natives in our states. Under Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), all federal agencies are required to engage "in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications." This Executive Order was re-affirmed by President Biden in his Memorandum on Tribal Consultation and Strengthening Nation-to-Nations Relationships, which also charged OMB with the responsibility to review Tribal consultation policies and actions throughout the federal government. As a result, OMB must recognize and remedy its failure to enforce Tribal

consultation policies in the FASTA process and its own lack of Tribal consultation in its decision to approval to sale of the Seattle NARA facility.

On January 4, 2021, the States of Washington and Oregon and 35 Tribal governments and Native organizations in four states filed suit in the United States District Court for the Western District of Washington asking the Court to declare that NARA's Seattle facility is ineligible for sale under FASTA and that the lack of Tribal consultation made the PBRB's actions "illegal, arbitrary, and capricious, and abuses of discretion." On January 7, the plaintiffs sought a preliminary injunction to block the sale of the facility. On February 16, 2021, the Court enjoined the sale of the Seattle NARA facility (*Washington v Fairweather*, No. 21-00002). Judge Coughenour held that the plaintiffs had established a likelihood of success on their claim that section 3 of FASTA exempts the Seattle archives facility from disposition by the PBRB. Judge Coughenour also held that the plaintiff States and Tribes had established a likelihood of success on their claims that OMB had unlawfully failed to follow the mandatory procedures Congress established in section 11 of FASTA. We agree with Judge Coughenour's conclusions, which mirror many of the concerns expressed in our earlier letter.

The NARA facility in Seattle contains irreplaceable records that are critical to the Tribes in our states, as well as to state agencies, universities, teachers, students, and researchers. The removal of the records from the region would make it nearly impossible for our constituents to access them. OMB's previous failure to adhere to FASTA's requirements and ensure that stakeholder and Tribal consultation requirements prioritized by this and prior Administrations occurred throughout the FASTA process, must be remedied. We therefore respectfully ask that you take immediate action to reverse OMB's prior approval of the sale of this facility by supporting the plaintiffs' position.

Sincerely,



Maria Cantwell
United States Senator



Lisa Murkowski
United States Senator



Patty Murray
United States Senator



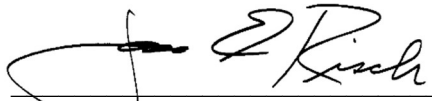
Dan Sullivan
United States Senator



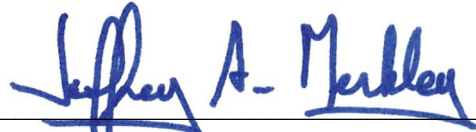
Ron Wyden
United States Senator



Mike Crapo
United States Senator



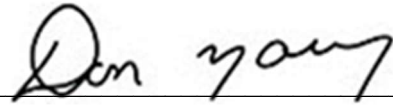
James E. Risch
United States Senator



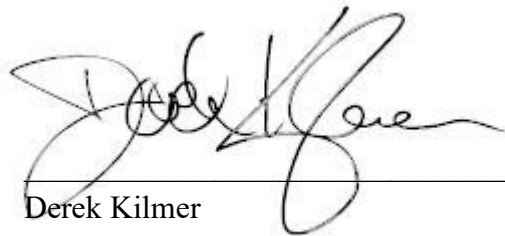
Jeffrey A. Merkley
United States Senator



Pramila Jayapal
Member of Congress



Don Young
Member of Congress



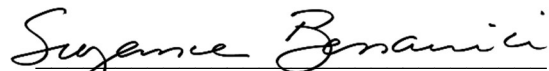
Derek Kilmer
Member of Congress



Cliff Bentz
Member of Congress



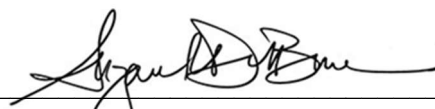
Earl Blumenauer
Member of Congress



Suzanne Bonamici
Member of Congress



Peter DeFazio
Member of Congress



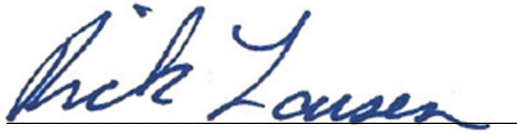
Suzan DelBene
Member of Congress



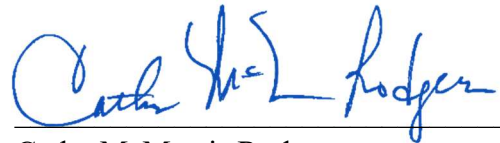
Russ Fulcher
Member of Congress



Jaime Herrera Beutler
Member of Congress



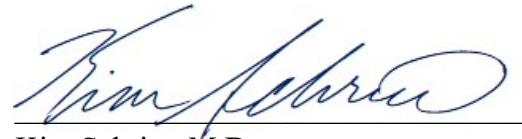
Rick Larsen
Member of Congress



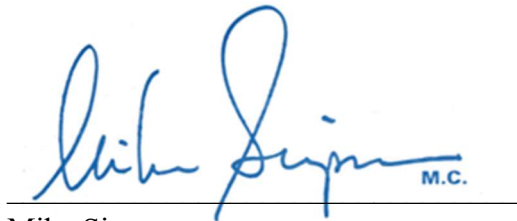
Cathy McMorris Rodgers
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Kurt Schrader
Member of Congress



Kim Schrier, M.D.
Member of Congress



Mike Simpson
Member of Congress



Adam Smith
Member of Congress



Marilyn Strickland
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