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PUBLIC HEARING
FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES
PROPOSED RULE 25 CFR 83

MORNING SESSION
JULY 15, 2014

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PUBLIC HEARING
FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES
PROPOSED RULE 25 CFR 83

Bureau of Indian Affairs
911 NE 11th Avenue
Portland, Oregon
July 15, 2014

APPEARANCES:

- LARRY ROBERTS, Principal Deputy
Assistant Secretary - Indian Affairs

- ELIZABETH APPEL, Assistant
Secretary - Indian Affairs

- STEPHEN L. SIMPSON, Office of the
Solicitor Division of Indian Affairs

1 TUESDAY, JULY 15, 2014

2 8:35 A.M.

3 * * * * *

4 LARRY ROBERTS: Good morning, everyone.
5 We're going to go ahead and get started this
6 morning.

7 So my name is Larry Roberts. I'm the
8 Principal Deputy Assistant Secretary for Indian
9 Affairs and with me today I have Liz Appel --
10 It's too early this morning -- Liz Appel, who is
11 awesome, and she is our director of the Office
12 of Regulatory Affairs and Steve Simpson from the
13 Office of the Solicitor.

14 And you all should have a packet of
15 materials that you received as you walked in
16 this morning. We're going to essentially this
17 morning walk through a brief PowerPoint and then
18 open up the floor to comments on the proposed
19 rule itself.

20 And so we have a relatively good group,
21 good-size group here. So what I would ask is
22 that you try to limit your comments on the
23 outset to about five minutes to give everyone a
24 chance to speak, and then if there are, after
25 everyone's had an opportunity, if they want to

1 speak, then, you know, we'll open the floor up
2 again for folks to make further comment.

3 So I want to thank you all for coming
4 here this morning. Start with the PowerPoint
5 itself, it's going to touch upon the highlights
6 of the proposed rule and we'll describe a little
7 bit of how we got to the proposed rule this
8 morning.

9 So as everyone is relatively aware,
10 there are three ways in which the government may
11 recognize a tribe. It can be judicially through
12 a federal court action or federal court
13 decision, congressionally through legislation
14 and then administratively by the Department of
15 the Interior.

16 Prior to 1978 the Department looked at
17 recognition issues and recognition of tribes on
18 an ad hoc approach. And in 1978 we published
19 the regulations of the Part 83 process that
20 we're working under today. In 1994 we revised
21 those regulations. So roughly 20 years ago we
22 revised them. The criteria remained unchanged,
23 but the principal change there was a section on
24 previous federal acknowledgment.

25 The Department since that time, since

1 the change in regulations has issued guidance,
2 the assistant secretary has issued guidance to
3 implement the regulations. And since the Part
4 83 process has been in place, we have recognized
5 17 tribes and denied roughly 30. So we have
6 heard from a number of different constituents in
7 the public that the Part 83 process is broken,
8 that it takes much too long to complete, that
9 it's burdensome, that it's expensive, that it is
10 unpredictable, that it's not applied equally
11 among petitioners and that it's not transparent.
12 And so those are some of the things that the
13 proposed rule is attempting to address.

14 So in terms of the development of the
15 proposed rule, prior, many years ago, 2009,
16 2009, Secretary Salazar testified before the
17 Senate Committee of Indian Affairs and committed
18 to looking at ways to improve the process.

19 In 2010 the Department worked internally
20 on a draft and in 2012 we -- or 2010, let me
21 back up, I believe we testified before the
22 Senate Committee of Indian Affairs and at that
23 hearing we basically stated that we anticipated
24 getting out a proposed rule within a year.

25 So in 2012 when we testified before the

1 Senate Committee again the Department had not
2 issued a proposed rule at that time but we did
3 lay out basic principles for a proposed rule.
4 And that would be transparency, timeliness,
5 efficiency, flexibility but maintaining the
6 integrity and the standards that are in place.

7 So in 2012, again, when the Senate
8 Committee, we testified before the committee,
9 they asked where the proposed rule was. We said
10 that we were still working on it internally.
11 Shortly after that hearing, Assistant Secretary
12 Washburn and myself joined the Department. And
13 Secretary Salazar essentially said to the
14 assistant secretary, this is a priority. It's
15 been a priority for some time. We need to
16 really make progress on this. And Secretary
17 Jewell has continued that commitment to moving
18 forward with a revised rule.

19 So last summer we issued a discussion
20 draft and had public meetings and tribal
21 consultations across the country and received
22 comment on that through July and August of last
23 summer. We received over 350 comments by over
24 2,000 people, and then what we did is we
25 reviewed all those comments and devised and

1 wrote with a team of folks from the Office of
2 Federal Acknowledgment, from Liz Appel from the
3 Office of Solicitors, Steve Simpson, and then
4 the Assistant Secretary's Office. We reviewed
5 all of those comments and then moved forward
6 with this proposed rule.

7 So one of the things that the proposed
8 rule does is it just puts it in plain language,
9 which is just a general federal requirement. So
10 it looks very different from the current Part 83
11 rule, because that plain language changed.

12 And we then in terms of our process of
13 the rule itself, we then submitted the rule to
14 OMB for review, and they will be distributed to
15 all the different federal agencies. And once we
16 received it back we from OMB, we then issued it
17 in May of this year.

18 So I am going to talk very briefly about
19 the revisions to the process and then revisions
20 and clarifications in the criteria.
21 Clarification of previous federal
22 acknowledgment, that's not an area that we're
23 proposing any substantive change but basically
24 to make the regulation consistent with how we
25 have been applying it. And then clarifying the

1 burden of proof, again, we're not changing the
2 burden of proof, but since we have promulgated
3 the rules in 1978 and -- or 1994, the Supreme
4 Court has spoken to the burden of proof. And
5 then we're, the proposed rule allows
6 repositioning in very limited circumstances and
7 then the proposed rule also provides additional
8 notice requirements.

9 So with regard to revisions to the
10 process, the current process as it stands,
11 petitioners send in a letter of intent. The
12 proposed rule suggests eliminating that step in
13 the process and starting the process with a
14 complete application.

15 The process also, the proposed rule also
16 proposes a process that would provide for phased
17 review by the Department. And that phased
18 review would be we would first look to criterion
19 (e), when the group can show any Indian
20 ancestry, and then we would move to the other
21 criteria, criteria (a), which we will talk about
22 later, and then criteria (d), (f) and (g)
23 primarily is a group terminated, do they have a
24 governing document, those type of things.

25 And if the group would fail any one of

1 those criteria, we would then issue a denial on
2 that, on that specific criteria.

3 If the group satisfied those criteria,
4 we would then go to the second phase which we
5 propose in the rule to look at (b), community,
6 and (c), political authority.

7 So under the proposed rule we're making
8 certain changes to the process but certain
9 changes are, certain parts of the process are
10 remaining the same. So we would eliminate the
11 letter of intent, but we would maintain the
12 current process, which is the Office of Federal
13 Acknowledgment would issue a proposed finding
14 and, as it does now. But if the proposed
15 finding is positive and there are no comments
16 received by third parties, then the assistant
17 secretary would issue a final determination, a
18 positive final determination, which is
19 incorporating how we've addressed this in past
20 practice.

21 If the proposed finding is negative,
22 what the proposed rule suggests is that we allow
23 the petitioner an opportunity for a hearing
24 before an Office of Hearings and Appeals judge.
25 And then the Office of Hearings judge would

1 provide a recommended decision to the assistant
2 secretary. And that hearing would, if the
3 petitioner requested a hearing, third parties
4 could intervene in that hearing.

5 The final decision would still be issued
6 by the assistant secretary as it is now, but the
7 proposed rule eliminates the Interior Board of
8 Indiana Appeals review, that starts the process
9 rather if someone disagrees with the final
10 decision of the assistant secretary, those
11 parties could go right to federal court.

12 In terms of a hearing on a negative
13 proposed finding, The Office of Hearings and
14 Appeals has proposed just procedural rules, sort
15 of civil procedural rules on that process
16 itself. And that is also out for comment right
17 now.

18 And one of the questions that they have
19 in the procedural rules is who should preside
20 over that hearing? Should it be an
21 administrative law judge, which is, probably has
22 the most independence within the Office of
23 Hearings and Appeals within the department?
24 Should it be an administrative judge who reports
25 to Office of Hearings and Appeals director or

1 should it be an attorney who's assigned by the
2 Office of Hearings and Appeals director? And
3 then another question that is asked as part of
4 the process is should the basis for OHA's
5 judge's recommended decision be limited to the
6 hearing record?

7 In terms of revisions to the process, in
8 terms of when a petitioner may withdraw a
9 petition, we have in the proposed rule that they
10 may withdraw a petition at any time prior to the
11 proposed finding being published by OFA. But if
12 a petitioner withdraws that prior to a proposed
13 finding, then they essentially lose their place
14 in line and would be reassigned a new priority
15 number.

16 In terms of greater notice, the proposed
17 rule is providing that we post to the internet
18 all portions of the petition and the proposed
19 findings and the reports that are allowable to
20 be released under federal law, so that everyone
21 has access to those documents. So that's a
22 broad overview of the process set forth in the
23 proposed rule.

24 In terms of the criteria in the proposed
25 rule, we've made some changes there as well.

1 With regard to criterion (a), which currently
2 requires external identification by third
3 parties from 1900 to the present, we've replaced
4 that criterion with a requirement that the
5 petitioner provide a narrative of its existence
6 as a tribe prior to 1900.

7 And external identification evidence
8 could still be used, but what we're looking at
9 as part of this criterion is basically describe
10 the tribe's history prior to 1900. We're not
11 recognizing groups that are, come together in
12 the '40s, '50s and '60s and 1970s. We need to,
13 this criterion is talking to the tribe's
14 existence prior to 1900.

15 We have it described as a relatively
16 brief summary. So we're not looking at a
17 multi-volume treatise. We're looking at
18 something shorter than that in terms of them
19 describing their history.

20 In terms of criterion (b), community,
21 we're proposing to change our review of that
22 criterion (b) and (c) to look at rather than
23 time of first sustained nonIndian contact, to
24 changing that to look at it from 1934 to the
25 present. And one of the reasons that we picked

1 1934 is that's when Congress changed its policy
2 from one of an allotment and assimilation and
3 essentially hostile to tribal governments to
4 passing the Indian Reorganization Act and
5 promoting strong tribal governments.

6 The other basis for 1934 is in looking
7 at our previous decisions, we've been working
8 under the Part 83 process for roughly 40 years
9 and we've never had a situation where a
10 petitioner has satisfied all seven of the
11 criteria after 1934 but failed then prior to
12 1934. So for administrative efficiency both on
13 behalf of the Department, on behalf of the
14 petitioner and third parties, we're proposing a
15 start date of review of 1934 to the present.

16 In terms of (b), we're looking at for
17 community, we have at least 30 percent of the
18 group must show distinct community for each time
19 period. And so that 30 percent is not a number
20 that we pulled from thin air. The 30 percent
21 comes from the Indian Reorganization Act itself
22 and the number, the percentage of members that
23 had to vote on a tribal constitution under the
24 IRA.

25 In terms of criterion (b), we're making

1 clear that we will look at attendance of
2 students at Indian boarding schools and that we
3 will also, if a petitioner has held a state
4 reservation from 1934 to the present
5 continuously or the United States has held land
6 for the group, not an individual but for a group
7 at any point in time from 1934 to the present,
8 that that fact of collective land holdings by
9 the group would satisfy both criterion (b) and
10 (c).

11 We've also defined "without substantial
12 interruption" to be generally less than
13 20 years. In the past the Department has
14 addressed "substantial interruption" as much as
15 I believe more than 27 years to less than, to
16 ten-year increments. And so the proposed rule
17 is suggesting as a general rule that you can't
18 have without substantial interruption of
19 documentary evidence of less than 20 years.

20 In terms of criterion (e), descent, we
21 are codifying our existing practice of requiring
22 that 80 percent must descend from a tribe that
23 existed in historical times prior to 1900. And
24 we are allowing descent if the federal
25 government has, and The Department of Interior

1 either by the direction of Congress or the
2 Department of Interior in its performance of its
3 duties has created a tribal-specific roll, we,
4 the proposed rule suggests that we use that
5 roll, if it was directed by Congress or
6 tribal-specific roll that we prepared, that we
7 would use that evidence as a starting date, as a
8 starting point or period for the evidence for
9 (e).

10 If the group doesn't have a roll that
11 was directed by Congress or that the Department
12 prepared, then we would look at whatever the
13 reliable evidence prior to 1900 is and start
14 from that date. So if there is evidence in
15 1880, we would look at from 1880 moving forward.
16 Again, that is consistent with various decisions
17 that the Department has made over time.

18 In terms of (f), membership, we heard on
19 the discussion draft that some petitioners had
20 said that some of their members were eligible
21 for enrollment in multiple tribes and that
22 because our process has taken quite some bit of
23 time, that those members had chosen to enroll in
24 another tribe, but that if they were recognized,
25 they would, if this group were recognized, those

1 members would come back.

2 And so we have inserted a provision that
3 if the petitioners have filed a letter of intent
4 by 2010, that if those members had left for a
5 federally recognized tribe, we wouldn't hold
6 that against them in our consideration of
7 criterion (f).

8 In terms of criterion (g), congressional
9 termination, right now we put the burden on the
10 petitioner to prove that they have been
11 terminated. The proposed rule suggests that we
12 shift that burden to the Department to show
13 whether a petitioner was terminated by Congress.

14 In terms of previous federal
15 acknowledgment, as I say before, we're not
16 proposing any substantive changes to previous
17 federal acknowledgment in the proposed rule.
18 We're attempting to clarify the current practice
19 as we apply the rule today.

20 In terms of the burden of proof, again,
21 we are, we're not changing the burden of proof.
22 It is still a reasonable likelihood. We're
23 clarifying the burden of proof based on Supreme
24 Court precedent.

25 And in terms of process in the proposed

1 rule, we're allowing for a limited opportunity
2 for repetition. And here's essentially how
3 it works. If, if a group has been denied, and
4 there's roughly 30 groups that have been denied,
5 and a third party litigated against that group
6 either administratively or in federal court and
7 prevailed, then the, before a group could even
8 start the process of being able to repetition,
9 they could, they would need the consent of that
10 third party.

11 If a third party group had not litigated
12 and prevailed or there were no other challenges,
13 that petitioner still is not able to just
14 repetition. They would, the way that the
15 proposed rule sets forth is that they would --

16 ELIZABETH APPEL: So before they could
17 be petitioned, then they would need to obtain
18 the consent.

19 LARRY ROBERTS: So they would either
20 need to obtain the consent or if there were no
21 third-party challenges, then they would still
22 need to go to an Office of Hearings and Appeals
23 judge and they would have to show one of two
24 things, either that the wrong burden of proof
25 was -- or the burden of proof was misapplied in

1 their final decision or that the change in the
2 regulations warrants reconsideration of their
3 petition.

4 In terms of notice, we're providing that
5 OFA, once they receive the petition, they
6 acknowledge receipt within 60 days and that they
7 publish notice in the federal register that they
8 post the petition narrative and other
9 information on the website, that they notify the
10 governor and the attorney general in the state
11 that's under current practice, that they notify
12 any federally recognized tribe within the state
13 or within a 25-mile radius and that they notify
14 any other recognized tribe or any petitioner
15 that appears to have a historic or present
16 relationship with the petitioner. That's
17 current practice as we do now.

18 In terms of notice to the petitioner and
19 informed parties, we're not proposing to change
20 that notice in a significant way. We're trying
21 to increase notice. So we would provide notice
22 when OFA begins review of petition. We would
23 provide notice when OFA issues its proposed
24 finding. We would provide notice when AS-IA
25 grants any time extensions and when AS-IA begins

1 its review of either the proposed finding or the
2 recommended decision by the Office of Hearings
3 and Appeals. And then we would provide notice
4 when the assistant secretary issues a final
5 decision.

6 So thank you for bearing with me as I
7 had the frog in my throat this morning.
8 Comments are due on the proposed rule on
9 August 1st and comments on OHA's procedural
10 rules are due on August 18th. And all of the
11 contact information in terms of where to send
12 the proposed rule. Comments on the proposed
13 rule is in your handouts. E-mail would work the
14 best.

15 In terms of next steps, once the comment
16 period closes, we will assemble our team from
17 the Office of Regulatory Affairs, from the
18 Solicitor's office, from the Office of Federal
19 Acknowledgment and from the assistant
20 secretary's office to review those comments
21 again and then develop a final rule based on
22 those comments.

23 And so with that, I am happy to open it
24 up for comment and hear any comments you may
25 have. Thank you.

1 HELEN SANDERS: Good morning. I'd like
2 to thank you for the opportunity to present
3 today. I stand in support of the Chinook Indian
4 tribe for federal recognition. My name is Helen
5 Sanders, member of the Chehalis tribe. I'm an
6 original allottee. I have served with the
7 Allottee Association and affiliate tribes of the
8 Quinault reservation about 40-plus years, off
9 and on.

10 The new regulations, in my opinion, from
11 the Department of the Interior released
12 May 22nd, 2014, leave a lot to be desired.
13 These regulations set up more roadblocks for
14 Indian tribes seeking federal recognition. I
15 will not detail each regulation because of time,
16 but the point, I will point out the third-party
17 veto by a tribe or an individual. Why?

18 Tribal -- Oh, I just wrote this little
19 note. Tribal -- In your release it says that
20 when the tribes are meeting, they -- no one else
21 is allowed. When is Interior ever going to find
22 out that a tribe can't be a tribe without its
23 members and those members should have a right to
24 listen.

25 The old regulations where tribes were to

1 present the history rather than based on the
2 failed 34 Act as proposed today. The failure of
3 the early regulations for federal recognition
4 was not the regulations but the implementation
5 of it.

6 If the tribes that are today federally
7 recognized had to meet the recommended process
8 in this proposed regulation, they would fail and
9 not be recognized.

10 If this -- I was fortunate to be elected
11 secretary of the National Congress of American
12 Indians in the '60s. I served with Vine
13 Deloria, Jr., where the Chinook tribe was a
14 voting member of this national organization.
15 They were accepted by the largest Indian
16 organization in the country.

17 I recorded the vote of the Chinook tribe
18 along with the other tribes, other tribe
19 members. The Chinook tribe was recognized by
20 Lewis and Clark, by the Hudson's Bay Company Fir
21 Trade in the early history of the West.

22 The treaty negotiations at the entrance
23 of the Chehalis River into Grays Harbor
24 February 20th, 1855, the Chinook was listed as
25 112 individuals. Governor Stevens testified for

1 the government. I mean, he ran the meeting.
2 Nakata and Moose Moose were the Chinook
3 representatives at that. And even though that
4 particular treaty negotiation failed, the land,
5 the lands identified by tribes later became
6 small reservations in Chehalis (inaudible), not
7 Chinook. And the Treaty of Olympia followed
8 Governor Stevens was proposing, it followed all
9 the recommendations that Governor Stevens was
10 proposing in that earlier negotiation where the
11 tribes would share in one reservation.

12 The Chinook tribal allottees
13 participated in the, I'm sorry, the members
14 participated in the McChesney report, the roll
15 of certain Indian tribes in Oregon, Washington,
16 family history is documented, descendants of the
17 Petite family, Pickernell and Elliott families
18 are all in that book, among others. And the
19 Roblin report in 1917, 1919, in action by the
20 BIA for petitions to receive allotments, Roblin
21 was sent to create records of Indians by tribe.
22 BIA forestry said this land at Quinault was not
23 agriculture land and not, should not be
24 allotted. Tommy Paine, a Quileute, who brought
25 suit and which determined that it was okay to

1 allot timberland.

2 BIA still refused, which brought about
3 the Halbert case versus United States, decided
4 June 1st, 1931, Halbert determined that Chehalis
5 Chinook and Cowlitz were eligible for allotment
6 at the Quinault reservation because they were
7 identified as the fish-eating Indians spoke of
8 in the treaty and the 7 order that established
9 the expansion of the Quinault reservation.

10 It was originally 10,000 acres. And
11 they decided that people weren't moving up there
12 enough, so they expanded it to include
13 220,000 acres.

14 The BIA prepared a list of 69 questions
15 for application for allotments of land on the
16 Quinault 1932, '34 (inaudible). Question 16,
17 "In what manner have you kept up tribal
18 relations with Indians of your tribe?" Each
19 answer described ways in which the Chinook kept
20 tribal relations. This is continued in the
21 supplement response to letter of obvious
22 deficiency in the original Chinook petition for
23 recognition.

24 The Chinook voted on the IRA. There was
25 a, required to identify themselves by tribes to

1 vote on the IRA, and they did.

2 The Chinook tribal members are the same
3 family names in McChesney, Roblin and Halbert.
4 All of the above can be found in the original
5 petition for recognition and the supplements by
6 the Chinook tribe.

7 Since you brought the third-party veto,
8 I'll have to tell you this: Statement by Fawn
9 Sharp, president of Quinault business committee
10 --

11 LARRY ROBERTS: And excuse me. I don't
12 want to interrupt, but I also want to make sure
13 everyone has time.

14 HELEN SANDERS: Yes. I'm going to go as
15 fast as I can.

16 LARRY ROBERTS: And we'll give you more
17 time after everyone has a chance.

18 HELEN SANDERS: This has to be said.
19 I'm sorry.

20 The governing body in the Quinault
21 Indian Nation. Ms. Sharp in her opening remarks
22 said the Quinault Indian Nation cannot propose
23 another tribe seeking federal recognition. That
24 was her opening statement. On page 2 of the
25 statement she states 19, the 28 United States

1 District Court in the Halbert case found there
2 was no Chinook tribal organization. Even as the
3 federal government provided for allotment on the
4 Quinault reservation, those were based on
5 Chinook descent and not on existing tribe body.

6 What Fawn Sharp failed to tell Congress
7 was that the United States District Court was
8 overturned by the United States Supreme Court.
9 And that -- In 1931. And it states clearly
10 Indians of the Chehalis, the Chinook and the
11 Quinault Cowlitz tribes entitled to allotments
12 within the Quinault reservation.

13 I believe their record is pretty clear
14 that the Chinook tribe does meet all of your
15 requirements for federal recognition. And the
16 bottom line is this: Why would the Quinault
17 tribe choose to oppose Chinook federal
18 recognition when records of the self-governance
19 compact? The Quinault tribe received amounts of
20 \$14.2 million in the fiscal year 2012 and
21 12.6 million in fiscal year 2013. It seems to
22 me that -- And they're counting the whole
23 reservation, which they don't own all of it.
24 There are many allotments that are owned by
25 Chehalis Chinook, Quileute (inaudible),

1 et cetera.

2 So it seems to me that the Chinook tribe
3 needs to be recognized especially for health
4 reasons. They need to be qualified for health
5 reasons, among other things. Thank you very
6 much. Sorry if I took too much.

7 LARRY ROBERTS: Thank you. And, folks,
8 just feel free to step up to the microphone.

9 BRIAN BAIRD: Can you hear me okay with
10 the mic where it is?

11 LARRY ROBERTS: Yes.

12 BRIAN BAIRD: I'm Brian Baird. And for
13 12 years it was my deep honor to represent the
14 Chinook people in Congress. And during that
15 time I worked very closely with the various
16 Chinook leaders to try to establish justice
17 really. It's a rare opportunity that one has a
18 chance to try to right a wrong performed by
19 one's country in history. And we have that
20 right today and we have not only that right, but
21 that responsibility. And I really want to thank
22 you and the entire team that has worked so
23 diligently on this for years.

24 Congress looks generally to the agency
25 to make decisions, and that's thoroughly

1 appropriate. But as you know, the history of
2 the Chinook people had been recognized, I
3 actually was at the ceremony. And then there
4 was an appeal and a change of administration and
5 that was taken away.

6 Imagine the feeling of having honored a
7 legacy for your ancestors, at long last
8 achieving the recognition that is deserved, only
9 to have it plucked away by a change of
10 administration.

11 The rules that you're putting forward in
12 many ways have a chance to correct that wrong,
13 but this issue of allowing a single prior
14 opponent to block a reconsideration of a
15 petition is simply unjust. Expediency should
16 never, ever outweigh truth or outweigh justice.
17 And this provision really must be changed. And
18 here's why.

19 First of all, logic. Let us suppose
20 thousands of people agree that experts, the
21 preponderance of the evidence agrees that there
22 is and, in fact, has been a tribe of the Chinook
23 for time immemorial as there has been and there
24 is today.

25 The way the rule is currently written,

1 if one single entity, just one as opposed to
2 thousands disagree with that, that one entity
3 prevails. That's not how we should arrive at
4 truth.

5 Justice would dictate as well that if
6 that one entity who is standing in opposition
7 would stand to gain materially from the denial
8 as is the case here, if the Chinook are denied
9 recognition, land held in trust for them would
10 eventually revert to the Quinaults.

11 So just to clarify, I think if you asked
12 an average citizen, if somebody has something
13 that actually rightfully belongs to you and you
14 say, I'd like to get that back, thanks very
15 much, and they say, well, you can't have it back
16 unless the person who's holding it agrees to
17 give it back, people would say that's just not
18 right. And thus is the case here. It is just
19 simply not right to allow one single opponent to
20 say we're going to deny petition.

21 Now, if you look at the regulation, the
22 subsequent line, the first line says, if anybody
23 opposes it, you can't get petition. Then the
24 judge gets to look at it. Why do it that way?
25 Why not allow the judge, in his or her

1 discretion, to make the determination of whether
2 or not there is just cause for repetition? To
3 allow a single opponent to block the judge when
4 that single opponent has a vested interest in
5 doing so is simply not right.

6 So for the good things, and I do think
7 there are many, many good things in this, this
8 one flaw is fatal. Indeed if that flaw would
9 perpetuate, in my best understanding, would
10 perpetuate a historic injustice, it would deny
11 truth, it would deny justice and it would favor
12 people who benefit, I believe, unjustly from an
13 unfair outcome.

14 So thank you for considering this and I
15 hope you will make that change.

16 LARRY ROBERTS: Thank you. I just want
17 to clarify on the third-party issue. It's not
18 if any third party had opposed a petition. It's
19 whether a third party had opposed and prevailed
20 in administrative litigation or in federal
21 court. And so just to provide a little bit more
22 context in terms of the thinking behind it is
23 that, you know, when, when, when tribes litigate
24 something and they win and someone tries to
25 change the rules, those, those are, those are

1 looked on, you know, if you litigate something
2 and you win, there's some equities there in
3 terms of a judge deciding in their favor.

4 I understand your comments. I just want
5 to clarify that it's not if any group objects.
6 It's if they've litigated and prevailed either
7 administratively or in federal court.

8 BRIAN BAIRD: I respect that, but I
9 would just add this following sentence. Let's
10 understand the premise here that they had been
11 recognized by a prior administration. So
12 previously there was a group, there was a
13 process. That was approved. And so at least
14 one significant body of our government under one
15 administration had made the determination.
16 Somehow that is given less weight.

17 To give it just a very common sense
18 argument here, imagine the instant replay rule.
19 The reason we have an instant replay rule is to
20 make sure the call was right. We don't say that
21 if the call went against you, you get to deny
22 the validity of the instant replay evidence. We
23 say let's look at the evidence. That's why the
24 judge must make the decision, not the plaintiff
25 in the initial appeal.

1 LARRY ROBERTS: Thank you.

2 SAM ROBINSON: So hi. I'm (inaudible)
3 Sam Robinson. My father was Scott Robinson.
4 His mother was Dora Clark. Dora Clark's mother
5 was Annie Hawks. Annie Hawks' father was John
6 Hawks and he was married to a Chehalis woman,
7 Nellie Casina. And John Hawks's father was
8 Thomas Husbaugh. He was a signor of the 1851
9 Anson Dart Treaty. He was lower Chinook and he
10 was married to a Willapa woman, Catherine
11 George.

12 Today I serve as the interim chairman of
13 the Chinook Indian Nation. Our five tribes are
14 the Clatsop, Kathlamet, Willapa, Wahkaikum and
15 Lower Chinook.

16 I thank the Interior for making an
17 attempt to correct the federal rules of
18 recognition. There are several criteria that we
19 may agree with, some that we don't.
20 Unfortunately, before we're able to repetition,
21 we must clear the biggest injustice of all, and
22 that is having the gain to consent of all
23 interested third parties. With the Chinook this
24 third party is the Quinault Indian Nation that
25 has a lot to gain by suppressing our federal

1 status. On the Quinault reservation many
2 Chinook people have allotments that the federal
3 government hold in trust. As long as the
4 Chinook Indian Nation stays unrecognized by the
5 federal government, our people can only pass
6 their allotments down one generation and no
7 further. When those people are no longer with
8 us, the Quinault Nation will take that land.

9 This is a practice that has already
10 begun. When our Chinook people are in need of
11 services, they are forced to enroll in other
12 tribes. These other tribes, except for one, the
13 Quinault, ask our people to disenroll as all our
14 other tribes recognize us as a tribe.

15 I thank you for your time, and the
16 Chinook Nation will be submitting letters with
17 more detail before August 1st deadline. Thank
18 you.

19 NICHOLAS KERSEN: Good morning. My name
20 is Nicholas Kersen, fire keeper. I'm an elder
21 in the Northern Cherokee Nation. I'd like to
22 make a couple of statements, one on some of the
23 items that these folks have been speaking about.
24 And they're short statements, but they're pretty
25 important.

1 We, the Cherokee Nation, strongly and
2 emphatically object to any third-party
3 consideration. The BIA should not allow outside
4 participation, which creates an unfair advantage
5 against the petitioner. A third party has, the
6 BIA as an ally until federal recognition is
7 achieved. These issues must be left to be
8 worked out between the relevant parties when
9 anyone is on equal footing. These objections by
10 outside parties are arbitrarily based on
11 business or casino or land issues.

12 The second statement I'd like to bring
13 out though is we feel an intermarriage should
14 be, should not be a factor in recognition
15 because in early days in a state like Missouri
16 where it was illegal to even exist as an Indian,
17 therefore when couples were married they did not
18 declare to the county clerk a fact of whether or
19 not they were Indians. The fear of these old
20 laws persisted until modern times with reported
21 date testimonies into the 1960's; if no
22 documentation exists, no records can be
23 presented. (Inaudible) I thank you for your
24 consideration.

25 STEPHEN DOW BECKHAM: My name is Stephen

1 Dow Beckham, Professor of History Emeritus,
2 Lewis & Clark College, Portland, Oregon. I
3 appear today at the request of the tribal
4 council of the Chinook Nation.

5 In 1973 with the three staff members of
6 STOWW, the Small Tribes Organization of Western
7 Washington, I went to Washington, D.C. to meet
8 with members of the House and Senate Indian
9 Affairs Committees and their staffs about the
10 situation of nonfederally recognized and
11 terminated tribes in the Pacific Northwest. In
12 March of 1976 I testified before Task Force 10
13 on non federally recognized and terminated
14 tribes, the American Indian Policy Review
15 Commission.

16 In 1978 I began 23 years of work as the
17 ethnohistorian for the petitioner Chinook Indian
18 tribe. From 1985 to 2001 I served in a similar
19 capacity for Cowlitz, and from 1994 to 2001 for
20 the Duwamish tribe. I believe that these years
21 of experience have created significant awareness
22 of the federal acknowledgment program, its
23 challenges and some of its problems. I believe
24 Congressman Baird has spoken adequately and
25 wonderfully to the problem of the third-party

1 veto in the proposed regulation and I agree
2 100 percent with his view about the
3 self-interest of one party thwarting the effort
4 of a tribe to secure its federal status,
5 affirmation of its federal status.

6 I would like to speak particularly to
7 another matter, and that is the purposeful but
8 arbitrary selection of the enactment of the
9 Indian Reorganization Act in 1934 as a
10 foundation or base for documentation of tribal
11 relations. I think this is inappropriate, but
12 really for the Chinooks is really hurtful. The
13 Chinooks have a remarkable documentary record.
14 In fact 1,307 exhibits that weighed 178 pounds
15 when they were shipped to Washington, D.C. about
16 their federal relationship. Those included
17 relations between 1852 and 1952 with ten
18 different federal agency jurisdictions in Oregon
19 and Washington.

20 In 1899 the Chinook tribe, the first on
21 the West Coast, secured a jurisdictional act to
22 litigate for the taking of its lands under the
23 unratified treaty of 1851 and for its
24 participation of the Chehalis River Treaty
25 Council of 1855.

1 In 1902, 12 tribal, elders of the tribe,
2 many of them who were born before the United
3 States acquired sovereignty in the Pacific
4 Northwest, testified in 200 pages of deposition
5 about their land claims and their presence in
6 the state of Washington.

7 In 1906 the Bureau enrolled the members
8 of this tribe, and that roll was published in
9 the Congressional Record.

10 In 1912 Congress appropriated money to
11 pay the claims of the Chinook. In 1914 the
12 Secretary of Treasury authorized a payment roll.
13 Between 1910 and 1918 the Chinooks were members
14 of the Northwestern Federation of the American
15 Indian, a pan-Indian group that lobbied the
16 Bureau of Indian Affairs for allotments of land
17 since they were a landless people in
18 southwestern Washington. They were enrolled in
19 1919 by Dr. Charles Roblin of the Bureau of
20 Indian Affairs. Their enrollment records are
21 part of the five rolls of microfilm that the
22 Bureau developed in that process.

23 The Chinooks were litigants in the
24 Halbert case over allotments at Quinault, a
25 matter addressed by Helen Sanders. Twelve

1 Chinooks testified in the Halbert case. They
2 were denominated in 1931 by the United States
3 Supreme Court as having a beneficial interest in
4 the Quinault reservation. And significantly,
5 the Bureau bought Dr. Roblin back, and in 1932
6 to 1934 he interviewed and secured affidavits
7 where Chinook tribal family leaders affirmed how
8 they had maintained their tribal relations and
9 their entitlements to allotment. As a result of
10 that, the Chinooks became the majority
11 land-owning tribe on the Quinault reservation.

12 The process led Dr. Roblin to write the
13 following observation in 1932. There are a
14 number of small Indian settlements comprising
15 remnants of tribes originally inhabiting the
16 country around the harbors and inlets of the
17 Pacific Coast and the Columbia River. These
18 have almost entirely lost their character as
19 Indian settlements, and yet so far as it has
20 been possible, the Indians can be said to have
21 kept up their tribal relations and communal
22 life. They can hardly be said to have severed
23 tribal relations.

24 That is a significant assessment of a
25 situation of Chinooks, that it is before 1934.

1 In other words, there is abundant evidence about
2 the relationship of this tribe, but it begins to
3 diminish after 1935.

4 The Chinooks were registered to vote on
5 the IRA. There were 59 tribal members
6 registered as Chinook and 110 as Quinault
7 Chinook in 1935. I think most of us in this
8 room are aware that the Bureau has refused to
9 organize a government at Quinault under the
10 favorable vote on the IRA in 1935 and has dealt
11 only with the Quinault business committee, not
12 with the tribes who are the land-owning interest
13 on that reservation. Consequently, out of
14 self-interest, the Quinault business committee
15 of Quinault tribe has fought this tribe as it
16 fought the Cowlitz, spending in the Cowlitz
17 situation an estimated \$300,000, hiring Nicholas
18 & Associates of Washington, D.C. to try to
19 thwart Cowlitz recognition. They did not
20 succeed in that matter.

21 Let me say I am very concerned about the
22 arbitrary but firm selection of the 1934 date.
23 I also would like to point out that Chinooks are
24 probably the most fully documented tribe in the
25 history of the Pacific Northwest. The town

1 Chinook, Washington, the Chinook salmon, the
2 Chinook Wind, the Chinook helicopter, all of
3 these carried forward their name.

4 To this day the Bureau of Indian Affairs
5 administers the allotments, sells the assets and
6 probates the estates of members of the Chinook
7 tribe, but it refuses to deal with the tribe as
8 a tribe. That matter was finally settled in
9 2001, only to be arbitrarily reversed by the
10 Bush administration. These new regulations have
11 the potential to place an impossible hurdle
12 before the Chinook tribe if it tries to
13 repetition. Thank you.

14 LARRY ROBERTS: Thank you.

15 JERRY FORD: My name is Jerry Ford. I'm
16 a proud member of the Little Shell Chippewa
17 Montana. There are probably not a lot of us
18 around here. I've listened to a lot of people
19 today. Our preliminary recognition was found in
20 2001, I believe it was 2009 you are all waiting
21 for the decision and we were, we were denied.
22 And that decision is currently pending on
23 appeal, I believe, with the Secretary of the
24 Interior. These regulations I believe will help
25 us to get our enrollment.

1 We are a large people. There are almost
2 5,000 of us. We're very real. We're the
3 Matise. We have no opposition in the state of
4 Montana, all the tribes support us. We are
5 recognized by the state of Montana. It is
6 amazing when this, when this finding was made in
7 contrary to no opposition how the government
8 changed its mind in nine years. It took nine
9 years. I think that's one of the things when
10 you talk about things being broken, it shouldn't
11 take nine years to go and make a final
12 determination. I think that, I think the new
13 rule that talks about that there's no
14 significant opposition or opposition to
15 preliminary findings, that the recognition
16 becomes automatic and is issued, is appropriate.
17 I think it's time that we honor the tribes, that
18 for whatever reason we left Turtle Mountain in
19 19 -- or 1870 to 1880 with 110 families. So we
20 were disenrolled. And we have been the landless
21 Indians of Montana ever since. But we've been
22 there. We are people. We are very real.
23 History is real. And our people are real. And
24 it, we're tired of being on the fringe. We're
25 tired of not being part of the greater Indian

1 community. We want to be that. Thank you.

2 LARRY ROBERTS: Thank you.

3 GARY JOHNSON: I'm Gary Johnson. I'm
4 proud to have been chosen to present for the
5 Chinook Nation today. I'm speaking for the
6 Wahkaikum, Kathlamet, Klatsop, Lower Chinook and
7 Willapa tribe. I'm getting offended to being
8 referred to as a group. We are one of the most
9 historic tribes in the Pacific Northwest.

10 The U.S. Government recognized Chinook
11 when Lewis and Clark and the Corps of Discovery,
12 a military expedition, arrived in Chinook
13 country in 1805. The U.S. Government recognized
14 Chinook when the Anson Dart Treaty was signed in
15 1851. My third great grandfather Oscalwut, was
16 a treaty signer. U.S. Government recognized
17 Chinook when the Chehalis River treaties were
18 negotiated in 1855 and the Chinooks were later
19 given affiliated treaty rights under the 1855
20 Treaty of Olympia.

21 Our tribal rolls are based on U.S.
22 Government documents from 1906, 1914 and 1919.
23 Our 2001 recognition by the BIA was based on
24 acts of both houses of Congress in 1911, 1912
25 and 1925. I hold a copy of an approved 1929

1 Columbia River fishing contract between the BIA
2 superintendent of the Quinault reservation on
3 behalf of the Chinook Indian reservation. That
4 document says "Chinook Indian reservation" and
5 also "Chinook tribal members." That signed
6 contract was for 20 years with a ten-year
7 renewal option.

8 My Quinault allottees card lists nine
9 tribes of the Quinault reservation, eight of
10 those tribes are federally recognized and have
11 their own reservation lands. The Chinook, who
12 held 54 percent of the lands allotted, are the
13 only tribe who does not have federal recognition
14 today.

15 My grandmother, Lizzy
16 Pickernell-Johnson, and her nine brothers and
17 sisters were allotted as Chinooks. My father
18 Farrell Johnson and his 13 brothers and sisters
19 were all allotted as Chinooks. To be allotted,
20 an Indian had to be a member of a federally
21 recognized tribe.

22 This all pertains to the proposed new
23 regs because a huge part of our Chinook tribal
24 history occurred before 1934.

25 The lives of all of our ancestors, our

1 grandmothers and our grandfathers, have made us
2 who we are today. Today's federally recognized
3 tribes have not been held to the same criteria
4 that's been proposed and I support that they
5 were not. A third-party with political
6 interests should have no voice in another
7 tribe's recognition. Federal Judge Thomas
8 Zilly, in the Samish case, stated that a tribe's
9 merits stand alone and that no other tribe has a
10 voice in the existence of the Samish people.
11 This is just and right and it is time for the
12 BIA to live up to its trust responsibility to
13 the Chinook people.

14 The requirement that 30 percent of the
15 petitioners' membership comprise the community
16 must be changed. U.S. Government and BIA
17 policies have pushed the Chinook people off our
18 great river, the Columbia River, and away from
19 our traditional village sites. The Anson Dart
20 Treaties tried to push all Chinook people east
21 of the Cascade Mountains. The Chehalis River
22 treaty demanded that Chinook move North 100
23 miles to Quinault territory.

24 Future policies, assimilation and
25 termination were a disaster for many tribes. My

1 grandmother, many of her siblings and at least
2 four of her children were taken from their home
3 to Indian school. Grandma Lizzy was a ward of
4 the court and not a U.S. citizen. She could not
5 vote. Other recognized tribes have not been
6 required to meet this 30 percent standard. This
7 requirement must be dropped. It is unjust and
8 it's time for the BIA to live up to its trust
9 responsibility to the Chinook people.

10 My father Farrell Johnson was born in
11 our village at Bay Center in 1914. Family
12 members of the Bay Center, Indian Shaker Church,
13 he was an allotted Chinook Quinault. He worked
14 for the Indian Conservation Corps on the Warm
15 Springs Reservation. He also provided a home
16 for my brother and I in South Bend, Chinook
17 Indian country that was BIA trust land. The
18 home that we grew up in was BIA trust land.

19 I've been chairman of the Cherokee
20 Indian Nation. I've signed a recognition
21 agreement with BIA under Secretary of Indian
22 Affairs Kevin Gover. I have signed multiple
23 contracts and agreements with federal and state
24 agencies and county governments.

25 People in the Northwest know who the

1 Chinook are and we have a close relationship
2 with the tribes of the Northwest. The BIA has a
3 trust responsibility to know the Chinook people
4 and to acknowledge us as a federally recognized
5 tribe.

6 The politics must come out of the
7 process. That is the bottom line for us, the
8 politics must come out of the process. We
9 request that you take your heads out of the
10 paperwork and open your eyes to the real world
11 of the Chinook people. 3,000 miles from your
12 offices we carry on our culture and our
13 traditions.

14 My son Tony is skippering our 36-foot
15 ocean canoe Cliff Mean to the village of
16 Bella Bella as I write these words. Four of my
17 grandchildren are pullers in that canoe. This
18 canoe was given to us by the William Clark
19 family to replace a canoe stolen by the Corps of
20 Discovery in 1806. Chinook travel on the
21 intertribal canoe journey every summer. We're
22 treated as equals as we go to the villages and
23 we'll travel on the waters with all the tribes.

24 Find a way to recognize us for our
25 thousand good reasons that we prepare and bring

1 before you and do not find the politically
2 contrived reason to commit an act of genocide.
3 I have got to repeat that. Find a way to
4 recognize us for our thousand well-documented
5 good reasons and do not find a politically
6 contrived reason to commit an act of genocide.

7 And I'm standing here. I'm not shaking
8 because I'm one bit nervous. I've got a tremor
9 and I'm explaining that to you because there's
10 no, nothing nervous about me. I'm fed up. I'm
11 frustrated. I watched my grandmother's
12 generation, the generations before us be denied
13 and the tribe respect us and know us and we're
14 not going quietly. So I thank you for
15 listening. I hope you're hearing what
16 Congressman Baird and our ethnohistorian David
17 Beckham and our other speakers are saying. We
18 have given our lives, we've dedicated ourselves
19 to getting this done. And it's going to get
20 done because our children, our grandchildren are
21 coming behind us. Thank you for listening.

22 LARRY ROBERTS: Thank you. And I also
23 want to, I think a number of the speakers have
24 touched upon the question of the data of 1934
25 and it being tied to the Indian Reorganization

1 Act. And I just want to point out that in the
2 preamble we do describe that the proposed rule
3 would allow petitioners to submit evidence prior
4 to 1934 if it were relevant to community and
5 political authority. So while we're starting
6 our review at 1934, we are allowing for that
7 submission of evidence if it's relevant prior to
8 that time period.

9 ROBERT TAYLOR: I would like to speak on
10 these proposed rules. My name is Robert Taylor.
11 I'm president of Chinook Nation, a human rights
12 corporation formed in 1995 to protect the rights
13 of the Chinook people. My father, Robert
14 Taylor, was treasurer of the Chinook Indian
15 tribe in the late '60s, early '70s. In 1977 I
16 was hired by the Chinook Indian tribe as their
17 first tribal planner. I was working for the
18 tribe as the legal research assistant in 1979
19 when the first acknowledgment petition rules
20 were presented in Seattle by Jimmy Carter's
21 representative.

22 At that time the Chinook tribe had a
23 legal represent -- legal advisor Homer Settler.
24 When those regulations were presented, the tribe
25 in Chinook asked their legal advisor to evaluate

1 the Federal Acknowledgment program. Homer
2 Settler told the Chinook tribal council that the
3 acknowledgment program that Jimmy Carter had
4 presented was a very interesting program, but
5 they must remember that, first of all, it was
6 administrative, not political, not a legal
7 process, but an administrative process, which
8 meant that it was rigid.

9 And after reviewing the rules of the
10 original acknowledgment petition that President
11 Carter presented, he said, the Chinook do not
12 meet at least two of the requirements. There
13 were seven requirements. The Chinook cannot
14 meet two of them. And so he advised the
15 Chinook, do not waste your time on this
16 administrative process which you do not qualify
17 for because you can never change the truth and
18 the administrative position is rigid.

19 This is exactly what happened as the
20 process went through and the Chinook petition
21 for acknowledgment was reaching its conclusion.
22 Chinook members who knew personally Kevin Gover,
23 who was the assistant secretary of the
24 Department of Interior for Indian Affairs,
25 please, Kevin, find some way to massage these

1 last two issues and get the Chinook to be
2 acknowledged.

3 And Kevin Gover put forth his
4 manipulation of the arguments so that the
5 finding could be that the United States agrees
6 to acknowledge the existence of the Chinook
7 Indian tribe.

8 But that was not according to the
9 administrative process. And so when that
10 administration went out and a new administration
11 went in, the new administration deferred to the
12 expertise of the long-term employees of the
13 Department of Interior handling acknowledgment.
14 And that process of acknowledgment was
15 overturned because the law is the law and the
16 rules are the rules, and you either meet the
17 rules and qualify or you don't meet the rules
18 and you do not qualify.

19 The Chinook were never recognized. They
20 were acknowledged. There's a huge difference
21 between being acknowledged to exist as an Indian
22 tribe and to be, to have your tribal government
23 recognized. Because the United States does not
24 recognize tribes. The United States recognizes
25 tribal governments. And the Chinook tribe does

1 not have a tribal government. They have a
2 corporation constitution for a corporation that
3 was dissolved. And the Constitution is not a
4 governmental constitution. It is a constitution
5 with no judicial and no legislative and audit
6 executive.

7 LARRY ROBERTS: So, and I don't mean to
8 interrupt you, but I guess I just want to say
9 sort of a general point for the consultation or
10 the public meeting here and the public meetings
11 that we've been having across the country.
12 You're not the first person where I've had to
13 say this. I have to say it generally. What
14 we're consulting on is the proposed rule, and
15 that's going to be applied uniformly across the
16 country. So I understand that there are a
17 number of folks here that have very strong
18 feelings about the Chinook, and we want to hear
19 those views, but what we want to hear most
20 importantly and what the purpose of this
21 gathering here today is, is to hear comments on
22 the proposed rule itself.

23 ROBERT TAYLOR: Then let me speak to the
24 proposed rule instead of going through the
25 history that I needed to say what I did because

1 there's been so much misunderstanding by the
2 Chinook as to the legal standing of what they
3 have tried to do.

4 Now, our corporation is dedicated to
5 defending the human rights of the 14 tribes of
6 the Chinook people that have never ceded their
7 land to the United States by treaty. The
8 current Chinook Indian tribe allows membership
9 in four other tribes, but all 14 tribes and
10 their rights are at stake.

11 This acknowledgment petition process has
12 some fundamental flaws that I think need to be
13 spoken to.

14 On December 16, 2010, President of the
15 United States, President Barack Obama signed the
16 United Nations Declaration on the Rights of
17 Indigenous People. And in that human rights
18 document the world says to the United States,
19 you must treat these indigenous people with
20 respect to their rights and respect their, honor
21 their rights.

22 This acknowledgment petition flies in
23 the face of the United Nations Declaration of
24 the Rights of Indigenous People and this system
25 of acknowledgment is a process of bondage. If

1 you will read the legal treatise by Hurd, The
2 Law of Freedom and Bondage in the United States,
3 it clearly defines two systems of bondage: The
4 slavery of black labor and the United States'
5 imposition of bondage for Indian tribes.

6 The third-party provision of these
7 proposed rules is important because if a woman
8 wants to rush into a flaming building to save a
9 child that she thinks is burned to death and may
10 be already dead, people have a right to stop her
11 from going in there and throwing away her right
12 to live in a futile effort.

13 And so perhaps the UN High Commissioner
14 of Human Rights could be allowed to step in and
15 veto a proposed acknowledgment of the Chinook
16 placing itself into bondage to save their human
17 rights that the United Nations is dedicated to
18 protect the indigenous rights of Chinook people.

19 And so that is, I want to say is a good
20 reason why a third-party veto should be allowed
21 to protect the human rights and the water rights
22 and the land rights and the jurisdictional
23 rights of the Chinook people over their land.
24 They've been here for over 9,000 years, longer
25 than the Egyptians have been in Egypt, and the

1 rights need to be protected.

2 LARRY ROBERTS: Okay. Thank you.

3 SPEAKER: Just for the record, I would
4 like to state that Robert Taylor has no speech
5 for the tribe and does not speak on behalf of
6 the Chinook Indian Nation.

7 LINDA RAE COON: Hello. My name is
8 Linda Rae Coon. I'm a seventh generation
9 Oregonian. My pioneering family arrived in
10 Oregon 1860 and 1870 in southern Oregon, Coos
11 and Curry County. I have kinship ties with the
12 ancestors with the Confederated Tribes of the
13 Lower Rogue, Shasta Costa, Tututni, and Chetco.
14 And I am here to represent them as their
15 volunteer cultural resource specialist.

16 I would like to discuss the proposed
17 rule to try to figure out how this community can
18 fit into the future that the BIA is trying to
19 put together. Unfortunately, they fall through
20 the cracks for a number of decades because they
21 are an off-reservation community and always have
22 been. Their ancestors survived from escaping
23 going to the reservation. The women married
24 miners and foreign members of the military and
25 settled on their ancestral lands. They never

1 went to the reservation, not once. So they will
2 never be on a tribal roll. Although the federal
3 government does know of them and knows of their
4 existence because they are documented in many
5 other sources with the BIA and can be found in
6 record group 75 of the national archives.

7 The BIA had a relationship with them
8 consistently in the 1930's. They spent time
9 down there on the Rogue River area documenting
10 families. And in 1940s they had a contract with
11 the families down there of this community and
12 brought them healthcare and developed a cannery
13 for them. They consistently developed a public
14 domain roll on this off-reservation community
15 and they self-identify as Chetco, Tututni or
16 Shasta Costa.

17 In 1977 when Congressman AuCoin and
18 Senator Hatfield began the restoration process,
19 they made a public decision they did not help
20 the off reservation communities. They made that
21 very clear and it's public record. And since
22 then they have been set aside and ignored and
23 suffer from a great injustice.

24 They had a long-term relationship with
25 the communities in the Southern Oregon Coast,

1 with members of the Coos and Coquille. They
2 attended their tribal meetings. They're a part
3 of their organization. Many of them speak the
4 same Athabaskan language and have other
5 cross-cultural ties with marriage.

6 For a long time the BIA has insisted
7 that they cannot acknowledge them because they
8 are a off-reservation status. But congressman,
9 senators have always been confused as to what to
10 do because they cannot get clear direction from
11 the BIA and feel they need to go through federal
12 acknowledgment. In your proposed rules they
13 still seem to fit into this black hole of
14 nonexistence because they have never been part
15 of the reservation community or culture and have
16 survived separately for decades. You can speak
17 to that.

18 LARRY ROBERTS: Sure. I'm not, I'm not
19 aware of our regulations prohibiting petitioners
20 just because they haven't lived on a reservation
21 itself. So --

22 LINDA RAE COON: I do have, I know
23 there's time to talk later, but I do have
24 letters from different employees over the past
25 from the BIA indicating to them, we have

1 documentation to the Lower Rogue Community that
2 you will not accept their petition and then you
3 have encouraged our Congress members not to
4 restore them as a tribe. Unfortunately when
5 Acting Assistant Secretary Ragsdale testified to
6 Congress in 1999 when the Coquille were working
7 to being restored, he gave some of this
8 information and didn't share this properly with
9 Congress. He said, "We are (inaudible)
10 enactment of HR881, and that is for Coquille
11 Tribe getting restored." Thankfully they were
12 restored. "Instead we recommend that the
13 legislation provide those groups, which were
14 tribes or identifiable communities and that
15 would terminate under the Western Oregon
16 Termination Act of 1954, the opportunity to
17 petition for federal acknowledgment under the
18 Bureau of Indian Affairs process 25 CFR 83. We
19 estimate that not two or three groups may be in
20 this category since Congress has already
21 restored those tribes that we know have ongoing
22 identifiable communities."

23 That is not true. This community, this
24 tight-knit community was a well-identified by
25 the government and had relationships with them.

1 When Task Force 10, which Dr. Beckham testified
2 at, and where Dr. Beckham grew up among these
3 people. He knows who these off-reservation
4 people are. He grew up with them as a child.
5 They're in here, Task Force 10. The federal
6 government went down to the Agness, Powers,
7 Illahe area and the Rogue River and interviewed
8 15, 15, Tututni descendents and asked them what
9 happened to them through this process. They're
10 written about in this book. They are
11 identified. And Congress does not say that
12 these people should be excluded.

13 LARRY ROBERTS: So I'm not aware --
14 Again, you know, we're here to talk about the
15 general rule, right, not any specific --

16 LINDA RAE COON: And I understand that.

17 LARRY ROBERTS: -- petition. So I
18 really can't comment on a specific petition. I
19 will just say I'm not aware of any bar in our
20 general rule to your petition.

21 LINDA RAE COON: It doesn't specifically
22 address their, in my opinion it doesn't
23 specifically address their circumstance.

24 LARRY ROBERTS: Okay.

25 LINDA RAE COON: When you have the

1 tribal not acknowledge and then (inaudible).
2 Like I said, they keep falling through the
3 cracks because they don't get specific enough
4 identification to how you want to handle this
5 group.

6 When I read your criteria, if they can
7 go through acknowledgment, they meet every
8 criteria and they have every single time. They
9 have an extensive amount of documentation in the
10 National Archives.

11 LARRY ROBERTS: If Congress has
12 terminated the tribe, passed specific
13 legislation terminating the tribe, then
14 administratively there's nothing we can do.

15 LINDA RAE COON: And I understand that.
16 But your employees continue to give
17 documentation to our congressman/senators
18 indicating that you believe they wouldn't meet
19 your criteria. And so they keep falling through
20 the cracks. If you will not look at their
21 information and assist our congressman/senators
22 to understand that evidence does exist, they
23 keep falling through the cracks. And right now
24 their cultural resources are being threatened.

25 LARRY ROBERTS: So I guess I'm just

1 going to take it back to -- I mean, we're happy
2 to talk with you at a break about -- I am not
3 familiar with your specific situation, but
4 generally speaking, unless there is federal
5 legislation prohibiting acknowledgment or
6 terminating the tribe or, you know, the tribe
7 has already gone through the process and been
8 denied, then I don't, I don't know of any reason
9 why -- The petitioning process is open roughly
10 to any group that wants to submit a documented
11 petition.

12 LINDA RAE COON: Well, at the break I
13 have the letters from your different employees
14 over the years that might explain a lot of the
15 confusion.

16 LARRY ROBERTS: Yeah. And I think it
17 would be helpful to, across the board, if there
18 are parts of the rule that are unclear or could
19 be improved, we encourage everyone to submit
20 comments how to improve it rather than comments
21 that essentially say, you know, the rule isn't
22 working and leaves it at that, doesn't provide
23 any guidance to the Department on how to improve
24 the rule.

25 LINDA RAE COON: I appreciate your time

1 and look forward to discussing this further.

2 LARRY ROBERTS: Thanks.

3 SUE HALL: Good morning. My name is Sue
4 Hall. I'm with the Snohomish Tribe of Indian.
5 I'm the daughter of Mary Hall, who is the
6 daughter of Senator, State Senator William
7 Bishop, who is the son of Sally (inaudible)
8 Bishop Wilson, who is the daughter of, who
9 signed the Treaty of Point Elliott, the sixth
10 signer. I'm currently vice chairman of the
11 Snohomish Tribe of Indians and The Small Tribes
12 of Western Washington STOWW board member.

13 Having tried to work within the current
14 system for many years, we're pleased to have the
15 opportunity to speak to you today about our
16 support and our concerns. The Snohomish Tribe
17 of Indians is a successor in interest to the
18 Snohomish who signed the Treaty of Point
19 Elliott. Nine of the signatures of that treaty
20 were Snohomish. The Snohomish Reservation
21 designated in the treaty was rolled into the
22 general reservation at Tulalip. Welcome
23 (inaudible) by the Snohomish were ignored and
24 only a small number of the Snohomish moved on
25 and stayed on the general reservation. The rest

1 moved back to their home villages on the
2 Snohomish River or stayed at their home villages
3 in Cultus Bay and Chinookum Creek, which
4 provided the necessary food that the reservation
5 land could not. Medical and school records on
6 Tulalip showed the coming and going of many
7 Snohomish tribal people. There was never
8 sufficient land that settled all the Point
9 Elliott Treaty signers. All the land in Tulalip
10 was allotted by 1909 and the Northwest
11 Federation of American Indians was founded by
12 Thomas Bishop, my great uncle, in 1913 to
13 address the deprivation of treaty rights and
14 assist the land of Indians.

15 Both reservation and nonreservation
16 Snohomish participated in government and other
17 organizations with the goal of pushing the
18 government, the U.S. Government to honor the
19 treaty. The 1917 Snohomish organization
20 predates the formal organization of the
21 reservation Snohomish Tribes and other tribes
22 that existed on the Tulalip reservation by
23 13 years.

24 In 1930, without the involvement,
25 knowledge or permission, the off-reservation

1 Snohomish were removed from the rolls just
2 after -- just before the Indian organization --
3 Reorganization Act of 1934. That included
4 full-blooded Snohomish.

5 Some Tulalip reservation community
6 members, possibly including some Snohomish
7 members, organized a business committee to deal
8 with reservation issues. And after the IRA,
9 Snohomish nonreservation Indians lost their
10 voice in those actions and were deprived of
11 their treaty rights. Further, membership of
12 intertribal organizations became limited by the
13 reservation tribes to exclude the landless
14 tribes until their help was needed in the 1954
15 termination era. The Snohomish and other
16 landless tribes were once again included in
17 intertribal organizations to fight the
18 termination.

19 The Snohomish tribe of Indians has been
20 seeking re-recognition for many decades in the
21 face of opposition by the Tulalip tribe, which
22 have become extremely successful and powerful.
23 It's a day-in-the-life situation (inaudible) if
24 the proposed federal acknowledgment, the FAP
25 changes, include the third-party consent and

1 recognizes third-party interest over the
2 injustice and errors made in previous findings.

3 The Snohomish tribe -- Excuse me. A
4 study done by Evergreen State College students,
5 graduate students in 2014 showed a large
6 percentage of recognized tribes responding to
7 the FAP changes were Washington tribes, Western
8 Washington tribes. The language used in these
9 arguments against changes to the FAP as well as
10 their list of concerns were unsurprisingly
11 similar between the tribes and it is unlikely
12 that a petitioning tribe ever have support from
13 a tribe that is historically opposed, especially
14 among the I-5 casino tribes.

15 The Snohomish Tribe of Indians were
16 welcoming objective and factual interested party
17 involvement, have concerns about the bias,
18 political affiliations, lobbying and involvement
19 of the powerful tribes in this area. Regardless
20 of how much time and money that these tribes
21 have spent on fighting the nonrecognized tribes,
22 these items should have no bearing on the facts
23 of landless tribes still seeking recognition
24 through their petitions.

25 So the, I want to thank you again for

1 allowing me to speak today.

2 LARRY ROBERTS: Thank you. If there is
3 nobody that wants to make a comment at this
4 point in time, we can take a short break. We'll
5 take a 15-minute break to I guess 10:20. Thank
6 you.

7 (Break taken from 10:04 to 10:21.)

8 LARRY ROBERTS: Just so that we can get
9 a sense of how many people still want to make
10 comments that haven't had a chance to do so,
11 would you please raise your hand just so I sort
12 of know? Those folks who haven't had a chance
13 to comment yet but still want to do so. Just a
14 couple.

15 Okay. So what we'll do is for this
16 session if we could just have those folks that
17 haven't had a chance to make comments yet,
18 please feel free to step up to the microphone
19 and make your comments. And then if there's
20 anyone else that's already commented that wants
21 to make additional comments, please feel free to
22 do so. Thanks so much.

23 JOSH LYNCH: Good morning. My name is
24 Josh Lynch. I'm a not tribal member and not
25 here to represent any tribe. I just graduated

1 from a program at Evergreen State College,
2 master's in public administration of tribal
3 governments. The issues that are being
4 discussed here today were something that I
5 studied pretty thoroughly for the extent of the
6 two-year program. And something that I wanted
7 to comment on just because of my interest in
8 justice more than procedural administrative
9 practice.

10 As far as my other interest, my family's
11 history is linked to the southwestern region of
12 Washington. I have family that lived in the
13 Chinook and the Ilwaco area for generations.
14 And myself, I was born in Snohomish, Washington.
15 So I am interested in, you know, history in this
16 region that I've grown up being taught in
17 schools, which unfortunately is not done very
18 well. I'm interested in the relations between
19 various peoples in this region being
20 strengthened, not, you know, characterized by
21 adversity, which unfortunately it often is.

22 As far as the proposed rules for the
23 changes to the Federal Acknowledgment Process
24 goes, I am somewhat hesitant to say that I
25 support the idea of the Federal Acknowledgment

1 Process in the first place, realizing that the
2 history is more than just the idea that before
3 1978 the Department acted in an ad hoc basis to
4 recognize the tribes and then all of the sudden
5 this regulation came out of nowhere. That's
6 just not the case. And I realize the background
7 you provided this morning and the background
8 that's provided in the intro to the proposed
9 rule wouldn't allow for a broad kind of
10 historical context to go into all the details of
11 that.

12 But I do think it's pertinent to
13 recognize that in the middle of the 1970s the
14 Department was really confused about even
15 whether they had the authority or not to
16 recognize tribes and were doing kind of the
17 dances around what was going on in the courts in
18 U.S. v. Washington, (inaudible) v. Morton, and
19 the decisions that were arising out of those
20 cases as well as the non-Indian restoration and
21 what that meant for tribal rights as opposed to
22 federal recognition and were the two equatable
23 or not.

24 The Samish case, as someone mentioned
25 earlier, is a more recent development in that

1 trajectory of federal policy that I feel like
2 the BIA needs to maybe look at a little closer
3 because of the proposed rules' reliance on the
4 federal court system to adjudicate matters after
5 a final determination by the Assistant
6 Secretary. The courts in the Ninth Circuit,
7 having decided there's a difference between
8 determinations for a treaty status in the tribe
9 as opposed to federal recognition and that the
10 two processes are entirely different branches of
11 the federal government, if you will.

12 Additionally, I think it's important to
13 recognize that in the '70s the American Indian
14 Policy Review Commission, as several people have
15 mentioned, brought out recommendation that the
16 BIA and many reservation-based tribes at the
17 time, both the National Tribal Chairman
18 Association opposed vehemently and the NCA died
19 and the BIA elaborated on what became the
20 initial proposed rules in 1978. There was
21 national recognition conference held in 1978
22 just prior to the rules being proposed.

23 And so it's important to recognize in
24 the rules themselves that there's embedded
25 values and meanings that are not value-free, if

1 you will, that they are setting mandatory
2 criteria as opposed to one assess, as the Jim
3 Abourezk bill originally proposed as well as the
4 idea that the process could remain in the BIA,
5 even though some of the attributed, they have
6 given the metaphor that it's kind of the fox
7 guarding the hen house. Many have advocated
8 over the years for an independent commission.
9 There's been legislation before Congress even as
10 recently as 2011, I believe, maybe more
11 recently, correct me if I'm wrong.

12 So I feel like the Bureau of Indian
13 Affairs is accepting many of the proposed
14 changes that were initially proposed in the '70s
15 as far as the 1934 and, you know, being more
16 flexible with the historical specificity of each
17 petitioner and allowing for some range, gaps in
18 the record and not being so dogmatic with
19 aspects like that, which are good changes.

20 But as far as how the wording of it, I
21 think several times in the document it says it's
22 about maintaining the integrity of the process.
23 Well, I think that's contradictory to the fact
24 that the process was born out of contention, has
25 gone before a congressional oversight hearings,

1 has been counteracted by legislation seeking to
2 remove the process from the BIA. Essentially
3 it's never really been integrous and it's been
4 overly burdensome. And so I feel like it would
5 be nice if the BIA, as an agency, could
6 recognize that, maybe something similar to Kevin
7 Gover's apology for the history of the BIA, how
8 they treated indigenous peoples. Because it
9 really is about justice more so, in my mind,
10 than it is about a procedural administrative
11 process to, you know, correct something that
12 just happened to go wrong. It's about more than
13 that.

14 And I realize the organizational
15 constraints that you operate within in the
16 Bureau as well as just in federal government
17 generally, but like several people have already
18 said today, the third-party clause that allows
19 basically a veto for a prior petitioner negates
20 the fact that it's not just the people that have
21 opposed the tribes that have spent an enormous
22 amount of effort and resources and whatnot, but
23 it's petitioners themselves that have spent
24 years and years and, you know, emotions and
25 resources, all that, that is kind of being left

1 out of that as far as the justification for why
2 that is in there.

3 It seems like the tribes that have
4 opposed the recognition of these tribes,
5 specifically in Western Washington I'm speaking
6 of because I know that history region more, that
7 their input has really shaped initially the 1978
8 proposed rules but also the constraints on
9 making any substantial changes. And I think
10 that's really what needs to happen is more than
11 just procedural changes, there needs to be a
12 substantive look at, you know, the values
13 embedded in the criteria themselves, how that
14 plays out for petitioners seeking some mode of
15 justice in all this.

16 So I have a lot of other comments I will
17 probably put into a paper and e-mail at some
18 point, but thank you for your time.

19 LARRY ROBERTS: Great. Thank you.

20 Okay. Are there any additional
21 comments?

22 Okay. Well, I thank everyone for
23 attending this morning. And as I started off
24 with, the comment period ends August 1st. So
25 please submit any written comments you have to

1 the website identified in the papers and, and
2 thank you for your participation today.

3 (Recess at 1:01 p.m.)

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C E R T I F I C A T E

I, Aleshia K. Macom, a Certified Shorthand Reporter for Oregon, do hereby certify that at the time and place set forth in the caption hereof I reported in Stenotype all oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 1 to 71, both inclusive, constitutes a full, true and accurate record of all proceedings had, and of the whole thereof.

Witness my hand and CSR stamp at Vancouver, Washington, this 22nd day of July, 2014.

Aleshia K. Macom
ALESHIA K. MACOM
Certified Shorthand Reporter
Certificate No. 94-2095

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