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Tribal Consultation: Draft Revisions to Federal
Acknowledgment Regulations (25 CFR 83)



Morning Session
July 17, 2014

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Tribal Consultation
Draft Revisions to Federal Acknowledgment
Regulations (25 CFR 83)

Menominee Casino Resort
Keshena, Wisconsin
July 17, 2014

APPEARANCES:

LAWRENCE ROBERTS, Deputy Assistant
Secretary - Indian Affairs

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

ELIZABETH APPEL, Office of Regulatory
Affairs - Indian Affairs

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TRANSCRIPT OF PROCEEDINGS

LARRY ROBERTS: Good morning, everybody. Thank you for attending this morning session here for our discussion on the proposed rule on the federal acknowledgment regulations.

Before we get started this morning, I want to thank Chairwoman Boivin for hosting this here in her territory this morning and would ask for her to provide a few opening remarks.

LAURIE BOIVIN: Welcome to the Land of the Menominee. Before we get started this morning, I would like to introduce Mr. David Grignon. He's our historic preservation director, one of our cultural leaders, and I would like him to give us an invocation this morning.

DAVID GRIGNON: I was given tobacco by Chairman Boivin to do the invocation this morning. I'm very honored to speak for this important meeting that you'll be having today.

I'll ask the great spirit for health, strength, and life for everyone here and that you have a good meeting. (Native language spoken.)

LAURIE BOIVIN: Waewaenen, Dave, for

1 those great words. So, again, good morning.
2 Welcome to the Land of the Menominee. I hope
3 that you've enjoyed your stay so far here.
4 Menominee is one of the indigenous tribes to
5 what is now known as the State of Wisconsin.
6 We've been here for over 10,000 years, and we
7 have an enrollment of almost 9,000 members. And
8 I think, from our perspective, anytime that we
9 have the opportunity to comment and have
10 consultations on changes, that's a good thing,
11 and so I commend the consultation process, and I
12 hope that anything that comes out of the
13 meetings today is taken into consideration.

14 For my tribe, we totally understand the
15 federal recognition process. For those of you
16 who may know this or may not know, but Menominee
17 Tribe was terminated in 1954. We were one of
18 the experiments. We were one of three tribes
19 that was selected, and we were selected for that
20 because at that time our tribe was very
21 successful, and the effects of that termination
22 was devastating to the Menominee Tribe. We
23 basically plummeted into poverty, and we've
24 never gotten back to the point where we were
25 prior to that termination, and we lost a great

1 deal of land, our security. We lost everything.
2 We lost our cultural identity, and a lot of our
3 members left our reservation and had to seek
4 jobs, you know, in the cities to provide for
5 their families, and that was another piece of
6 historical trauma for us. So we understand the
7 importance of federal recognition. And in 1973,
8 after a long fight, our tribe was restored back
9 to federal recognition. So we've never been the
10 same, but we have our nation back, we have our
11 identity, and so we understand the importance of
12 federal recognition and what it means to Native
13 people.

14 So with that, I would like to thank
15 Mr. Larry Roberts for being here and the Bureau
16 for having the consultation here at Menominee,
17 and, again, I hope that you have enjoyed your
18 stay and that you have good discussions today on
19 such an important topic. Waewaenen.

20 LARRY ROBERTS: Okay. So thank you
21 all for attending this morning. My name is
22 Larry Roberts. I'm a member of the Oneida
23 Nation of Wisconsin and principal deputy
24 assistant secretary for Indian Affairs, and so
25 before we get too far down the road, I want to

1 just make sure that everyone has this packet of
2 materials. We're going to be going over the
3 PowerPoint this morning. Basically I'm going to
4 walk through a little bit of the history of the
5 proposed rule, how we got to where we are today,
6 and talk about sort of the high-level proposed
7 changes in the rule and then really open it all
8 up to you because this is a forum not for us to
9 talk into the microphones for a long period of
10 time but really hear directly from all of you in
11 terms of your questions and your concerns and
12 your comments on the proposed rule.

13 So given the number of people we have here
14 today, what I would ask is that for folks that
15 do want to make comments, try to limit your
16 comments to about five minutes. I'm going to
17 try to do that so that everybody has a chance to
18 speak. I'm doing it for all of you so all of
19 you have a chance to speak, and then if we
20 have -- we'll have time afterwards, after
21 everyone's had a chance, that if you want to
22 make more extended comments, you're welcome to
23 do so.

24 So by way of background, the United States
25 recognizes tribes through one of three ways.

1 Tribes can be recognized through a federal court
2 decision, they can be recognized congressionally
3 through federal legislation, and they can be
4 recognized administratively by the Department of
5 the Interior.

6 And so prior to 1978, the Department of the
7 Interior reviewed requests for acknowledgment on
8 just an ad hoc basis. As those applications
9 came in, they were reviewed by the solicitor's
10 office, by the Bureau, and applying essentially
11 five criteria that the Department developed,
12 they looked to see whether they would recognize
13 that tribe. In 1978 we promulgated regulations
14 to establish a uniform process for federal
15 acknowledgment. And so in 1994 we updated those
16 regulations, so approximately 20 years ago we
17 updated those, primarily to provide for those
18 circumstances where there may have been previous
19 federal acknowledgment for the tribes going
20 through the process or groups going through the
21 process. In 2000, 2005, and 2008 the Department
22 of the Interior issued guidance to implement
23 those regulations, and of the 566 federally
24 recognized tribes, 17 have been recognized
25 through the Part 83 regulations.

1 So in terms of the revisions and why we're
2 taking a look at this rule, we've heard over
3 time, certainly before my time at the
4 Department, over a number of years that the
5 process is broken, that it takes too long, that
6 it's burdensome, that it's expensive, and that
7 the results are unpredictable, that the criteria
8 that we have on the books are being applied
9 differently depending on who the petitioner is
10 and that it's not transparent, that it's not a
11 transparent process.

12 And so in 2009 when Secretary Salazar was
13 confirmed for Secretary of the Department of the
14 Interior, he testified before the Senate
15 Committee on Indian Affairs, and at that hearing
16 he committed to examining ways to improve this
17 process, and in 2010 the Department of the
18 Interior again testified before the Senate
19 Committee on Indian Affairs and put out a goal
20 of getting a proposed rule out in 2010, in about
21 a year. So in 2012 the committee had another
22 oversight hearing on federal acknowledgment, and
23 in 2012 the committee -- members of the
24 committee asked why we hadn't met our year time
25 frame for getting out a proposed rule. So at

1 that hearing we identified guiding principles
2 explaining that we had been working internally
3 on a proposed rule, and those guiding principles
4 are transparency, timeliness, efficiency,
5 flexibility but maintaining the integrity of the
6 process, maintaining the integrity of the
7 standards.

8 And so shortly after that 2012 hearing
9 before the Senate Committee on Indian Affairs,
10 Assistant Secretary Washburn and I joined the
11 Department, and one of the first things that
12 Secretary Salazar directed Assistant Secretary
13 Washburn to do was really carry this effort
14 forward of improving the Part 83 process, and so
15 in 2013 Assistant Secretary Washburn testified
16 before the subcommittee on Indian Affairs before
17 the House of Natural Resources Committee and
18 talked about how we were putting out a
19 discussion draft last summer and sort of laying
20 out the progress and the path forward that we
21 would be taking with regard to this proposed
22 rule. So last summer, in June, we issued a
23 discussion draft. We had a number of public
24 meetings and tribal consultations across the
25 country on the discussion draft. We received

1 a lot of input and comments, over 2,000
2 comments. 350 comment submissions but over
3 2,000 commenters provided those comments.

4 And so what we did as a team is we convened
5 the assistant secretary's office, the
6 solicitor's office, the Office of Federal
7 Acknowledgment, and the Office of Regulatory
8 Affairs to really work on reviewing those
9 comments and putting together a proposed rule.
10 So the proposed rule is completely rewritten
11 from 1994 to today. The federal government just
12 has a requirement that we put things in plain
13 language, so it's in a question-and-answer
14 format, and we submitted the proposed rule to
15 OMB to review, and all the -- that was provided
16 to all the federal agencies, and then we've
17 issued the proposed rule in May of this year,
18 and our comment period closes August 1st.

19 So in terms of revisions, I'm going to first
20 talk about process, revisions to process, and
21 then revisions and clarifications to the
22 criteria, some clarifications we're making with
23 regard to previous federal acknowledgment,
24 clarification for the burden of proof, and then
25 allowance for repetition under limited

1 circumstances, and then additional notice
2 requirements that we're providing in the
3 proposed rule.

4 So first off, for folks who are unfamiliar
5 with the process, the current Part 83 process
6 starts with a letter of intent, and that's
7 simply just a one-page -- it could be as simple
8 as a one-page letter that says, We at some time
9 intend to submit a full application for federal
10 acknowledgment. The proposed rule proposes to
11 eliminate that letter of intent step and just
12 start with a complete application, which is how
13 the federal government starts most of its
14 processes, is with a complete application.
15 We've also implemented a phased review of the
16 petitions themselves, and so to be federally
17 recognized through the Part 83 process, the
18 petitioners have to meet all seven criteria that
19 we've identified in the regulation. In the past
20 what we have done is we have reviewed all seven
21 of those criteria. Even if a petitioner, let's
22 say, fails three of the criteria, we've reviewed
23 all seven, and so what we're proposing here to
24 provide more timely responses is to have a
25 phased approach where the first thing in the

1 proposed rule is we would look at criterion (e),
2 which is essentially genealogy, you know, is
3 this an Indian group? Do they have Indian
4 ancestry? And if that is met, then we would
5 move forward to other criteria within the
6 regulation such as is there federal legislation
7 that forbids this group from being federally
8 recognized? Has this group been terminated, for
9 example? So the chairwoman spoke very
10 eloquently about the termination legislation
11 with regard to Menominee and Congress correcting
12 that egregious error. If Congress passes
13 legislation that terminates a tribe, the
14 Department administratively can't recognize that
15 because the federal law prohibits us from doing
16 so. So there are other groups that have
17 petitioned for federal acknowledgment through
18 the Part 83 process that have similarly been
19 terminated by Congress, and so that is one of
20 the criteria. There can't be federal
21 legislation forbidding the relationship. So
22 we're proposing a phased review where if
23 someone -- where if a petitioner fails one of
24 these criterion at the outset, that we limit our
25 review to that criterion and provide a more

1 timely answer. If these initial criterion are
2 met, then the phased approach we have is then
3 looking at community and political authority for
4 those petitioners as sort of a second phase
5 review because that is one of the more
6 documentary, heavy parts of our review, and it's
7 also a more timely -- time-intensive review for
8 the Department, for third parties, and for the
9 petitioners themselves.

10 So under our current process, a proposed
11 finding is issued by the assistant secretary.
12 In our proposed rule, we're proposing that a
13 proposed finding be issued by the Office of
14 Federal Acknowledgment and that we have a
15 comment period, just similarly as we do now. We
16 would maintain the comment period on the
17 proposed finding.

18 Some of the changes that we're proposing is
19 if the proposed finding is positive and we don't
20 receive any substantive comments in opposition
21 to that positive proposed finding, rather than
22 going through a process of then writing a final
23 determination that's positive, the rule provides
24 just for that proposed finding to be finalized
25 immediately if we don't receive any substantive

1 negative comments.

2 If the proposed finding is negative, what we
3 provide is that the petitioner may ask for a
4 hearing before the Office of Hearings and
5 Appeals, before a judge, and the judge would
6 make a recommended decision to the assistant
7 secretary. And so third parties -- if, let's
8 say, there's a proposed negative finding and a
9 petitioner elects to have a hearing, third
10 parties can intervene in that hearing process,
11 but I want to underscore that the Office of
12 Hearings and Appeals is independent within the
13 Department of the Interior. They have
14 administrative judges, and what they're
15 providing is a recommended decision to the
16 assistant secretary. The assistant secretary
17 under the proposed rule still maintains final
18 decision-making authority on the petition. With
19 regard to a final determination, once that final
20 determination is issued, it is under the
21 proposed rule final for the Department. As it
22 works right now, these decisions can have
23 limited appeals to the Interior Board of Indian
24 Appeals. These are the only decisions that the
25 assistant secretary makes that are subject to

1 Interior Board of Indian Appeals review, and so
2 what we have proposed is to eliminate that
3 review and provide immediate access, immediate
4 review to federal district court.

5 In terms of the hearing on the negative
6 proposed finding, the Office of Hearings and
7 Appeals, which is separate from Indian Affairs,
8 has issued proposed procedures, and they're --
9 basically for any attorneys in the room, they
10 are basically just civil procedures, how the
11 hearing will be handled. One of the questions
12 that they've asked in their rule is who should
13 preside over these hearings? Should it be an
14 administrative law judge, who maintains quite
15 independent authority within the Department and
16 within the Office of Hearings and Appeals,
17 similar to a judge that you would think of in
18 terms of either a tribal court or a federal
19 district court? There is another category of
20 judges called just administrative judges, and
21 they report directly to the Office of Hearings
22 and Appeals director, and there's a little bit
23 more -- or a little less independence, I should
24 say, with that position. And then the other
25 option is to have an attorney designated by the

1 Office of Hearings and Appeals director to
2 preside over the hearing, and so that's one of
3 the things that the Office of Hearings and
4 Appeals is looking for in terms of feedback and
5 comment on that process.

6 Some of the revisions to the process in
7 terms of when may a petitioner withdraw their
8 petition, when may they sort of stop out of the
9 process, and under the proposed rule, we're
10 providing flexibility to the petitioner to
11 withdraw at any time prior to the proposed
12 finding is published. OFA will stop
13 consideration of that petition at that request,
14 but if a petitioner makes that decision, they
15 would need to resubmit it, and they would lose
16 essentially their place in line for
17 consideration by the Office of Federal
18 Acknowledgment.

19 The other thing that we have in the proposed
20 rule is for the Department to post on the
21 Internet basically all aspects of the petition
22 and comments on the petition that are releasable
23 under federal law. So if, for example, the
24 Privacy Act applies in this context, we're not
25 talking about releasing Privacy Act information.

1 We're talking about releasing the petition, how
2 the petitioner feels that they've met the seven
3 elements, those sort of things.

4 So with regard to criteria, let's segue to
5 that, we currently have seven criteria. The
6 proposed rule is carrying forward also seven
7 criterion. We're making a change to the first
8 criterion. Under the first criterion, we
9 require the petitioner to show that they have
10 been identified by third parties, outside
11 entities, from 1900 to the present, and under
12 the proposed rule we're eliminating that
13 requirement and replacing it with a requirement
14 that the petitioner provide a brief narrative of
15 their existence as a tribe prior to 1900, and
16 this should be -- we're talking about a brief
17 narrative with evidence in the proposed rule,
18 and our thoughts are that it shouldn't be a
19 treatise, it shouldn't be a multi-volume
20 treatise, but it should be something long enough
21 to provide a good sense of the tribe's history,
22 because through this process we're not creating
23 new tribes; we are recognizing existing tribes.
24 And so we're proposing eliminating the external
25 identification requirement because one of the

1 things that we have been thinking about is, one,
2 we have never denied a petitioner solely on
3 criterion (a), and the other thing is is that if
4 you look at all of the other criteria, a group
5 that's maintaining community, a group that's
6 exercising political authority, they show
7 descent from a historic tribe, they have all the
8 attributes of a tribe but a third party hasn't
9 been out there writing about them, does that
10 make them any less of a tribe from 1900 to the
11 present?

12 So with regard to criterion (b), community,
13 which I was just talking about, we are proposing
14 to start our analysis of a petitioner's
15 community from 1934 to the present. Currently,
16 under the existing regulation, it's time of
17 first sustained contact or 1789, whichever is
18 later, and one of the reasons that we're
19 proposing the 1934 date is that that is the date
20 that Congress changed its policy towards tribes.
21 Prior to 1934, Congress's policy was either they
22 were at war with tribes or they were -- the
23 policy was allotment and assimilation and
24 breaking up tribal governments, and so 1934 is
25 one of the first times in the federal

1 government's history where the federal
2 government is passing legislation to say those
3 policies of allotment and assimilation are
4 failed, in 1934 we're going to promote tribal
5 governments and promote strong tribal
6 governments, and so that's why we picked 1934.
7 The other fact with regard to 1934 is that in
8 looking at our almost 40 years of administering
9 the Part 83 process, we've never had a situation
10 where a petitioner has satisfied all the
11 criteria post 1934 but failed them prior to
12 1934. So for administrative efficiency, we've
13 never -- for administrative efficiency and also
14 to align with federal policy, we're starting
15 with the 1934 date because we've never had a
16 situation where a petitioner has satisfied all
17 the criteria from '34 to the present but has
18 failed those criteria prior to that. So in
19 terms of criterion (b) and (c), we're actually
20 proposing a start date of 1934 to the present
21 for both of those, for political authority and
22 community, and we're also saying that for those
23 two criterion, that if the group has maintained
24 a state reservation since 1934 continuously to
25 the present or the United States has held land

1 for the group, collective land holdings for the
2 group, at any point since 1934, that those will
3 satisfy criterion (b) and (c) in the proposed
4 rule. And the thought behind that is that when
5 I mentioned earlier about prior to 1978 the
6 Department looking at the recognition of tribes
7 on an ad hoc basis, one of the criteria that the
8 Department looked at was collective ownership in
9 land, and that could be a determinative factor
10 for the Department.

11 In terms of without substantial
12 interruption, so under the current rule, we
13 require petitioners to show community and
14 political authority without substantial
15 interruption. The Department has applied that
16 differently throughout the 40 years of
17 administering the process. Sometimes without
18 substantial interruption has been as much as
19 27 years; sometimes we have applied that to mean
20 as little as 10 years. And so in the proposed
21 rule, we're proposing that as a general matter
22 it should be less than 20 years, and we're
23 trying to provide consistency with our decisions
24 in the past.

25 With regard to criterion (e), descent, we're

1 requiring that 80 percent of the petitioner's
2 membership showed documentation that they
3 descend from a tribe that existed prior to 1900.
4 That 80 percent rule is something that we've
5 applied as a standard administratively, and so
6 we're codifying it here in the regulations.
7 That doesn't mean that 20 percent of the
8 petitioner's membership can be non-Indian. It
9 just means for documentary evidence we require
10 80 percent of those members to provide that
11 information.

12 One of the other things that we're doing in
13 the proposed rule is we're allowing descent --
14 for many of you, you're aware that Congress from
15 time to time has directed the Department to
16 prepare rolls of Indian tribes and at other
17 times the Department has done that themselves;
18 and with regard to that criterion, if there is a
19 specific roll prepared either at the direction
20 of Congress or by the Department, a specific
21 roll for a tribe, that we're going to use that
22 roll and trace descent from that roll forward.
23 If the group does not have a specific roll that
24 was prepared at the direction of Congress or
25 prepared by the Department of Interior, what

1 we're going to look at is the most recent
2 reliable evidence prior to 1900, and so that is
3 also consistent with various decisions that
4 we've made in the past where we will look at
5 information that we believe is accurate in 1880,
6 1890, 1900 and move forward from that point in
7 time.

8 In terms of criterion (f), membership, we
9 have proposed -- we have heard through our
10 consultations and public meetings last summer
11 that -- a number of petitioners in the process
12 have said a number of our members have left the
13 petitioning group and enrolled in federally
14 recognized tribes, they're eligible for
15 enrollment in either group, and it's because the
16 Department's process has taken so long they've
17 made this choice. And so we've proposed in the
18 rule that if their members had enrolled in a
19 federally recognized group and they have filed a
20 letter of intent by 2010, that we're not going
21 to penalize our slow process for that effect.
22 In terms of congressional termination, right now
23 the onus is on petitioners to prove that they
24 haven't been terminated. We're proposing to
25 change that so that it would shift the burden on

1 the Department to show that a petitioner has
2 been terminated and is ineligible for the
3 process.

4 In terms of previous federal acknowledgment,
5 we haven't tried to substantively change this in
6 any manner. We're basically trying to clarify
7 it, and so we're not making a substantive change
8 to that aspect of previous federal
9 acknowledgment.

10 In terms of burden of proof, similarly,
11 we're not substantively changing the standard,
12 but we are clarifying the standard based on
13 Supreme Court precedent, and we've heard that
14 that burden of proof has been inconsistently
15 applied over time by the Department, and so
16 we're trying to clarify, but we're not changing
17 the burden of proof.

18 In terms of repetitioning, because we have
19 heard that the process is broken, that it's been
20 applied inconsistently, we are providing a
21 narrow opportunity for repetitioning, and this
22 is how it works in the proposed rule. So if a
23 petitioner has gone through the process and has
24 been denied and third parties have litigated
25 that petition either administratively before the

1 IBIA or to the administrative appeals process at
2 the Department or in federal court and those
3 third parties have prevailed, then the
4 petitioner needs the consent of those third
5 parties before they can take the next step in
6 the process. Now, for those petitioners -- and
7 there's about 30 that have been denied. For
8 those petitioners who did not have any
9 administrative or federal court litigation, it's
10 still not an open door. They still have to show
11 some things before they can have an opportunity
12 to restart the process, and how we structured it
13 is that an Office of Hearings and Appeals judge
14 would basically determine whether they could
15 re-enter and restart the process, and one of
16 the -- the petitioner has to show one of two
17 things to the Office of Hearings and Appeals,
18 either that the change in the regulations
19 warrants reconsideration or that the burden of
20 proof was misapplied in their earlier final
21 decision and that that misapplication of the
22 burden of proof warrants reconsideration. If an
23 OHA judge who is independent decides that the
24 petitioner has met one of those two things, then
25 what that provides is that they can just start

1 the process all over again. It doesn't mean
2 that they're recognized. It just means that
3 they can restart the process.

4 So in terms of notice, there are a couple of
5 changes. We're trying to increase notice on the
6 petitions, and so we're going to acknowledge
7 receipt to the petitioner within 30 days.
8 Within 60 days we're going to publish notice in
9 the Public Register. We're going to post
10 materials on our website, as I mentioned
11 earlier. We're going to continue to notify the
12 governor and the attorney general of the state.
13 We're going to notify any federally recognized
14 tribe within the state or within a 25-mile
15 radius of the petitioner. So if there's a
16 petitioner that's just across state lines, we
17 have a 25-mile radius. And we're going to
18 continue to notify, in addition to that, any
19 other recognized tribe, and this is what we do
20 currently, and any petitioner that appears to
21 have some sort of either historical or present
22 relationship with the petitioner who may have
23 interest in the acknowledgment determination.

24 So the next slide talks about how we're
25 going to provide notice and when we're going to

1 provide notice, and the Office of Federal
2 Acknowledgment is going to provide notice when
3 it begins its review, when it issues its
4 proposed findings, if the assistant secretary
5 grants any time extensions, when the assistant
6 secretary begins his or her review of the
7 petition. Once they either have a proposed
8 favorable or have received a recommended
9 decision from the Office of Hearings and
10 Appeals, then they'll issue the final
11 determination.

12 So the proposed rule -- comments on the
13 proposed rule are due August 1st. The
14 procedural rule that the Office of Hearings and
15 Appeals has issued is due on August 18th. You
16 can send any comments to our email address in
17 the materials here. Next steps are going to be
18 pretty similar to the steps that we've taken to
19 get to this point. So we're going to look at
20 all of the comments both here, that are
21 transcribed as part of this meeting and all of
22 the meetings that we hold and all the tribal
23 consultations, and also written comments. We're
24 going to go through all of those, and then our
25 team of folks from the solicitor's office, from

1 the Office of Regulatory Affairs, from the
2 assistant secretary's office and the Office of
3 Federal Acknowledgment, we're going to go
4 through those comments and move forward with a
5 final rule based on those comments.

6 So with that, I'm happy to turn it over to
7 you all, and I'm interested in hearing your
8 comments on the proposed rule, so thank you.

9 So I guess we have the microphone up here.
10 I don't know if we can move this. I think the
11 acoustics in this room are so good, I don't know
12 that we need the microphone, but I guess it
13 would be helpful for the person preparing the
14 transcript if you would use the microphone for
15 any comments.

16 FRANK ETTAWAGESHIK: Good morning.
17 Good to see you folks again, and I'm
18 Frank Ettawageshik. I'm the former chair at the
19 Little Traverse Bay Bands of Odawa Indians in
20 Michigan, I am now the executive director for
21 the United Tribes of Michigan, and I serve as
22 the co-chair for the Federal Recognition Task
23 Force at the National Congress of American
24 Indians.

25 We've been working on these issues for a

1 long time. We work primarily with those tribes
2 that are state recognized or non-recognized that
3 are in this process or seeking to be in this
4 process, and my first comment is I want to
5 commend Larry and Kevin for their dedication to
6 working on this process and all those others who
7 have been part of this over the years. We have
8 been working for many years.

9 My tribe itself was not on the list of
10 federally recognized tribes. We started in this
11 process of federal recognition with one of
12 those. Our letter actually wasn't a single
13 page. It was a single sentence. "We intend to
14 apply for our letter of intent," but our number
15 was way up above 100. We were like 120, 126,
16 somewhere in there, and at the rate that
17 petitioners were being considered, we were
18 looking at, we felt, maybe 50 years before we
19 would get considered, and so we worked on
20 legislation. We successfully in 1994 got
21 legislation passed that reaffirmed our federal
22 status, and so this September we're celebrating
23 a 20th anniversary of that process.

24 There were many tribes that stayed in that
25 process that were in that process at the time

1 through the federal recognition process that are
2 still there today and have yet to make it
3 through, and so, you know, when we talk about
4 how this federal recognition process has been
5 broken and how it's an onerous process and how
6 things are -- the criteria which have not yet
7 changed, by the way, but keep continually being
8 reinterpreted in such a way as to make it more
9 difficult for petitioners, we felt that it would
10 be really important to have these proposed
11 changes, and so we're very happy to see that
12 this process is at the point that it's at, and
13 we're supportive of this effort to make these
14 changes and to make this -- keep this process a
15 rigorous process because we don't want -- we
16 don't want petitioners who may clearly be -- not
17 eligible be able to make it through the process.
18 However, for tribes that are eligible and for
19 those tribal governments that -- you know, as we
20 say, justice delayed is justice denied, and we
21 look at this situation as it's taken a whole
22 generation for many of the tribes to do this.
23 There are elders who have -- who die in this
24 process and who never see the end of it from the
25 various petitioning tribes. So we believe that

1 making -- the process that has been outlined,
2 you've laid out here is -- that would make this
3 a more expedited and, we believe, more fair is a
4 good thing.

5 I'm aware of the time. I wanted to comment
6 that often those people who have expressed
7 concern about any changes to the process
8 generally are doing so because it would be
9 inconvenient for them in some way and that that
10 inconvenience often has to do with financial
11 concerns. While that clearly can be true, I
12 don't believe that those reasons are sufficient
13 to continue a process or a system that clearly
14 creates injustice for people, that we should do
15 what's right even if it's inconvenient for us,
16 and so I think that we need to keep those in
17 mind as we look at these changes.

18 There is -- one of the substantive points
19 that I wanted to make before I sit down and make
20 room for others to speak is that while I applaud
21 all of the changes as proposed, I am concerned
22 about the repetition section and the veto
23 that's given, that in this case the current
24 wording is pretty absolute if someone had
25 opposed in a previous -- in the previous

1 petition, the previous process. And while I
2 certainly believe that someone who is opposed in
3 the previous process should have a say, they
4 should be recognized, but I don't believe that
5 merely them saying no should be able to stop a
6 process from being reconsidered and being looked
7 into, and so I think that that -- I think that
8 that would be an injustice that could -- further
9 an injustice that already may have been -- may
10 have happened because of the way the system was
11 set up. So we would like to see some
12 modification there.

13 You did ask about the -- for the hearing,
14 and my personal opinion is that an
15 administrative law judge would be the better way
16 to go. I believe that this -- you know, I think
17 that that's the better way to deal with that
18 hearing.

19 And with that, I'm going to sit down and
20 make room for others to speak, but once again, I
21 want to thank everybody for all your hard work
22 on this, and through the work through the task
23 force, we will be making more detailed written
24 comments that are specific to many of the points
25 in the proposed rule, and those will be

1 provided, some of them in some of the
2 previous -- some of the subsequent hearings that
3 are coming up and also in written form prior to
4 the deadline. Thank you.

5 LARRY ROBERTS: Thank you.

6 STEPHEN SIMPSON: Thank you.

7 ELIZABETH APPEL: Thank you.

8 NOLA PARKEY: Hello.

9 LARRY PETERSON: Hello.

10 NOLA PARKEY: My name is Nola Parkey.

11 I'm from the Burt Lake Band in Michigan.

12 Burt Lake Band is kind of in an odd situation,

13 and you talked about it, about Congress not

14 terminating you. Back when we were told in the

15 beginning that we had to go through this

16 process, we thought we already were a federally

17 recognized tribe, but we were told we had to go

18 through the BIA process.

19 In 2004 -- excuse me, 2007 we filed for

20 reaffirmation, and Congress's findings say

21 they've never terminated us. So you said today

22 that if there's proof you weren't terminated,

23 then you can't go through this process? I

24 guess --

25 LARRY ROBERTS: So let me clarify --

1 NOLA PARKEY: Yeah.

2 LARRY ROBERTS: -- just clarify that,
3 and I'm sorry to interrupt.

4 NOLA PARKEY: No, that's okay.

5 LARRY ROBERTS: I just want to
6 clarify. If the Department -- the proposed
7 rule -- so the longstanding rule has been if
8 Congress has terminated a group --

9 NOLA PARKEY: Right.

10 LARRY ROBERTS: -- if Congress has
11 terminated a tribe and hasn't -- the Department
12 has to act consistently with federal law, so
13 they're not eligible for the process.

14 NOLA PARKEY: Okay.

15 LARRY ROBERTS: If a -- what we're
16 doing -- under the current rule, the onus is on
17 the petitioner to show that they haven't been
18 terminated.

19 NOLA PARKEY: Right.

20 LARRY ROBERTS: And so the proposed
21 rule is switching that burden because if you
22 haven't been terminated, then you are eligible
23 for the process.

24 NOLA PARKEY: Okay. So would we then
25 under the new rule, just to be clear about

1 everything, write a letter to the BIA or apply
2 to the BIA and ask them to tell us specifically?

3 LARRY ROBERTS: So we're not -- yeah,
4 so that's -- so we're not changing the
5 requirement, but we're putting the burden on the
6 Department.

7 NOLA PARKEY: Right.

8 LARRY ROBERTS: So rather than the
9 petitioner having to prove a negative, that they
10 haven't been terminated, we're putting the
11 burden -- the proposed rule would put the burden
12 on the Department to show that the petitioner
13 has been terminated and is not eligible for the
14 process.

15 NOLA PARKEY: Okay.

16 LARRY ROBERTS: Otherwise they are
17 eligible for the process if they're not on the
18 list of federally recognized tribes.

19 NOLA PARKEY: Okay. So I just -- I
20 would like to just sort of go along with
21 Frank -- I guess with what Frank said about, you
22 know, financially. I know Burt Lake Band has
23 been through millions of dollars, and we're
24 stuck in this whirlpool, and we need to get out
25 of it, and we don't have another million

1 dollars. And we do appreciate the efforts, the
2 new rules. We're hoping that, you know, future
3 groups maybe won't have to go through the
4 turmoil that we've gone through. It's been
5 many, many years. It seems as though we would
6 jump through one hoop and another hoop would
7 just be put in front of us. So it's nice to
8 know that things are going to be down in writing
9 and won't be so left up to individuals to sort
10 of make their own judgment on something, and I
11 think that's the only way to go on this because
12 each tribe is individual, and you can't just,
13 you know, put a stamp on something and say yes,
14 you're Indian and no, you're not. So I
15 appreciate your time. Thank you.

16 LARRY ROBERTS: Thank you. And so
17 just -- and generally, you know, one of the
18 reasons that we have the public comment period
19 is, you know, what we're -- one of the goals is
20 we want objective criteria, and so we in the
21 proposed rule have tried to provide and --
22 provide clarity and provide objective criteria,
23 but we want everyone to know what the rules of
24 the road are. And so in your comments, if you
25 can provide comments on objective criteria and

1 what those objective criteria should be, those
2 will definitely be appreciated and looked at.

3 RON YOB: I hope I talk close enough.
4 I am Ron Yob. I am the chairman of the
5 Grand River Bands of Ottawa Indians out of
6 Western Michigan. We are currently under the
7 old rules. We chose to stay in those rules, and
8 the only reason we did choose to stay in those
9 rules was because we were unsure of what the
10 proposed rules would be, so we stayed in those.

11 We appreciate -- we brought our tribal
12 council members. It's important they know what
13 is going on because until we're through the
14 process, we're still in the process. So even
15 though we're with the old rules, there's a
16 possibility we could become part of the new
17 rules. With that, can I ask some questions?

18 LARRY ROBERTS: Sure. Yeah.

19 RON YOB: Okay. Well, a question got
20 brought up about the termination, for instance.
21 To be terminated, you have to exist to be
22 terminated. So who determines your existence?
23 See, we could say we were never terminated, but
24 then you could say, Well, you never existed to
25 be terminated.

1 LARRY ROBERTS: So the only reason
2 we're looking at termination is to see
3 if Congress has passed legislation forbidding
4 the federal relationship with the tribe.

5 RON YOB: Okay.

6 LARRY ROBERTS: And if Congress has
7 done that, forbidden, we can't act contrary to
8 that law, but otherwise, you know, all of the
9 groups that have been recognized, all of the
10 tribes that have been recognized, there's 17,
11 none of them have had termination legislation
12 and we've recognized them, so it's not a --

13 RON YOB: Okay.

14 LARRY ROBERTS: So if you haven't --
15 if there's not specific federal legislation
16 saying, for example, the Grand River Band is
17 hereby terminated, then, you know, generally
18 speaking that shouldn't be a barrier for going
19 through the process.

20 RON YOB: Okay. But I guess to --
21 I'm kind of muddy yet because my thing is to be
22 terminated, you had to be recognized, so then
23 your guys are recognizing us. So if you don't
24 recognize us, then how can we be terminated?
25 You have to be in existence, so at some point

1 you have to prove that existence. Do you see
2 what I'm getting at?

3 LARRY ROBERTS: Sure. Sure. I think
4 so. I guess I'll use the example of the
5 17 tribes that have been recognized.

6 RON YOB: Uh-huh.

7 LARRY ROBERTS: They have been in
8 existence, right? We're not -- like I said
9 before, we're not --

10 RON YOB: But who's determining that?

11 LARRY ROBERTS: The Office of Federal
12 Acknowledgment determined that through the
13 application of the criteria.

14 RON YOB: Okay. But they're
15 determining also that they don't exist.

16 LARRY ROBERTS: No. They did
17 recognize them.

18 RON YOB: Okay. That wasn't the
19 point I come up for, but when they brought up
20 that, while it was a question in my head, I
21 wanted to get that out because otherwise I could
22 say Blue Lake Tribe out of Texas or something
23 could be saying, Well, we were never terminated.
24 Well, someone -- but if they never were in
25 existence, they can't be terminated. You can't

1 terminate something that doesn't exist.

2 LARRY ROBERTS: Right, but on the
3 same token, Congress hasn't terminated every
4 tribe that's always existed, right?

5 RON YOB: Yeah. I guess it's just --
6 it's not going to be a problem in our case, but
7 I just thought of that when I was sitting there.

8 LARRY ROBERTS: Okay.

9 RON YOB: It's like how can I spend
10 money if I don't have it, you know, or
11 something? I don't know. Anyway, that was one
12 question.

13 The other question was the priority numbers.
14 How do the -- is there anybody on that list yet
15 or how do they -- how does that start out? Just
16 by their date of petitioning?

17 LARRY ROBERTS: I believe that that's
18 right. I think it's the date of the complete
19 application. Now, for petitioners that are
20 already in the process, the way the proposed
21 rule reads is that for those petitioners that
22 have, I believe, submitted a complete
23 application and -- I think a complete
24 application, they can -- so let's say a
25 petitioner has submitted a complete application

1 and that tomorrow -- just for hypothetical sake,
2 tomorrow the proposed rule became final. Under
3 the proposed rule, those petitioners that had
4 submitted a complete application would have a
5 choice: Do they want to proceed under the rules
6 that exist today or do they want to proceed
7 under the new rules? And that would be up to
8 each individual petitioner.

9 RON YOB: Okay. And now some
10 unfortunate chance were to happen that we
11 were -- we're on the active list right now, and
12 if for some proposed -- for some -- I don't even
13 want to bring this up like that, but if we were
14 to have a negative finding, could we move over
15 to the new or do we stay -- if that was going to
16 happen, a hypothetical, would we stay with the
17 old rules or would we move? At that point do we
18 have an option?

19 LARRY ROBERTS: So what we've
20 provided -- and Stephen or Liz can correct me if
21 I'm wrong, but for those petitioners that are in
22 the process, currently in the process, they
23 can -- we've asked them to basically let us know
24 at their earliest convenience whether they want
25 to stay consideration of their petition, so --

1 and I think we've provided that stay option so
2 long as the petitioner is still before the
3 Department. So I think it doesn't matter
4 whether the petitioner has a proposed finding
5 that's already been issued or not. So long as
6 it's still pending before the Department in some
7 way, shape, or form, that the petitioner can
8 choose to stay that consideration of that
9 petition. The Office of Solicitor is shaking
10 their head yes.

11 STEPHEN SIMPSON: Yes.

12 RON YOB: Then one other comment,
13 kind of going on something Frank said about
14 losing our elders, which is obvious. I mean, I
15 don't need to keep bringing that point up, but
16 one thing that -- I don't know if it's been
17 brought up, but if not, I'll bring it up anyway.
18 But besides our tribe, besides losing our
19 elders, we're losing our future leaders, because
20 what's happening in our tribe is by the other
21 tribes, you know, giving incentives, education,
22 whatever, per capita, anything, whatever the
23 other tribes -- the benefits the other tribes
24 give, especially in Michigan, we just lost
25 our -- for our tribe not being federally

1 recognized, we lost our Indian Tuition Waiver,
2 which probably -- I know three chiefs that went
3 under Grand River but jumped to other tribes, I
4 mean, we lost. So what's happening is our
5 youngsters are losing. So what we're -- what
6 I'm getting at is we're trying to rebuild our
7 tribal council with youth, right? So if you get
8 people coming up that -- and you want them to
9 have a good, proper education, they're not being
10 allowed to go to the colleges under the tuition
11 waiver; and if they do go, they have to jump
12 tribes. So what's happening is the cream of our
13 crop is kind of just leaving us, you know, I
14 mean. So besides elders, we're losing the
15 bottom end of our group too.

16 LARRY ROBERTS: And so that type of
17 situation is one of the situations that we've
18 tried to address in the proposed rule, to say
19 that if a petitioner has filed a letter of
20 intent prior to 2010, that we're not going to
21 hold against that petitioner if, as you're
22 describing, members are leaving because, you
23 know, of sort of on-the-ground, just real-life
24 choices that they have to make, and so we have
25 sort of -- in the proposed rule, we've addressed

1 that.

2 Now, with everything in the proposed rule,
3 and I just want to, you know, emphasize this to
4 everyone, is that, you know, we need your
5 comments on the proposed rule. We need to know
6 not only what you don't like about the proposed
7 rule, we need to know what you like about the
8 proposed rule so that when we're looking at it,
9 we get a good sense. You know, sometimes
10 people -- I complain about things I don't like,
11 right?

12 RON YOB: Yeah.

13 LARRY ROBERTS: But I probably don't
14 say as much about the things that I like, so we
15 need to hear both. We need to hear both in this
16 comment period.

17 RON YOB: Okay. Well, I do like
18 a lot of the adjustments that you have made.
19 We're still in the old ruling, but I can
20 appreciate, you know, what's going on, and
21 hopefully the next groups that come through will
22 see the benefits of it, you know.

23 LARRY ROBERTS: Okay.

24 RON YOB: And I want to thank you for
25 letting me speak and allowing us to come and

1 listen and hear and comment, and we'll take it
2 back with us. Chi miigwetch.

3 SANDRA SKINAWAY: Bousho. My name is
4 Sandra Skinaway. I'm the chairwoman at the
5 Sandy Lake Band of Mississippi Chippewa in
6 McGregor, Minnesota, and we've filed lawsuits
7 against the BIA in the last couple of years, and
8 it always resulted to having it come through the
9 administrative process, but we're here today
10 just to basically try to understand this process
11 a little more, and we had -- I had a question
12 about the third-party review. Now, the third
13 party, is that considered like other tribal
14 governments, local, state governments? Is that
15 what the third-party --

16 LARRY ROBERTS: Yeah, I don't think
17 we've -- I think the third party is
18 all-encompassing, so it could be state or local
19 governments, it could be other tribes, it could
20 be -- I don't think we've defined it to an
21 exclusive list. I think by third party we mean
22 someone other than the petitioner.

23 SANDRA SKINAWAY: Okay. My next
24 question then is how influential are these third
25 parties in this review process, you know, of a

1 petition?

2 LARRY ROBERTS: Sure. So what we do
3 is when we put out a proposed finding, we put it
4 out there for essentially comment, and so we're
5 going to look at all of the comments from those
6 third parties in terms of, you know, are they
7 providing substantive evidence to the
8 Department, because that's what we want. We
9 want to make a decision based on the facts, and
10 so that's what we're looking at in their
11 comments.

12 And so, you know, I think we're putting, you
13 know, sufficient weight on actual facts that
14 are, you know, truth basically. So if somebody
15 puts in a comment that just says I'm opposed to
16 this recognition but doesn't provide any facts,
17 you know, we'll consider it, but we probably
18 give more weight to actual facts being
19 submitted.

20 SANDRA SKINAWAY: Okay. Because our
21 tribe is a historic tribe, and we pretty much
22 meet all the criteria; however, due to political
23 influences by other tribes, they've opposed
24 everything that we have done. So we're trying
25 to look for, you know, an unbiased opinion, and

1 I'm not really sure this process, you know, is
2 fair from political influences, but we're here
3 today just basically to look at our options. I
4 mean, we can always go back to court or we can
5 try to go through this process, but first we
6 need to try to understand it better.

7 LARRY ROBERTS: Okay.

8 SANDRA SKINAWAY: And I just had that
9 question about the third party, and pretty much
10 you told me that -- I get the feeling that they
11 are pretty influential in the decision-making
12 process.

13 LARRY ROBERTS: So we've heard that
14 concern in the past about the criteria not being
15 applied uniformly, and so we're trying to
16 provide -- we're trying to provide more
17 objective criteria so that everybody knows what
18 the rules are.

19 So one of the things that I am thinking
20 about in terms of that -- I forgot to mention it
21 to you all this morning but it is in the
22 PowerPoint, is that, for example, for
23 criterion (b), community, we have put in there
24 that 30 percent of the membership -- the
25 petitioner needs to show that 30 percent of the

1 membership is demonstrating community. So
2 that's an objective standard, that 30 percent.
3 It's not pulled out of thin air. It's pulled
4 out of the Indian Reorganization Act and the
5 requirements of the Indian Reorganization Act
6 for a group to ratify -- or for a tribe to
7 ratify a constitution under the IRA, to vote on
8 a constitution I should say, so -- but it's
9 examples like that where we're trying to provide
10 objective criteria so that everybody knows what
11 the rules of the road are.

12 SANDRA SKINAWAY: Okay. Another
13 comment I'd like to make too is that, you know,
14 many years ago in our treaty-making era, stages,
15 I mean, we recognized the 10 treaties with the
16 United States Government, and so we were thereby
17 recognized. We had a government-to-government
18 relationship, and I find it very ironic that we
19 would have to try to petition for recognition.
20 I mean, what we're trying to do is restore what
21 we had. I mean, we consider ourselves
22 recognized already through this treaty process.
23 We were never terminated by Congress, and only
24 Congress has the authority to terminate a tribe.

25 LARRY ROBERTS: So under the current

1 rules, we do provide a section for previous
2 federal acknowledgment, like through a treaty,
3 and so we're not proposing any substantive
4 changes to that, but sort of a very simplistic
5 description of that is that if a petitioner can
6 show that they were previously federally
7 recognized, let's say through a treaty that was
8 signed in 1860, under the current rules we would
9 start the analysis from that previous federal
10 acknowledgment forward.

11 SANDRA SKINAWAY: Okay. All right.
12 I just want to put on record that we kind of
13 oppose the third-party proposed rule.

14 LARRY ROBERTS: Okay. That's for
15 petitioners that have gone through the process
16 and have been denied.

17 SANDRA SKINAWAY: Oh, that's just for
18 them that have been denied?

19 LARRY ROBERTS: Uh-huh, and that they
20 prevailed, that the third parties prevailed in
21 court.

22 So let me also clarify this because I've
23 clarified it at other meetings and tribal
24 consultations. We've had comments and we had a
25 comment today about the third party, to use

1 their words, veto is unfair, and let me explain
2 that again. The way that it works is if a
3 petitioner has gone all the way through the
4 process and they have received a final
5 determination that's negative, that says you do
6 not satisfy the criteria and third parties -- or
7 let's say -- either way, third parties, let's
8 say, participated in administrative litigation
9 before the Department, you know, say they agreed
10 with the Department and intervened in the case
11 and litigated it and the Court agreed with them
12 or let's say that there was a final
13 determination that was favorable and third
14 parties sued under that final determination in
15 court and prevailed, the Court found in favor of
16 them, we're not saying that those parties are
17 forever barred from restarting the process.
18 What we're saying is that they need to get the
19 consent of those third parties who litigated and
20 won.

21 And so it's not unlike situations where, you
22 know, tribes prevail in litigation and win.
23 There's equities there in terms of not changing
24 those rules, and so here if this provision only
25 applies to those petitioners that have gone all

1 the way through the process, that have gotten a
2 final determination that has been challenged
3 either administratively in an appeal or in
4 court, if they've been challenged in either one
5 of those situations and that third party won,
6 that's where the third-party consent comes in or
7 some folks say the third-party veto comes in.
8 Otherwise, there is no third-party veto.

9 SANDRA SKINAWAY: So what happens
10 when there is a third-party veto in those cases?

11 LARRY ROBERTS: In those cases, that
12 group that has lost in the litigation, if the
13 third party doesn't consent, they cannot then
14 take that next step of going to the Office of
15 Hearings and Appeals to ask whether they may
16 restart the process. They need to get that
17 consent.

18 SANDRA SKINAWAY: And if they can't
19 get the consent, then it's over with, done?

20 LARRY ROBERTS: If they can't get the
21 consent, they can't take that next step of
22 asking the Office of Hearings and Appeals
23 whether they can restart the process, and so
24 until they get that party's consent, that's
25 right.

1 SANDRA SKINAWAY: And they can't go
2 directly to federal court?

3 LARRY ROBERTS: I don't know.

4 SANDRA SKINAWAY: Do you know if they
5 have to go through that process?

6 LARRY ROBERTS: I don't know. That's
7 not something that we've contemplated in the
8 proposed rule. I don't know whether they could
9 go to court or not at that point.

10 SANDRA SKINAWAY: Okay. Well,
11 miigwetch. Thank you for your time.

12 LARRY ROBERTS: And we're doing
13 pretty well on time this morning, so, you know,
14 I think I'm happy to let people go over a little
15 bit as long as we're staying on topic of the
16 proposed rule and questions on the proposed
17 rule, so --

18 VERONICA SKINAWAY: Larry, how long
19 does this process take?

20 LARRY ROBERTS: Can you just identify
21 yourself just so that we have it in the
22 transcript?

23 VERONICA SKINAWAY: My name is
24 Veronica Skinaway. I'm from the Sandy Lake Band
25 of Mississippi Chippewa. How long does this

1 process take usually, time frame?

2 LARRY ROBERTS: The federal
3 acknowledgment process of Part 83? Under the
4 current regulations, we have heard from groups
5 that they've been in the process for decades,
6 and so we're trying to improve that timeline
7 process. Quite frankly, there are some groups
8 that have sent in a letter of intent and maybe
9 nothing else and so they have been technically,
10 I guess, in the process for a long period of
11 time but they haven't submitted a complete
12 application, and so that's why we're proposing
13 to start with the application itself.

14 VERONICA SKINAWAY: Okay. Miigwetch,
15 Larry.

16 FRANK ETTAWAGESHIK: For those people
17 who know me, it's really hard for me to ignore a
18 lonely microphone, but what we know is that -- I
19 think the most important part of this that we
20 support is that we do want a rigorous process.
21 We want a process that is going to be --

22 And I should identify myself again. I'm
23 Frank Ettawageshik. This is my second comment.

24 We do want that rigorous process. We
25 realize that there are -- that there have been

1 in the past and there may be currently -- on the
2 long list of people who have given intent to
3 apply, there may be entities that would not meet
4 the criteria, and there are a number of
5 instances where -- and I use the term "fake"
6 tribes only because there are some groups that
7 would like to be considered tribes but clearly
8 are not, and this has happened in the past, and
9 we understand that part of the reason for this
10 process in the first place was to make sure that
11 there weren't mistakes made and that the federal
12 government acknowledged some entities that did
13 not deserve to be acknowledged, and I think
14 pretty much all of the tribes understand that
15 this is potentially an issue. So having a
16 rigorous process is important, we believe.

17 Having an onerous process, on the other
18 hand, is not what we would like to see, and we
19 would -- you know, we have some concerns that
20 the Office -- that the Branch of Acknowledgment
21 and Research which became the Office of Federal
22 Acknowledgment has often appeared to be under
23 political influence to not recognize tribes. We
24 believe that there have been -- you know,
25 there's been a lot of time when it appeared that

1 way because they weren't doing any recognition
2 at all. There weren't anyone coming through.
3 We know people who have sent their petition in,
4 they believed that that petition was being
5 looked at and being taken care of, and after a
6 couple of years they go to Washington and they
7 find the boxes that they shipped sitting
8 unopened in the hall of, in this case, the
9 Branch of Acknowledgment and Research. We know
10 that there are a number of instances where
11 things like this have occurred. So things that
12 will help make this process work better are
13 good.

14 We like the -- you know, as we look through
15 these things, there are some subtle -- you know,
16 some subtle wording definitions in places that,
17 as I said, we'll provide detailed comments and
18 written comments to but that overall, as I
19 mentioned earlier, we support this.

20 I know that this -- the decades-long process
21 that has occurred for some tribes and the huge
22 amount -- huge cost to this, I think it would be
23 important to say in this hearing that because of
24 the incredible cost to preparing the huge volume
25 of information necessary and because for tribes

1 the sort of life-and-death situation of not
2 wanting to blow their only chance at getting
3 through this process, that they -- it costs
4 millions of dollars to prepare a petition, to
5 prepare the supporting documentation, and
6 sources of funding for this have been drying up.
7 There used to be grants for status clarification
8 through the Administration for Native Americans
9 that helped fund -- for instance, my tribe was
10 one of the beneficiaries of those grants, but
11 this was back in '94, '92, '93, '94, and those
12 fundings, that funding source, has dried up. So
13 what that means is that about the only source of
14 funding for this -- to fund the process is
15 speculators and developers in the gaming
16 industry who would profit substantially if they
17 had a relationship with the successful
18 petitioner, and so this means that this issue of
19 social justice has been turned into a question
20 about gaming often and that -- since so much of
21 the funding comes from people that are
22 interested in the gaming industry. So a tribe
23 that may or may not be interested in gaming as
24 they move through this process, often the only
25 source of funding for them is a gaming

1 developer, and so this -- any of the changes
2 that we have here that would lessen the burden
3 financially on the petitioner is greatly
4 appreciated and long overdue because this is not
5 an issue of gaming or not gaming, even though it
6 seems to be that, because the financial burden
7 is placed on petitioners, but it's actually a
8 question of social justice.

9 Earlier, you know, you mentioned -- Larry,
10 you mentioned that this isn't a process of
11 creating a tribe; it's recognizing a tribe that
12 already exists. And the way that I think about
13 this is that it's the establishment of
14 diplomatic relations between a tribal nation and
15 between the United States, and that negotiation
16 or that establishment of those relations, it
17 actually cuts both ways because it is the United
18 States looking at a tribe and deciding do we
19 recognize this tribe, but it's also the tribe
20 deciding, and some tribes decide not to, to have
21 relations with the United States. And so
22 there's this sort of two-way criteria, and often
23 it's pretty much thought of as being one-way,
24 but this --

25 So the acknowledgment of an existing tribal

1 government is critical, and what we found often
2 is that petitioners have often been discouraged
3 from, quote, acting like a tribe. They've been
4 discouraged from being able to take advantage of
5 and to, for instance, establish a court or, you
6 know, establishing public safety officers
7 because of the lack of acknowledged jurisdiction
8 for those public safety officers. Often for
9 establishing some of the programs that might
10 give assistance to their tribal citizens,
11 they've been discouraged from that, and yet part
12 of this whole process is looking at whether or
13 not you have a functioning tribal government;
14 and if you have a functioning tribal government,
15 you're going to have to deal with public safety
16 issues, you're going to deal with programs,
17 you're going to be dealing with economic
18 development issues, and so it's sort of like
19 it's a catch 22. You can't act like a tribe
20 until we acknowledge you, but we won't
21 acknowledge you unless you're acting like a
22 tribe, and so we have to try to find a way
23 through all of that, and I believe that what's
24 happened here with these changes is a long way
25 down the road towards doing that.

1 I have one other comment that I wanted to
2 mention and bring into this and that is that the
3 United States has now endorsed the United Nations
4 Declaration on the Rights of Indigenous Peoples,
5 and in that, that -- while I've heard
6 representatives of the United States describe
7 that as an aspirational document, even with that
8 definition, that is how the indigenous people of
9 the world -- how the nation states of the world
10 aspire to treat indigenous people, and it's also
11 how indigenous peoples should aspire to be
12 treated by the nation states, and in there are
13 substantial parts of that UN declaration that
14 deal with the issues that we're dealing with
15 here in federal recognition, and while that says
16 indigenous people should have -- should aspire
17 to or should have these particular set of rights
18 and the access to, for instance, sacred objects
19 like eagle fathers and sacred sites, that the
20 United States has been defining that as
21 federally recognized have that right.

22 Well, we certainly appreciate what's
23 happened in this case with the Department of the
24 Interior holding not only a tribal consultation
25 this afternoon with elected tribal leaders, but

1 also a public session with all of those other
2 interested parties such as the tribes that are
3 yet to be on the list of federally recognized
4 tribes, the other interested parties to be part
5 of this process on this rulemaking, so we
6 appreciate that and appreciate that as part of
7 the larger movement for indigenous rights and
8 the recognition of the human rights for
9 indigenous peoples, that this process is part of
10 that larger movement, and I just wanted to add
11 that perspective this morning.

12 LARRY ROBERTS: Thank you. So it's
13 almost 10:00. Sure.

14 RON YOB: Every time I hear Frank,
15 Ron Yob, Grand River Band of Ottawas, I think of
16 something. The afternoon hearing, is that open
17 only to federally recognized tribes or can we
18 observe?

19 LARRY ROBERTS: It's open to only
20 tribal leaders and federally recognized tribes
21 and their staff.

22 RON YOB: Okay. Thank you.

23 LARRY ROBERTS: So we're about at
24 10:00 here. I know that there's a number of
25 folks that are attending that maybe don't want

1 to make comments, and that's completely fine. I
2 know sometimes folks come to public meetings and
3 tribal consultations to learn about the proposed
4 rule itself, but why don't we go ahead and take
5 a 15-minute break, we'll reconvene at 10:15, and
6 I'd be happy to take any additional comments
7 then. Thank you.

8 SANDRA SKINAWAY: I have a question.

9 LARRY ROBERTS: So if you want to use
10 the mic, sorry, just so that everything is --
11 and I guess I should also say we're transcribing
12 this, but -- we're transcribing the public
13 meetings, we're transcribing the tribal
14 consultations. All of those will be put up on
15 our website. So if you can't make all of the
16 meetings, that you know what's being said at
17 each one of them. That's why, you know, we have
18 the transcriptionist, why we're using the
19 microphone. We want to make sure that we have
20 an accurate record of what was said, and so I
21 think your question was why is the afternoon
22 session closed and only open to federally
23 recognized tribal leaders and their staff?

24 SANDRA SKINAWAY: Yes. In addition
25 to that, I just want to know why they can make

1 comments about it when they're already federally
2 recognized. I mean, is it just so they can
3 oppose future petitioners or --

4 LARRY ROBERTS: No, I don't think
5 that -- I don't think that all federally
6 recognized tribes are opposed to this process,
7 so I certainly would say that, but the reason
8 that we're consulting with tribes --

9 SANDRA SKINAWAY: That's exactly what
10 I'd like to know.

11 LARRY ROBERTS: -- is that
12 President Obama -- under executive orders issued
13 by President Clinton and President Obama, we are
14 holding tribal consultations with tribal leaders
15 on any regulations that may in one shape or form
16 touch upon tribes, and so whether it's
17 rights-of-way regulations or FTTA trust
18 regulations or otherwise, we always consult with
19 tribal leaders to abide by the executive order,
20 and the executive order limits those
21 consultations to tribal leaders and their staff.
22 So that's why we're doing it.

23 SANDRA SKINAWAY: Okay. Thank you.

24 LARRY ROBERTS: Sure. So I guess
25 we'll take a break here. We'll reconvene at

1 about 10:15. Thank you for coming.

2 (Recess held.)

3 LARRY ROBERTS: We're going to go
4 ahead and get started here with the meeting, so
5 if folks could -- hopefully during the break
6 folks have had time to think about any
7 additional comments or feedback on the proposed
8 rule itself.

9 And before we get started -- restarted here
10 for any additional comments, I just wanted to --
11 some folks had to ask questions, so I guess I
12 wasn't necessarily clear prior to the break. So
13 that afternoon session is open to tribal leaders
14 from federally recognized tribes and their
15 staff, and so it's not open to members of
16 federally recognized tribes. It's the federal
17 governments that we're meeting with this
18 afternoon, so just to provide that additional
19 clarity.

20 So, happy to hear any additional comments
21 folks have this morning.

22 ELIZABETH APPEL: And while people
23 are collecting their thoughts, Frank had asked
24 me during the break to explain my role in this
25 process, and my office is sort of the process

1 person role in all of this, so we collect all
2 the comments through all the various ways. You
3 can submit comments primarily through
4 consultation@bia.gov, that website. We organize
5 them all and get them in a place where they're
6 reviewable by the subject matter experts in our
7 Office of Solicitor and the assistant secretary
8 for Indian Affairs, and we manage getting the
9 publications into the Federal Register and up on
10 the websites, and if anyone has any questions
11 about process, please feel free to reach out to
12 me.

13 STEPHEN SIMPSON: And Larry just
14 asked me to, if I wanted to, explain the
15 solicitor's office role, and so I will do that.

16 The solicitor's office is separate from --
17 is in the Department of the Interior and is
18 separate from all the various bureaus. So we
19 are not part of the Bureau of Indian Affairs.
20 We are not under the assistant secretary. We
21 are not part of the Park Service. We are not
22 part of BLM. We are not part of any of those
23 people. We are separate, headed up by the
24 solicitor, who is a political appointee and is
25 actually the third-ranking person in the

1 Department, and we have statutory authority
2 given us by Congress to advise, to give legal
3 advice and do the legal work of the Department.
4 So we represent basically the Department as a
5 whole. And I am in the Division of Indian
6 Affairs, so what I do is -- or what my office
7 does in D.C. is just work on Indian issues.

8 Our role in the regulatory process is
9 basically to be part of those work groups that
10 Liz puts -- Liz's office puts together to write
11 regulations. We advise on the law and on how to
12 word things, what the underlying law is and sort
13 of how flexible the assistant secretary's office
14 and the folks who are actually working on these
15 regulations can be to stay within the law and
16 then still stay within the law. So it's not
17 that we are -- we sort of let them know the
18 bounds of their discretion and flexibility and
19 work to answer any legal issues and make sure
20 that we're in accordance with the statutes that
21 Congress passes.

22 LARRY ROBERTS: Great. Thank you,
23 Steve. And I don't want to dwell on the fact,
24 but we have had a number of folks just rejoin us
25 since the break, so I just wanted to just say I

1 started off by saying that the afternoon session
2 is closed. It's just the tribal leaders and
3 their staff. It's not tribal members. Under
4 the executive order, it's consultation with
5 tribal leaders and their staff.

6 So with that, we have a lot of time here
7 this morning for additional comments, and happy
8 to hear those comments. Does anyone -- before
9 Frank grabs the microphone one more time here,
10 can I just get sort of a show of hands in terms
11 of folks who haven't commented yet that still
12 want to comment? So a handful? So why don't
13 we -- if you don't mind, we'll let those folks
14 go first who haven't had a chance.

15 FRANK ETTAWAGESHIK: I just had a
16 real quick follow-up question.

17 LARRY ROBERTS: Sure.

18 FRANK ETTAWAGESHIK: You mentioned
19 that transcripts would be put online from these
20 sessions. Do you know what the timetable for
21 that is yet?

22 ELIZABETH APPEL: It usually takes
23 our court reporters a couple weeks to put
24 together the transcripts, but we're going to be
25 posting them as soon as we get them, and so the

1 one from our first session in Marksville,
2 Louisiana should be up fairly soon, and I would
3 just keep an eye out on the website. Our goal
4 is to get them all posted well in advance of the
5 end of the comment period.

6 FRANK ETTAWAGESHIK: Thank you.

7 LARRY ROBERTS: Okay.

8 DON PARKEY: Hello. My name is
9 Don Parkey. I'm on the tribal council of
10 Burt Lake Band, and my question today is the
11 Burt Lake Band has been through the affirmation
12 process and failed, and we would probably
13 consider an attempt -- another attempt at that,
14 and I was wondering if possibly -- it's kind of
15 a negative statement, but if the same people
16 that kind of picked at our initial paperwork are
17 going to be involved in making that decision
18 again and if they would be able to make a
19 decision that would be fair to us. Being as how
20 they've already made a decision, they would have
21 to go back on what they their feelings were
22 initially.

23 LARRY ROBERTS: So we have full
24 confidence in our Office of Federal
25 Acknowledgment. We have full confidence in our

1 staff there. We work with them on a very
2 regular basis, and the proposed rule doesn't
3 change that. What we're trying to accomplish
4 with the proposed rule is objective standards
5 that can be applied. We have heard in the past
6 that those standards that we have right now have
7 been applied consistently. And so as I talked
8 about earlier this morning, there are some
9 changes in the process that we are proposing to
10 provide those petitioners more process if they
11 feel like they've received a -- if they've
12 received a proposed negative determination, they
13 can ask for a hearing before the Office of
14 Hearings and Appeals, which is independent, and
15 then the assistant secretary, as under the
16 current process, would look -- would make the
17 final decision, but I guess under the proposed
18 rule, that hearing would provide a recommended
19 decision from an administrative judge who would
20 have heard the evidence both from the petitioner
21 and from the Office of Federal Acknowledgment
22 and any third parties that would intervene, and
23 then that judge could look at the record and
24 identify the areas that are really in dispute
25 and provide a recommendation based on that

1 hearing to the assistant secretary.

2 So the Office of Federal Acknowledgment will
3 continue to play a vital role in this process,
4 and they are playing a vital role in helping us
5 with preparing the proposed rule, and they'll
6 continue to play a role in helping us to prepare
7 the final rule.

8 DON PARKEY: Okay. Thank you.

9 LARRY ROBERTS: Sure.

10 VERONICA SKINAWAY: Hello again. My
11 question is exactly, since this new process --

12 LARRY ROBERTS: Can you just state
13 your name so that she has it?

14 VERONICA SKINAWAY: Yes. My name is
15 Veronica Skinaway. I am from the Sandy Lake
16 Band, Mississippi Chippewa Band, and my question
17 is exactly, since your new process, how many
18 bands have you helped reorganize?

19 LARRY ROBERTS: So -- I'm only
20 pausing because I'm not entirely clear on your
21 question, so let me see if this answers your
22 question. If not, we can just have a dialogue
23 here, and hopefully I can provide you an answer.

24 So under the Part 83 process, we have
25 recognized 17 tribes over the 40 years, and we

1 have denied approximately 30 petitions over that
2 40-year course of time. So we've recognized 17.

3 VERONICA SKINAWAY: Okay. And when
4 was the last prior?

5 LARRY ROBERTS: I think the last
6 tribe that we recognized was Shinnecock? The
7 Shinnecock Tribe of New York. So through the
8 Part 83 process, I think -- I think Liz is
9 right. This is all up on our website though,
10 but I think it is Shinnecock.

11 VERONICA SKINAWAY: Okay. All right.
12 Thank you. That answers my question.

13 LARRY ROBERTS: Sure. Okay.

14 ELMER KNOX: Good morning. My name
15 is Elmer Knox. I am a member of the Grand River
16 Council. I brought three different things.
17 When we started out, we had three different ways
18 to be recognized, right? Now we're working on
19 the third here.

20 LARRY ROBERTS: That's right.

21 ELMER KNOX: The other two, do they
22 have the same criteria that we're going to have?

23 LARRY ROBERTS: I think the short
24 answer is no. I think Congress -- Congress
25 retains plenary authority to recognize tribes,

1 and they have done so repeatedly in the past,
2 and I think Mr. Ettawageshik mentioned that the
3 Little Traverse Band, for example, was
4 recognized through federal legislation, so they
5 did not use the Part 83 process.

6 ELMER KNOX: They won't have the same
7 proof that we have to prove?

8 LARRY ROBERTS: Well, I don't know.
9 In terms of tribes that were recognized
10 legislatively, I don't know what information was
11 provided to Congress when they made that
12 decision.

13 ELMER KNOX: Okay. The next would be
14 tribes and bands. Do you distinguish between
15 the two?

16 LARRY ROBERTS: So we are looking at
17 recognizing tribes or bands that have been
18 independent governmental entities. So, for
19 example, there are a number of federally
20 recognized tribes in Minnesota that are bands,
21 but we also recognize the Minnesota Chippewa
22 Tribe. So we will recognize tribes or bands,
23 but the importance is is that they have been
24 functioning both politically and to their
25 community and they meet all seven criteria

1 independently. They're showing that as a band
2 that they are functioning in that way.

3 And so, you know, I think one of the things
4 that I want to clarify for everyone in the room,
5 if it's not already clear, is that, as I said
6 before, we're not creating tribes through this
7 process. We're not changing the rules so that
8 we can recognize groups that came into existence
9 in, say, the 1940s or the 1950s or the 1960s or
10 the 1970s or the '80s or the '90s. We're
11 recognizing preexisting tribes. So that's how
12 we're looking at things in terms of -- and
13 that's something that we've applied consistently
14 through the process in terms of, you know, we
15 can recognize bands if they satisfy the seven
16 criteria.

17 STEPHEN SIMPSON: The definition of
18 tribe or Indian tribe in the current regulations
19 and a tribe in the proposed regulations includes
20 band, village, community, pueblo, and tribe, so
21 bands are included under the definitions of
22 tribe.

23 ELMER KNOX: Yeah, because when you
24 go back into it, the Grand River Bands were made
25 into a tribe.

1 STEPHEN SIMPSON: Right.

2 ELMER KNOX: Bands are families. So
3 you have to have a continuous relationship with
4 them. Okay. Thank you.

5 LARRY ROBERTS: Thank you.

6 TASHINA PERRY: Bousho. My name is
7 Tashina Perry. I'm from the Sandy Lake Band of
8 Ojibwe. I just kind of want to -- I don't
9 really have as many questions as I just want to
10 talk about, you know, what's been said and my
11 position on everything.

12 Once the -- what do you call it, the phase
13 approach starts, how long is it exactly going to
14 take to become federally recognized or restored
15 because, you know, we don't want to die waiting.
16 I'm 25 years old and not enrolled anywhere, and
17 we've been working on this since the '70s, since
18 before bingos and before casinos. And how long
19 is it exactly going to take? If there's only
20 been 17 tribes recognized in that 40-year
21 period, that's not very many to me and 30 were
22 told no.

23 LARRY ROBERTS: Sure. So -- and my
24 colleagues here can correct me if I'm wrong, but
25 the proposed rule does set forth various

1 timelines for review, and so our hope is that
2 with a phased approach, that we're going to be
3 able to make more timely decisions, but we're
4 also going to have -- by starting it with the
5 complete application itself, because I think
6 a lot of times what we don't have is a complete
7 application before us, and so, you know, our
8 goal is to get decisions out as quickly as we
9 can. We have to have enough time to review them
10 on the merits. I don't think we've done an
11 analysis in terms of how much time would be
12 saved under the proposed rule. We have done an
13 analysis of how much paperwork would be saved
14 under the proposed rule, which is in your
15 materials here, but it's literally thousands of
16 hours of work on behalf of the Department and
17 the petitioner and third parties to maintain
18 this rigorous process but not have it overly
19 onerous. And so, you know, we haven't done an
20 analysis of how quickly the entire process will
21 take, but we have done an analysis of the
22 reduced burden of hours that it should take on a
23 petitioner and the Department, thousands of
24 hours, and that's detailed in this document
25 here, this Federal Register notice that's in

1 your packets of materials.

2 TASHINA PERRY: All right. When will
3 the proposed final be?

4 LARRY ROBERTS: So the final rule
5 is -- good question. Right now the comment
6 period ends at August 1st, and so how quickly we
7 move forward with the final rule will depend on
8 the number of comments we get. We'll have to go
9 through all those comments. You know, you guys
10 are here investing your own time. You want us
11 to consider your comments, so we've got to make
12 sure that we consider those comments and go
13 through them. So it's hard to say exactly how
14 long it will take. It is a priority for the
15 administration. It is a priority for the
16 assistant secretary and Secretary Jewell that we
17 move forward with this process, and so -- but I
18 can't sit here today and say it will be two
19 months or four months. I have no idea how long
20 it will take before we publish it in the final
21 rule.

22 TASHINA PERRY: Okay. Yeah,
23 that's one of my biggest concern, is how long
24 the whole process is actually going to take
25 because, I mean, by the time we get through

1 everything, everyone is going to be enrolled in
2 other tribes or married elsewhere, you know.

3 LARRY ROBERTS: And the other thing
4 is if there are petitioners out there that want
5 to submit an application now under the existing
6 rules, there's nothing that prohibits them from
7 doing so. So, for example, last year during our
8 public meetings and consultations, I do recall
9 someone saying, Well, I'm petitioner number --
10 and I'm making this up, but, you know, I'm
11 petitioner number 157, for example, and I'm
12 waiting to submit my application, and I'm
13 waiting for you guys to finish the 156 before
14 me, so let me know when my number is up. Sort
15 of like when you go to the bakery or something,
16 right?

17 And so we had to explain that the process --
18 the current process doesn't work that way. The
19 current process assigns a petitioner a number,
20 and that's triggered by the letter of intent.
21 Petitioners are free to then submit an
22 application under the process. They don't have
23 to wait until we've decided all of those other
24 petitions because a lot of times what we'll have
25 is a letter of intent and we won't have the

1 materials behind that.

2 So just while we're going through this
3 rulemaking process now, it's not -- our current
4 process is still functioning. I think you heard
5 from some of the other folks that commented this
6 morning that they're actively being considered
7 in the process.

8 TASHINA PERRY: Yeah.

9 LARRY ROBERTS: So --

10 TASHINA PERRY: Okay. That answered
11 my question. Thank you.

12 LARRY ROBERTS: Thanks.

13 RON YOB: Ron Yob, Grand River Bands
14 of Ottawa Indians. I keep thinking of other
15 little questions.

16 When these proposed rules go into effect, my
17 question, I guess, is the staff at the OFA, will
18 they continue to be the -- I don't want to
19 mention names, but will they continue -- it
20 seems like their roles are going to change or
21 their expertise needs to be different or will
22 they just be a continuation of the people that
23 are operating under the old rules?

24 LARRY ROBERTS: Yeah, we're not
25 changing staff. The Office of Federal

1 Acknowledgment will remain involved, and in the
2 proposed rule, you know, to a large extent we
3 haven't changed their role. They're going to be
4 applying the criteria, but we're still, you
5 know -- I think you're very familiar with the
6 process, and so, you know, there's -- I know
7 that petitioners typically have to engage a
8 genealogist, they typically have to engage a
9 historian, they typically have to engage an
10 anthropologist. None of that is changing with
11 the proposed rule, and while these criteria are
12 being changed to some extent, the changes to a
13 large extent are either intended to provide
14 consistency across our decisions that we've made
15 in the past or to provide consistency with
16 federal policy or federal law.

17 RON YOB: Okay. Miigwetch.

18 FRANK ETTAWAGESHIK: Frank Ettawageshik
19 again. I talked briefly in one of my previous
20 comments about the access to different programs
21 and to different issues. I talked a little
22 about the United Nations declaration and
23 about -- what I didn't talk about is that the
24 federal recognition process specifically sets up
25 a -- there's a list published of the federally

1 recognized tribes, but many states have state
2 recognition processes, and they vary from state
3 to state, and those -- there are a number of
4 federal statutes that make programs available
5 under those statutes, available to federal or
6 state-recognized tribes, and so there are --
7 while the Bureau of Indian Affairs and Indian
8 Health Service don't recognize those in terms of
9 direct funding, many of the other programs do.
10 So there are state-recognized tribes, for
11 instance, that have access to the Department of
12 Justice programs, to HUD programs, to several
13 other places that have successfully run quite
14 large operations under these.

15 And so one of the things that we looked at,
16 and this is the specific wording that I think
17 needs to be noted, and this is -- it's a
18 recommendation to eliminate the phrase "for
19 purposes of federal law." In 83.2 the language
20 should be changed to take into account that
21 non-BIA listed tribes are considered Indian
22 tribes under some federal statutes. This
23 provision is really meant to clarify that tribes
24 recognized through the federal acknowledgment
25 process are eligible to be placed on the

1 Federally Recognized Tribes List Act, 108 §471.
2 Therefore, the language "for purposes of federal
3 law" should be changed to "for purposes of
4 establishing a government-to-government
5 relationship."

6 We ran into some similar issues in the --
7 when we were working on access to eagle fathers,
8 for instance, when the Morton Policy, which has
9 been around for a long time, did not mention
10 federally recognized tribes but it mentioned
11 Indians and that state-recognized tribes and
12 some non-recognized tribes that are clearly
13 Indian but are not in states where they have
14 state-recognized -- state processes and these
15 tribes that are not yet through the federal
16 acknowledgment process, they have ceremonies in
17 which they utilize eagle feathers, they have --
18 there are other sacred objects, but particularly
19 the eagle feather policy. Under the Morton
20 Policy which exists, which is still the policy
21 for -- you know, for interior, it's not specific
22 to federally recognized tribes.

23 The Department of Justice recently came out
24 with a new definition which they said in its
25 initial when they started that it was going to

1 be for -- it was merely going to have a
2 Department of Justice program that paralleled
3 the Morton Policy, and yet the language in it
4 specifically says federally recognized.

5 And so while I helped worked on that, worked
6 on those points, I think that -- and we
7 certainly applaud the Department of Justice for
8 doing this policy. It was long overdue, and it
9 was a good thing that they did it. I was one of
10 the ones who brought into that discussion the
11 fact that there were state-recognized tribes and
12 also brought in the UN declaration that
13 indigenous people should have access to their
14 sacred objects, and so that's the spirit in
15 which we're making this recommendation for
16 specific change in the language. This is one of
17 the many specific changes that we would be
18 proposing that will be in writing when we send
19 them in. Thank you.

20 ROCHELLE ETTAWAGESHIK: My name is
21 Rochelle Ettawageshik, and I just have a
22 question on your membership criteria, and I'm
23 just kind of curious. The part that says the
24 year 2010 was chosen because four years have
25 passed since then, since -- so I'm just trying

1 to understand what that means, and since then,
2 what does that mean, so -- I'm curious about
3 that.

4 LARRY ROBERTS: So I think generally
5 we had to -- we had heard comments at other
6 public meetings and tribal consultations about
7 the loss of members from petitioning groups of
8 federally recognized tribes, and so, you know, I
9 think we had to propose some sort of date in
10 terms of how to address that situation, and so
11 as we said here in the spreadsheet, ideally, you
12 know, under an ideal process, a final decision
13 would be issued within at least four years, and
14 so that's something that -- you know, that's why
15 we put out the proposed rule. We want comment
16 on it. If folks think it should be a longer
17 period of time or a shorter period of time or
18 whether that provision shouldn't be changed at
19 all, that's what we need to hear, but I think
20 that's sort of the rationale.

21 ROCHELLE ETTAWAGESHIK: Yeah. My
22 opinion, I think it should be a shorter period
23 of time. I don't know why 2010 was selected,
24 but I just think of, you know, I have
25 grandchildren that are not able to join and of

1 tribes that would be federally recognized, and I
2 have children as well, and I would like to see
3 that made more current in, you know, either
4 2014, 2015 to give those children time to make
5 an application for citizenship in a tribe that
6 is going to become -- will become federally
7 recognized, because it still may take a number
8 of years for them to become federally
9 recognized.

10 LARRY ROBERTS: So we're not trying
11 to determine tribal membership in any way,
12 shape, or form in that criterion and that date.
13 What that date is triggered to is, I think,
14 along the lines of what you've said. So let's
15 say that there is a petitioner that has a
16 thousand members.

17 ROCHELLE ETTAWAGESHIK: Sure.

18 LARRY ROBERTS: And 50 of those
19 members are eligible for enrollment in both
20 federally recognized tribes and the petitioner.
21 What this date -- this 2010 isn't to say you
22 need to -- you, individual member, need to
23 decide your citizenship by that date. What it's
24 intended to say is if the petitioner has sent in
25 a letter of intent -- right, it is a letter of

1 intent -- by 2010, that regardless of how those
2 members decide as to, let's say, 2012, 2013,
3 2014, let's say for whatever reason they decide
4 for tuition purposes that they want to enroll in
5 another federally recognized tribe --

6 ROCHELLE ETTAWAGESHIK: Sure. Right.

7 LARRY ROBERTS: -- we're not going to
8 hold that against the petitioner itself because
9 they've already submitted an application by --
10 or a letter of intent by 2010. So whatever
11 those members decide to do after -- during that
12 time period is really up to them, but we're not
13 going to -- under the current regulation, I
14 think that there is a concern that those members
15 making those decisions may be held against that
16 petitioner, and so we're trying to avoid that
17 because our process takes so much time, and so
18 all that's doing is basically saying if you've
19 sent in a letter of intent by 2010 and let's say
20 your enrollment was X at that period of time and
21 you lose membership because our process is
22 taking so long, we're not going to hold that
23 against you --

24 ROCHELLE ETTAWAGESHIK: Ah, okay.

25 LARRY ROBERTS: -- as you're going

1 through the process, and we're not trying to
2 determine what their membership is or whether
3 their citizens are going to reenroll with that
4 tribe after they're federally recognized.
5 That's not touching upon that issue at all.
6 That's not limiting that in any way, shape, or
7 form.

8 ROCHELLE ETTAWAGESHIK: I see.
9 You're saying that it's -- if I'm understanding
10 you correctly, you're saying that it's just a
11 matter for your ability to understand where
12 your -- where the membership is, the citizenship
13 of the tribe at that point in time?

14 LARRY ROBERTS: A little bit. And so
15 we've heard from some petitioners that say, Hey,
16 you know, your process is taking so long, we're
17 losing our --

18 ROCHELLE ETTAWAGESHIK: Members.

19 LARRY ROBERTS: -- we're losing our
20 citizens because you guys are taking so long.

21 ROCHELLE ETTAWAGESHIK: Right.

22 LARRY ROBERTS: And that's going to
23 hurt us under some of these criteria.

24 ROCHELLE ETTAWAGESHIK: In the long
25 run.

1 LARRY ROBERTS: And what we're saying
2 is we're not going to hold that against you if
3 you've submitted a letter of intent by 2010 just
4 because our process takes so long.

5 ROCHELLE ETTAWAGESHIK: Okay. And if
6 those tribes have submitted a letter of intent
7 by 2010 and they've lost their members -- some
8 members from that, that will not be held against
9 them, those members?

10 LARRY ROBERTS: Exactly, or that
11 petitioner.

12 ROCHELLE ETTAWAGESHIK: Or that
13 petitioner. Okay. Well, thank you so much. I
14 understand that.

15 LARRY ROBERTS: Okay. Thanks. Well,
16 this is the last chance, I guess, for comments.
17 If everyone's had a chance to speak that wants
18 to say so, that's great. If you still want to
19 make comments, I encourage you to do so now,
20 otherwise we'll end this session early.

21 We thank you all for your time. Is there
22 anyone else that wants to make any final
23 comments?

24 (No response.)

25 LARRY ROBERTS: Okay. Well, thank

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you all for attending today, and I hope everyone
has safe travels home.

(Concluded at 11:07 a.m.)

1 STATE OF WISCONSIN)

2 COUNTY OF BROWN)

3

4 I, **PAULA HUETTENRAUCH**, a Notary Public
5 and Registered Professional Reporter and Registered
6 Merit Reporter and Certified Realtime Reporter in and
7 for the State of Wisconsin, do hereby certify that
8 the foregoing proceedings were taken at said time and
9 place and is a true and accurate transcript of my
10 original machine shorthand notes.

11 That the appearances were as noted
12 initially.

13 That said witness was first duly
14 sworn/affirmed to testify the truth, the whole truth
15 and nothing but the truth relative to said cause.

16

17 Dated at Green Bay, Wisconsin
18 This 30th day of July, 2014.

19

20

21

PAULA HUETTENRAUCH
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter
Notary Public, State of Wisconsin
My commission expires 9-13-15 (fc)

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