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TRIBAL CONSULTATION ON
CONSULTATION POLICY/PROCEDURES DMS

Monday, December 13, 2021

2:00 p.m.

Remote, via Zoom

Reported by: Irene Gray

JOB No.: 4987430

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A P P E A R A N C E S

BRYAN NEWLAND

REGINA GILBERT

SCOTT AIKIN

DOROTHY FIRECLOUD

CHRIS HAMMOND

TRACY GOODLUCK

DJ MONETTE

JACK LORRIGAN

SHIRLEY CLOUD-LANE

LIZ MALERBA

1 P R O C E E D I N G S

2 MR. NEWLAND: All right. I'm thumbs up
3 to go.

4 MS. GILBERT: Okay. Just give me a
5 second here. I'm going to go ahead and send a text
6 message to those in the waiting room and give them a
7 pass code just in case it ask them for one. Okay. I'm
8 going to go ahead and admit all. Everyone is admitted
9 into the meeting. I'm going to go ahead and hit the
10 record button first.

11 Okay. You may go ahead and begin.

12 MR. NEWLAND: All right. Well, good
13 morning, good afternoon to everybody joining us today
14 for the Department of the Interior's consultation on
15 updates to our tribal consultation policy in the
16 departmental manual.

17 My name is Bryan Newland, I serve as the
18 Assistant Secretary for Indian Affairs here at the
19 Department of the Interior. And before we begin
20 today's consultation session, we always want to make
21 sure that we're starting these meetings off right, in a
22 good way and make sure we have folks from across Indian

1 country provide us words of blessing or prayer before
2 we begin. So, today we have Chairman Buster Attebery
3 from the Karuk tribe to provide us with an opening
4 prayer. Chairman Attebery, are you here? Chairman
5 Attebery, if you are with us, you can unmute your line
6 at this time.

7 Okay. It doesn't appear that Chairman
8 Attebery is with us. So, what I will instead do is to
9 simply ask that those of you joining us today take a
10 moment to pray or reflect in your own way. At this
11 moment, I'll turn my camera off and we'll have a few
12 moments of silence for you to do that.

13 (Inaudible), thank you so much. All
14 right. Again, I want to welcome you all to the
15 department's consultation. This has been quite a
16 journey. It started actually the first week of
17 President Biden's term in office when he issued an
18 executive memorandum to all federal agencies asking us
19 to engage with you on tribal consultation and get
20 feedback on how we can improve this process. And we
21 set out in the spring, as a department, with a series
22 of tribal consultation sessions. We took our feedback

1 from you in those sessions and went to work to make a
2 number of changes to our departmental policy.

3 For example, one of the consistent themes
4 we heard during those consultation sessions was the
5 need for the Department of the Interior to establish a
6 travel advisory committee. And many of you may know
7 that Secretary Haaland announced at the White House
8 Tribal Nations Summit, just 3 weeks ago, that the
9 Department of the Interior would be establishing a
10 travel advisory committee to the Secretary, that would
11 provide a forum for direct engagement between tribes
12 and the Secretary of the Interior on a regular basis.
13 And I look forward to sharing more details with you
14 about when that committee will be set up and when it
15 will meet.

16 In addition, we also heard a number of
17 comments from folks about the -- the need for free,
18 prior and informed consent consistent with the UN
19 Declaration on the Rights of Indigenous people.

20 And so we went back to the drawing board
21 with that feedback and tried to come up with ways to
22 strengthen our consultation policy, to move in a

1 consensus seeking direction, between federal agencies
2 and tribes, which is, I think, reflected in the
3 departmental manual edits and a number of other things.
4 So, last month, on November the 12th, we issued a Dear
5 Tribal Leader letter. And we highlighted some of the
6 changes in the departmental manual.

7 And those edits are at 512 departmental
8 manual 4 and 5 and they include provisions that will
9 bolster the department's Consultation Policy and
10 encourage early, robust, interactive and pre-
11 decisional, informative and transparent consultation.
12 As I was just referencing, those changes also establish
13 a model for seeking tribal consensus and agency
14 decision making. The changes also require the
15 department staff to go -- undergo training before
16 participating in consultation.

17 It codifies the Secretary's travel
18 advisory committee. It addresses flexibility for
19 tribal waivers. The changes also clarify that the
20 department's decision makers must invite tribes to
21 engage in consultation. And it also requires a record
22 of consultation.

1 So with these proposed changes which were
2 also copied to the Dear Tribal Leader letter, we now
3 want to invite feedback from all of you on the proposed
4 changes before the department moves forward.

5 So I will ask first that we prioritize
6 elected tribal leaders and representatives from
7 intertribal organizations. Also ask that you be
8 respectful of the time of those who took time out of
9 their days working on behalf of the tribal communities
10 and limit your comments. And then if you need to come
11 back and add on to what you've already stated that you
12 make sure that others have had an opportunity to speak
13 before you speak a second time.

14 So with that, we will turn the floor over
15 to tribal leaders and I just -- actually before we do
16 that, I want to make sure I acknowledge our other folks
17 on the line from the Department of the Interior
18 including Principal Deputy Assistant Secretary for
19 Indian Affairs, Wizipan Garriott. We have our special
20 assistant within the Office of the Assistant Secretary,
21 Joaquin Gallegos. From the BIA we have Tyler Fish.
22 And also helping to organize this consultation, faces

1 that are familiar to you, Elizabeth Appel, Regina
2 Gilbert and Rachel Brown. I apologize if I missed
3 anyone else from Team DoI.

4 So with that, I will open up to tribal
5 leaders in our tribal organizations and tribal
6 representatives, please use the raise hand function
7 here on Zoom, and we will call on you in the order you
8 do so.

9 Again, I want to make sure we invite
10 those of you who have feedback on the department's
11 proposed changes and the departmental manual. You can
12 raise your hand here and provide that feedback to us.
13 We're ready to listen.

14 I know it's -- it's a Monday, during the
15 holiday season. So, sometimes it can be, you know, a
16 sluggish start to the week. But, again, I want to
17 throw it open, and just emphasize to you all that the
18 changes you see reflected in the departmental manual
19 that was sent out with the Dear Tribal Leader letter
20 are -- those changes are based on feedback we received
21 directly from tribal leaders and representatives in our
22 spring consultation session.

1 MS. GILBERT: Mr. Newland, this is
2 Regina. We do have a message in the chat of possibly -
3 - it says, maybe go through some of the changes.

4 MR. NEWLAND: We can -- we can do that.
5 I don't have the red line handy. I did provide an
6 overview of what those changes were in the, you know,
7 up at the top. The Dear Tribal Leader letter also sets
8 out some of the questions that we're seeking feedback
9 on during this consultation session.

10 But, again, one of the -- one of the
11 things that we tried to do was to create a way for the
12 department to obtain tribal consensus when we're
13 engaging in consultation and based on a zone of
14 interest framework so that a closer in an agency action
15 has a direct and substantial impact on a tribe or a
16 number of tribes, particularly on their lands that this
17 -- the threshold, the standard for the department to
18 seek consensus is greater than a national policymaking
19 that affects tribes alongside the general public.

20 And so this is, we believe, a step
21 forward, but a big step forward from where we've been.
22 But we also want to get feedback on whether you think

1 this is a workable standard.

2 And I also want to emphasize that these
3 changes would apply to the entire Department of the
4 Interior, not just the BIA and the BIE. So, these
5 departmental manual changes would apply, for example,
6 to the National Park Service, Bureau of Land
7 Management, Fish and Wildlife Service, Bureau of Ocean
8 Energy Management, and all the other agencies under the
9 umbrella of the Department of the Interior.

10 We can hold the floor open for a few
11 minutes more. I do want to take an opportunity to allow
12 any of our other departmental tribal liaisons to
13 introduce themselves from other agencies if they wish
14 to do so.

15 MR. AIKIN: Welcome, Scott Aikin from the
16 U.S. Fish and Wildlife Service, the National Native
17 American Programs Coordinator. Grateful to be on.

18 MS. FIRECLOUD: Good afternoon, Dorothy
19 FireCloud, National Park Service and I apologize, I
20 don't have my camera with me today, but welcome.

21 MR. NEWLAND: Thanks, Scott and Dorothy.

22 UNIDENTIFIED SPEAKER: Bureau of Land

1 Management, Farmington Field Office, I'm the tribal
2 coordinator.

3 MR. HAMMOND: Hi, Chris Hammond from U.S.
4 Geological Survey.

5 MS. GOODLUCK: Good afternoon, everyone.
6 My name is Tracy Goodluck, I'm with the White House
7 Council and Native American Affairs and the Indian
8 Affairs hallway and also representing the Secretary's
9 Indian water rights office. Good afternoon.

10 MR. MONETTE: DJ Monette, U.S. Fish and
11 Wildlife Service, the Associate Native American Liaison
12 Advisor. Thanks for joining us today.

13 MR. LORRIGAN: Jack Lorrigan from the
14 Bureau of Safety and Environmental Enforcement in
15 Alaska. Thank you.

16 MR. NEWLAND: Thank you, Jack. We do
17 have a question in the chat from up -- sorry, go ahead,
18 Shirley.

19 MS. CLOUD-LANE: Oh, I was just going to
20 say, I'm Shirley Cloud-Lane from the Bureau of Land
21 Management, Monticello Field Office, Utah. Thanks.

22 MR. NEWLAND: Thank you for being here.

1 We do have a question in the chat from Ryan Seelau from
2 NCAI. And the question is, can the department provide
3 more information on the consensus seeking model. Is
4 there a different specific standard being considered
5 for each level of the diagram? NCAI has been talking
6 to leaders about the model, but it's difficult to
7 discern how it would play out in a practical situation.

8 That's a great question, Ryan, and I do
9 appreciate it. You know, one of the things that, you
10 know, we struggle with just generally in making policy,
11 but particular with -- in particular with this -- this
12 particular provision is not wanting to be over
13 prescriptive to make sure that we have enough
14 flexibility in our processes to adapt them to different
15 situations. But at the same time we have to provide
16 some clarity of direction.

17 And so what we're -- what we're trying to
18 do, what the goal of this is to move closer toward that
19 consensus benchmark. There -- there are some concerns
20 at a departmental level about having a high consensus
21 threshold for each and every federally recognized tribe
22 for a national policymaking that affects tribes

1 alongside other members of the public.

2 On the flip side or the opposite end of
3 that spectrum is a departmental policy or action that
4 would affect one tribe in particular on its reservation
5 in a significant and substantial way. And so in that
6 instance it's not enough. We certainly don't want to
7 be engaged in a check the box exercise in it and we
8 feel that we want to go beyond simply having a
9 meaningful conversation to -- in a situation like that,
10 making sure we are going through more work to achieve
11 consensus with the tribe to shape our actions and
12 policies as a department on tribal land.

13 And so between those two ends of the
14 spectrum, you know, there's a shifting, as we envision
15 it, there's a shifting burden on the department to try
16 to gain tribal or achieve consensus with a tribe or
17 affected tribes depending on how direct and significant
18 and substantial the impacts of our policymaking are.

19 And that's -- if you feel like we're not
20 hitting the mark or we need more clarity, we certainly,
21 through this process, want to get feedback from you on
22 language in the departmental manual that might achieve

1 that goal.

2 And, again, I just want to, on that
3 point, I want to add that this is one of the -- I think
4 one of the ways that the consultation process itself is
5 a value add to federal policymaking. You know, we're -
6 - we're explaining to you what our objectives are here.
7 And if the language in our policies, you feel doesn't
8 get us to that objective, you know, we want your
9 feedback and input on language that might hit the mark
10 or do a better job, achieving those policy goals. But
11 I just want to be clear going back to this spring's
12 consultation sessions. Tribes consistently raised the
13 UN declaration standard as something the federal
14 government should be doing.

15 As I just explained, there are some
16 broader policy questions and concerns within the
17 federal government that we feel there's some nuance
18 there to get closer toward that goal of consensus, but
19 also making sure that we're, you know, not elevating
20 any one particular tribe's concerns when we come to
21 what agencies might describe as attenuated interest on
22 a national policymaking.

1 And so, you know, within that framework,
2 if you've got ideas, we're listening.

3 MS. GILBERT: Bryan, it appears we've got
4 one raised hand from Liz.

5 MR. NEWLAND: Oh, great.

6 MS. MALERBA: Hi, good afternoon,
7 Assistant Secretary Newland and -- and all the other
8 DoI employees on the call. So I just have a couple of
9 questions related to the consensus based model. Of
10 course this is something that our membership is really
11 interested in seeing and certainly this is a huge step
12 forward to start to incorporate this into the
13 department's policy.

14 I guess, I'm wondering, though, if -- if
15 it's going to be fleshed out in any way? I definitely
16 understand the need for flexibility on the part of the
17 department. But I also think that some of the vagaries
18 associated with what is here may invite confusion or
19 just a situation where we're not all on the same page
20 in terms of what to expect.

21 MR. NEWLAND: No. Liz, that's a --
22 that's a great question and a fair question. It's also

1 a tough question. Again, we -- we would really like to
2 see if -- if there's a better design for this process
3 or this mousetrap, so to speak. We would welcome, you
4 said, we're tribal -- tribal leaders, we're
5 representatives to provide language to implement it in
6 a way that is effective. You know, that's -- that's
7 one of the reasons why we wanted, rather than to just
8 simply pop it in the DM and say we consulted last
9 spring. It's one of the reasons why we wanted to come
10 back and engage in another round of consultation is to
11 try to get this right.

12 And we know that it will need refining
13 over the years because we have never done this as a
14 department as a matter of written policy and practice.
15 And so it's -- it's new to us in terms of written
16 procedures. And if you've got ideas or proposal, we're
17 -- we're ready to listen.

18 MS. MALERBA: All right, thanks. We'll -
19 - we'll start bawling that one over for our comments.

20 MR. NEWLAND: Thank you, Liz, and I
21 appreciate you being with us today. All right. Do we
22 have any other representatives or leaders who wish to

1 comment? Okay. I'm -- you know, we're scheduled to go
2 for a couple of hours. I have not seen a significant
3 number of new participants coming onto the line. We'll
4 hold the floor open for a few -- a few more moments.
5 We will stay on for the allotted time if folks want to
6 engage in a conversation.

7 But if you would prefer to submit your
8 written comments, you are invited and welcome to do
9 that, and we'll read them and take them back to the
10 drawing board.

11 Our next consultation session on this
12 will be on Wednesday at 2:00 p.m. Eastern time. The
13 link is in the chat. And our final consultation
14 session will be on Thursday at 2:00 p.m. Eastern time.
15 The link for that one is also in the chat. And written
16 comments can be sent to consultation@bia.gov by
17 December 31.

18 I will do a last call for comment.
19 Seeing no hands raised and no comments in the chat, we
20 can close today's session and reconvene on Wednesday.
21 I want to thank you all for taking some time to join us
22 today for your feedback throughout this process and for

1 your service on behalf of your people, your communities
2 and your organization. I wish you all a healthy, safe
3 holiday season. And I look forward to speaking with
4 you again on Wednesday.

5 We will conclude today's session.

6 MS. GILBERT: Thank you. I will go ahead
7 and close the session.

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CERTIFICATE OF NOTARY PUBLIC

I, IRENE GRAY, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



IRENE GRAY

Notary Public in and for the
District of Columbia

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I, JIMMY JACOB, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JIMMY JACOB

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