

**U.S. Department of the Interior
Office of the Assistant Secretary – Indian Affairs
TRIBAL CONSULTATION
Federal Acknowledgment Re-Petitioning**

**February 25, 2021
2:00 pm CT**

Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen-only mode until the question-and-answer session of today's call. At that time if you would like to ask a question you may press Star 1. Today's conference is being recorded. If you have any objections you may disconnect at this time. I would now like to turn the meeting over to Elizabeth Appel, you may begin.

Elizabeth Appel: Hi welcome everyone to the tribal consultation on whether to reopen the federal acknowledgement regulations to modify or appeal the ban on repetitioning. My name is (Liz) Appel. I'm the Director of the Office of Regulatory Affairs and Collaborative Action in the Office of the Assistant Secretary for Indian Affairs. This is a formal tribal consultation so it's only for officially designated representatives of federally recognized tribes. And the session is being transcribed and that transcript will be made available on the Web site. The session is not open to press. If you're a member of the press we respectfully ask that you disconnect at this time.

So to begin let me introduce you to the folks we have here from Interior side beginning with Darryl LaCounte. Darryl would you like to introduce yourself?

Darryl LaCounte: Thank you Liz. Yes, I am Darryl LaCounte. I am the Director of the Bureau of Indian Affairs. I am currently exercising the non-exclusive authorities of the Assistant Secretary of Indian Affairs. I don't know how much longer that will be my task. But as of right now that's what I'm doing. I'd like to say thanks to everybody who got on and we look forward to your input. And I would also like to thank NCAI for allowing this to happen basically on their time and their dime. We appreciate that very much. So back to you (Liz).

Elizabeth Appel: Thank you Darryl. And then from the Office of Federal Acknowledgment we have Lee Fleming. Lee would you like to introduce yourself?

Lee Fleming: Yes thank you. My name is Lee Fleming. I'm the Director of the Office of Federal Acknowledgement. And our office implements the regulation that governs the federal acknowledgment process, thanks.

Elizabeth Appel: Great. And then we have several people here from the Office of the Solicitor. John-Michael would you like to begin?

John-Michael Partesotti: Yes, thank you Liz, good afternoon. My name is John-Michael Partesotti. I'm an attorney adviser in the Division of Indian Affairs in the Department of the Interior Office of the Solicitor.

Elizabeth Appel: And then Connie.

Connie Briggs: Hi everyone. My name is Connie Briggs. I work with John-Michael in the Office of the Solicitor, Division of Indian Affairs in the Branch of Tribal Government Services.

Elizabeth Appel: Great, thank you. And just to doublecheck do we have anyone else from the Office of the Solicitor with us? Okay so let's get started on just a quick

overview of what we're consulting about today. You probably heard about this consultation in the dear tribal leader letter that went out on December 18 basically for some background.

The regulations that established the process and criteria for how the department administratively acknowledges the Indian tribes were updated in 2015. Those regulations are at 25 CFR Part 83. And as part of that 2015 rulemaking the department decided not to allow groups that had previously petitioned for but were denied federal acknowledgment the opportunity to repetition.

Since that time two federal district courts ruled that the department's explanation for its decision to ban repetition was insufficient as a matter of law under the Administrative Procedure Act. So the department's taking this opportunity to consult on whether it should reconsider its prior decision to ban repetition.

The purpose of this consultation is to hear from federally recognized tribes on whether to keep the repetition ban in place, modify it or repeal it entirely. So with that introduction we are here to hear the thoughts and input from federally recognized tribes and I will open the floor. We ask that you state your name and tribal affiliation so that it can be accurately reflected in the record. And at this time I'll turn it over to the operator to provide instructions for how to indicate that you would like to make a comment.

Coordinator: If you would like to make a comment please press Star 1 and record your name clearly when prompted. To withdraw your comment you may press Star 2. One moment please for our first comment.

Elizabeth Appel: While we wait for folks to gather their thoughts I'll also mention that we are also accepting written input on this question. If you'd like to submit your

comments by March 31 to consultation@bia.gov. Email is the preferred method. We are all working remotely these days.

And operator do we have a...

Coordinator: Yes, our first comment comes from Ben Barnes. Your line is open.

Ben Barnes: Hello can you hear me?

Elizabeth Appel: We can, thank you.

Ben Barnes: This is Chief Barnes with the Shawnee Tribe. And thank you for taking time to consult with us today while NCAIs occurring. The question that I have is regarding the scope of removal of this ban. Is the Bureau of Interior considering allowing tribes that denied their recognition process to be able to refile those claims or is this simply a removal of the ban so that tribes that have not been recognized can now apply for recognition and what does that look like?

Elizabeth Appel: Sure. So any tribes that have gone through the process under Part 83 to be recognized but have been denied are under the current regulation banned from refiling as you said. What we're considering now is whether to remove that ban or modify it so those tribes could reapply for recognition. Does that answer your question?

Ben Barnes: I think so. So let's not name names or let's just look at hypothetical. So if a tribe has a spurious claim towards a tribal identity and you're looking to become a federally recognized tribe, they've applied before. And the correct decision was made. They're not a tribe. And that's – they were not, you know, added to the list of federally recognized tribes. They failed to meet any

of the criteria. We're going to allow those – where we would allow this hypothetical tribe to reapply in the future is that what we're saying?

Elizabeth Appel: So that is what is under consideration now either allowing them for – allowing them with some if they meet certain conditions which...

((Crosstalk))

Ben Barnes: Does this – that's different than I thought this conversation was supposed to be. I thought this conversation was going to be about tribes that have not been through the recognition process yet. There are still tribes in the Pacific Coast that were disestablished that need to be recognized. But you're talking about opening the flood gates again and allowing anyone with a spurious claim to ethnicity and (unintelligible) or a tribal organization inside of an urban center to suddenly claim the identity of a sovereign. Is that what I'm hearing?

Elizabeth Appel: So that is what we're opening for discussion. And not just removing the ban entirely but maybe there's some form of a band that is appropriate to keep, like, I'm trying to remember. When we proposed maybe one of the other folks from Solicitor or federal acknowledgment if they remember can help. But when we proposed the regulations that led up to the 2015 final rule, the proposal had some sort of modified you may repetition if you meet certain criteria.

John-Michael Partesotti: Yes Liz this is John-Michael. I can...

Elizabeth Appel: Thank you.

John-Michael Partesotti: ...step in for you here just to clarify. Yes, so what happened was the department had proposed a rule in 2014 that would have created a limited opportunity for certain previously denied petitioners to repetition for federal

acknowledgement subject to certain conditions. So it was not open to everyone who had been previously denied. Specifically, the one that I recall is that if a third-party individual or entity had participated in some kind of secretarial reconsideration action or some other kind of action I believe, like on an appeal of a denied petition, then the group seeking to repetition would actually have to get the consent of that third party.

Now I may be misstating that because I'm sort of trying to recall it off the top of my head. But it is located in that 2014 proposed rule. You can go back and look at that and see that there were limitations on what kind of groups could repetition. And so, you know, it's possible that, you know, there could be a repositioning ban that has similar limitations put on in the future. At this point we are only soliciting input on whether there even should be a repetition ban or if there should be no repetition ban or a limited one. It's not suggesting any which way at this point.

Ben Barnes: My concern is that a complete reopening opens up the potential for problems across Indian country. An adoptive couple versus baby girl at the Supreme Court Chief Justice Roberts expressed the concern that what is to stop any group of indigenous people or people of native ancestry to form together as a community and claim Indian child welfare rights for themselves. What I worry about is that a floodgate of people glomming together and trying to develop themselves as a newly founded tribal nation with spurious or no claims to sovereignty. So brand-new tribes creating them a whole cloth.

So I think the Shawnee Tribe's official position would be, you know, there needs to be a process for tribes that were disestablished along the Oregon Coast, in Virginia where those people were subject to one drop laws that unfairly punished them for having black ancestry. I think there needs to be a place for those people. I think it does not need to be a place for people to

come together – glom together and create fictitious tribes. I think there needs to be an academic rigor applied to the process. Thank you.

Connie Briggs: Sure, hi this is Connie Briggs. And just to clarify, you know, we're not considering any changes to the substantive criteria for acknowledgement. This is just in terms of – we're just considering whether to reconsider the ban on whether any groups can repetition. So, you know, any group whether we keep the ban or not that group would still have to undergo the very rigorous criteria that's currently in the regulation. So just kind of wanted to clarify that point.

Elizabeth Appel: Thank you Chief Barnes. Did you have any other comments?

Ben Barnes: I do not, thank you very much.

Elizabeth Appel: Okay, thank you so much for commenting.

Coordinator: I would like to remind participants that to make a comment please press Star 1 and record your name clearly when prompted. To withdraw your comment you may press Star 2.

Elizabeth Appel: Do we have any other representatives of federally recognized tribes that would like to make a comment?

Darryl LaCounte: Well this is Darryl LaCounte. I'd like to say thanks Chief Barnes. This would have been rather boring with your comments. We appreciate that very much. I'd like everybody to understand that the new administration -- the Biden Administration – is very committed to consultation and very shortly you will see a consultation invite on consultation itself. And we want your

input and we welcome your input. And please stay alert because we'd like everybody's input on that.

And we're going to do it in a little different manner so we can get more tribes involved on the lines. We're going to do it by four different regions. And that's because we have limited phone lines and there's 574 federally recognized tribes. I think the last time we did one we only had 500 lines. And so hopefully we'll get up to 2,000 lines when we do it in four different regions. So I'd just like to say that while there's a lull in the action here.

Elizabeth Appel: Thank you Darryl. Do we have any other comments from federally recognized tribes? Again if anyone on the line would like to speak but would prefer not to comment at this session we are accepting written comments until March 31 by email to consultation@bia.gov.

Coordinator: We have a comment in queue from Leonard Forsman.

Elizabeth Appel: Wonderful.

Coordinator: Your line is open.

Leonard Forsman: Hello, good morning from Suquamish.

Elizabeth Appel: Hello.

Leonard Forsman: Hi there. Hey, I just had a question about the process as far as this call – this consultation. Is there a written format or a deadline on comments or any of that on this particular – related to this call?

Elizabeth Appel: Yes, Chairman Forsman there is. We have a written comment deadline of March 31.

Leonard Forsman: Okay.

Elizabeth Appel: And we'll be accepting comments by email to consultation@bia.gov.

Leonard Forsman: Consultation@bia.gov. Okay thank you. It's a complicated issue and one that will probably have some comments on so I appreciate that opportunity.

Elizabeth Appel: Great, thank you. We look forward to taking your written comments.

Leonard Forsman: Yes.

Elizabeth Appel: Do we have any other representatives of federally recognized tribes who would like to comment today? (Valerie) would you like to give directions again in case?

Coordinator: Yes. If you would like to make a comment please press Star 1 and record your name clearly when prompted. To withdraw your question or comment you may press Star 2.

Elizabeth Appel: Thank you. Well if we don't have any other comments on federally recognized tribes we'll wrap up early. Maybe everybody's planning on submitting written comments instead. I'll give it a couple more minutes. This is the last call for federally recognized tribes who would like to comment. Okay if we don't have any other comments from federally recognized tribes I think...

Coordinator: Excuse me we do have a comment. We have a comment from Starling Jinright your line is open.

Starling Jinright: Hi yes. We're not a federally recognized tribe. But I thought there was going to be a question-and-answer session. Is that not the case?

Elizabeth Appel: Well there is a comment discussion period for tribes that are federally recognized which is what this call is. But we don't at this time have a question-and-answer session for the non-federally recognized tribes.

Starling Jinright: Understand. Thank you for that clarification.

Elizabeth Appel: Thank you. Okay. Well if we don't have anymore comments from federally recognized tribes I guess we'll wrap it up early. Again please submit written comments to consultation@bia – the Bureau of Indian Affairs - .gov. I thank everybody for joining today. And Darryl did you want to provide any closing comments?

Darryl LaCounte: Thank you folks for attending. And I know there was some confusion about what this was about so we'll expect you'll regroup and we'll see some comments in writing. Again I'd like to thank you for participating and I'd like to thank NCAI again. And again let's be alert for the next consultations that we will be doing. The president has issued an executive order directing us to consult with all of you on consultation and it's across the board. It's not just the Bureau of Indian Affairs. So you're going to see a lot of them out there but obviously ours would be the number one you'd want to attend. Thank you all.

Elizabeth Appel: Thank you everybody.

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