

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

2

3

4

5

6

7

8

9

10

REPORTER'S TRANSCRIPT OF

11

CONSULTATION ON INDIAN TRADER REGULATIONS

12

13

(Tribal Consultation on Whether/How to Revise

14

25 CFR 140 - Traders with Indians)

15

16

17

18

National RES 2017
Mirage Resort & Casino
3400 South Las Vegas Boulevard
Las Vegas, Nevada

19

20

On Monday, March 13, 2017
At 9:05 a.m.

21

22

23

24

Reported by: Jane V. Efaw, CCR #601, RPR

25

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 Appearances:

2 MILES JANSSEN, Department of the Interior

3 REBEKAH KRISPINSKY, Department of the Interior

4 WENDY PEARSON, Hobbs, Straus, Dean & Walker

5

* * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 MS. PEARSON: Again, my name is Wendy
2 Pearson. Welcome everyone to the official
3 government-to-government consultation session on the
4 Advanced Notice of Proposed Rule Making regarding
5 updates to the Indian Trader Regulations.

6 So it's good to see you all here. It's a
7 great turnout. This is a wonderful opportunity, as I
8 say, for consultation with the government
9 representatives who are here with us today to talk
10 about the ANPRM and to listen and take your comments
11 and questions.

12 So we have Rebekah Krispinsky. She's with
13 the Solicitors Office of Interior. And Miles
14 Janssen. He's counselor to the Assistant Secretary
15 of Interior.

16 So these folks know a lot about the Indian
17 trader rights and the Indian trader statute. And so
18 they're going to share their knowledge with us and,
19 as I say, are here to hear your comments.

20 And this is being recorded. So please when
21 you do have questions and/or comments, we have a mic
22 up here. We ask you to come up to the microphone and
23 make your comments or ask your questions.

24 So with no further ado, I'll let our guests
25 begin. Thank you.

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 MR. JANSSEN: Thank you. So, again, my name
2 is Miles Janssen. I work as a counselor to the
3 Assistant Secretary of Indian Affairs. I'm a member
4 of the Tlingit Haida Indians of Alaska, a descendent
5 of Cheyenne and Arapaho in Oklahoma.

6 MS. KRISPINSKY: Good morning. My name is
7 Rebekah Krispinsky, and I'm with the Solicitors
8 Office, a division of Indian Affairs.

9 MR. JANSSEN: So before we take comments, I
10 just kind of want to discuss briefly a little bit of
11 the background of the ANPRM regarding the Indian
12 Trader Regulations.

13 So on December 8th, 2016, Indian Affairs
14 published an Advanced Notice of Proposed Rule Making
15 to get input on whether to update 25 CFR Part 140,
16 licensed Indian traders.

17 This was a direct response to proposals and
18 inquiries that the Department received in the past
19 year from tribes and tribal organizations requesting
20 of the Department to look at Part 140 and possibly
21 make revisions.

22 Right now we're at the very early stages,
23 and we have not drafted any revisions because we want
24 to hear from you on whether to leave the rule as is,
25 to repeal it, or to revise it. And if the answer is

1 to revise it, what those revisions should look like.

2 A little bit of background on Part 140.

3 Part 140 governs trade economy on Indian
4 reservations. Part 140 is based on the Indian Trader
5 Statutes. The most recent of those statutes was
6 passed in 1903. I believe the first one was passed
7 in 1870. So obviously they're very good statutes.

8 Originally the intent of the statutes was to
9 protect tribes from unlawful traders on their
10 reservations. Currently Part 140 envisions a
11 framework where BIA issues licenses to anyone who
12 wants to do business on a reservation.

13 But the Department recognizes that tribes
14 fully regulate businesses operating on reservations
15 currently. So the intent of the regulations might
16 not be applicable today.

17 The regulations in Part 140 were first
18 published in 1956, revised in 1957, and then modified
19 in a piecemeal fashion in 1984. And since that time,
20 there have been no changes to the regulation since
21 1984.

22 So we're looking at whether and how Part 140
23 could be revised to reflect the -- to modernize the
24 implementation of these statutes in a way that is
25 consistent with federal policies and tribal

1 self-determination and self-governance in a way that
2 supports current tribal business practices, in a way
3 that strengthens tribal economies across the country.

4 As far as the new administration's
5 priorities, the specifics of those priorities in
6 Indian Country are unknown, but we anticipate that
7 they will align with the President's priorities for
8 economic development. Keep that in mind.

9 As I mentioned, there have been handouts
10 that have been passed around. Included in those
11 handouts is a list of questions that we would like
12 your input on. They're the same questions that we
13 published in the Advanced Notice of Proposed Rule
14 Making, and we'll be going through each of those
15 questions today one by one.

16 Along with the answers to those questions,
17 we are also interested in learning how tribes
18 currently regulate trade occurring within their
19 jurisdiction and how the revisions to this regulation
20 will create economic viability in Indian Country and
21 address potential taxation issues.

22 Along with the consultation today, we are
23 accepting written comments. The comment period
24 closes April 10th to submit written comments.

25 So we're here today to listen and to get

1 your thoughts on how to modernize the Indian Trader
2 Regulations, to promote tribal self-determination and
3 economic development. I look forward to this
4 discussion.

5 One additional question that people have had
6 have been the two-for-one requirement for
7 regulations. There have been news where two
8 regulations would have to be repealed for every new
9 one that's promulgated. OME is still looking at
10 that. It looks like that would only apply to
11 regulations that are determined to be significant
12 based on monitoring policy thresholds.

13 And so at this point in time, OME has not
14 made a determination whether this would be considered
15 a significant regulation. So at this point in time,
16 that's not something we have to worry about right
17 now.

18 So I would like to open it up for general
19 comments on Indian Trader regulations, and then we
20 can go question by question.

21 I would ask that the tribal leaders or their
22 designated representatives go first, and then
23 afterwards we can get to everyone else. Thank you.
24 And then also when you come up, just state your name
25 and what tribe you represent.

1 There's also a microphone up here at the
2 front. Since this is being recorded on the record,
3 it would be helpful for the court reporter.

4 MR. MICKLING: My English name is Will
5 Mickling. I'm second vice president of Central
6 Council of the Tlingit Haida Tribes of Alaska. Our
7 communities are in southeast Alaska from Yakutat
8 north to Edna Bay south. Jackie Johnson Dada is our
9 fourth vice president. And I see some of our folks
10 out here in the audience. It's good to see you.

11 So I'll just say very briefly that we
12 strongly urge the administration to carefully
13 consider reaffirming an ambiguous express intent in
14 25 CFR 140 as revised pursuant to the underlying
15 statute of 25 UFC 262 to protect the interest of
16 tribal governments and expressly for the intent of
17 precluding taxation or what's called dual taxation,
18 the imposition of federal -- of state and local taxes
19 within the tribal community, upon the tribal
20 government or its subdivisions or subsidiaries or its
21 enterprises, whether or not the tribe has trust land
22 or not but within the jurisdiction of the tribe.

23 The deleterious effect, the impairment, on
24 tribal economic development and on tribal government
25 is significant by the imposition of state and local

1 government taxation. It deprives the tribal
2 government of an essential attribute of a sovereign
3 government, which is the undisputed ability to impose
4 taxes within its jurisdiction and territories. And
5 it impedes the ability of tribes to fully benefit
6 from economic development, business development, even
7 within its enterprises or by third parties locating
8 within the tribal community. A double taxation
9 doesn't work.

10 The old argument that tribes would use this
11 as a recruiting effort to sort the development of
12 these businesses outside of boundaries of the
13 reservation, given the number of governors that today
14 market the tax vacations within their jurisdictions,
15 whether it's New York or San Francisco or Portland or
16 what have you.

17 So I strongly recommend that this revision
18 to Part 140 not impose additional burdensome
19 regulation that as well impedes business development
20 and tribal governments within Indian communities but
21 instead provide its focus on precluding the unfair,
22 inequitable and significantly harmful imposition of
23 state and local governments and let tribes build the
24 infrastructure, build a government structure, and
25 build the businesses that provide and create the jobs

1 for its members and for the residents within the
2 Indian communities. Thank you for the opportunity to
3 speak.

4 MS. DADA: Thank you, Miles. I'm Jackie
5 Dada. I'm the executive director of National
6 Congress of American Indians. As Will said, I'm the
7 fourth vice president of Tlingit Haida tribes of
8 Alaska.

9 I want to thank everybody for being here
10 today. It was really great to be able to have a nice
11 full run. I think this is a really, really important
12 topic. And even though the Indian Trader Rights
13 haven't been something that we've been utilizing in
14 many, many years, I think that the opportunity is a
15 great time to talk about opportunities and
16 opportunities for change.

17 So I just have a few comments. And NCAI
18 will actually be submitting our formal comments
19 before the April deadline.

20 But this is a good example of what some
21 would think is a neglect of the federal government to
22 really pursue economic development in Indian Country.

23 If you take a look at how long these Indian
24 Trader Rights, which was an essential part of setting
25 the tone, I guess, for the engagement with tribal

1 governments on tribal communities. And these
2 regulations, as noted, has not been updated since
3 1957 when Eisenhower was president. And they're
4 essentially the same framework as when George
5 Washington was president.

6 Federal governments licenses to traders, to
7 the Indians. And if you don't have a license, you
8 forfeit your trade goods. And the regulations are
9 incredibly outdated.

10 But this statute has really brought
11 authority. And any person's desire to trade on
12 Indian reservations shall do so under the rules and
13 regulations as the Department of the Interior may
14 prescribe.

15 The regulation could be updated for the
16 modern era for today's tribal governments who are
17 fully capable of governing our own affairs. And so
18 we have three basic frameworks for how that could be
19 addressed.

20 First, the licensing function should be
21 delegated to the tribal governments. Tribes are far
22 more capable of handling local business licensing on
23 tribal land, and it's very important to have a
24 business licensing structure that can promote local
25 businesses and also deal with the unscrupulous or

1 fraudulent business operators that should be
2 prevented from preying on customers. And you'll see
3 many tribes have already started to do this. There
4 are tribes, such as Navajo Nation, that have a large,
5 comprehensive taxing structure. There are tribes
6 like Tulalip who have their own business licensing
7 structures.

8 And certainly there are many other tribes
9 who may not even have taxing licenses but are put in
10 place as business licensing or have put in other
11 kinds of preventative laws and ordinances regarding
12 even things such as predatory lending standards, etc.

13 So tribes have already dealt with the things
14 where they have investors or businesses doing work on
15 their own tribal communities.

16 Second, there should be a presumption that
17 tribal courts have jurisdiction over all the parties
18 conducting business on a reservation. We don't
19 intend this applies to the average consumer who
20 actually comes to buy gas at a tribal gas station, of
21 course but is intended for a licensed business on a
22 reservation.

23 We saw this problem last year in the Dollar
24 General case that we were following, Dollar General
25 versus Mississippi Choctaw, where the Supreme Court

1 could not decide if the tribal courts had the
2 jurisdiction when a store manager sexually assaulted
3 a young tribal member that was working as an intern.

4 The clear presumption of tribal court
5 jurisdiction in the regulations would enable us to
6 protect our citizens, and this could be easily done
7 as there is already a provision for the consent to
8 jurisdiction under the trader regulations for the
9 Hopi and Zuni tribes.

10 And then the third part, taxation, this is
11 significant amongst any problems dealing with dual
12 taxation on tribal lands. When the state and local
13 government is taxing transactions on tribal land, it
14 prevents the tribe from taxing or collecting its own
15 taxes.

16 State governments provide for few services
17 on Indian reservations but impose taxes on severance
18 of natural resources, retail sales, and increasingly
19 on properties such as wind-generation facilities.

20 Tribal governments face a losing proposition
21 when forced to collect sales taxes. If we impose a
22 tribal government tax, then resulting dual taxation
23 drives the businesses away, or tribes collecting no
24 tax and suffer inadequate roads, schools, police,
25 courts and health care.

1 To add insult to injury, reservation
2 economies are funding millions of tax dollars to
3 treasuries of state and local governments, who spend
4 the funds outside of Indian Country. This dilemma is
5 fundamentally unfair to tribal governments and
6 undermines the Constitutional promise, a respect for
7 tribal sovereignty, and keep Indian reservations the
8 most underserved community in the nation.

9 This is a good example. If you take a look
10 at in the recent years the expansion with tribes
11 taking on alternative energy projects and just look
12 at some of the deliberations that Campo had to do
13 when they were talking about their energy project,
14 the wind turbines, and the difficulty of the taxing
15 structure that was proposed for the local government
16 and state local government, which almost made the
17 project infeasible. And people have to think about
18 that.

19 In fact, you saw -- even in South Dakota is
20 another good example where prior to tribes getting
21 involved in alternative energy and energy
22 development, there really wasn't a taxing structure
23 for tribes in South Dakota that created a dual tax
24 structure. But then after they saw investments in
25 other areas, they created a tax sweep basically for

1 those kinds of developments. And tribes are not the
2 beneficiaries of the additional revenue that may be
3 generated through a taxing structure.

4 So those are some of the things that we just
5 wanted to put forward. I also have a handout that
6 just talks about some of the points that we will be
7 covering in our testimony when we submit our final
8 document.

9 And we've been attending -- NCAI has been
10 attending each of these consultations -- not all of
11 them but the majority of them -- and then actually
12 gathering the tribal testimony that's given so that
13 we can have a really solid, comprehensive document
14 before NCAI does its consultation.

15 So thank you very much for this opportunity.
16 I appreciate it.

17 MR. JANSSEN: Does anyone else have kind of
18 general comments on the Indian Trader Regulations
19 potential revisions?

20 MR. MARCHAND: Thank you. My name is Mike
21 Marchand. I'm with Colville Tribes. I'm chairman of
22 the tribe. But most of my life, I was a tribal
23 planner, a conference planner. So I've been involved
24 with the tribe's development and growth probably
25 since 1970. In 1970 we had about ten employees. And

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 most businesses pretty much left, and we were about
2 to be terminated. Other groups saved us. And we're
3 here.

4 And so since '70, it went from ten to today.
5 And today we probably have 1300 tribal government
6 employees. Probably a hundred thousand business
7 employees. And we have a BIA agency and Indian
8 health services there also. I'm not sure how many
9 people that is.

10 But the tribal government's operating budget
11 is about \$60 million to pay for staff and health
12 services. BIA is probably, just guessing, maybe \$20
13 million, \$25 million.

14 We're in a rural area. We have not a lot of
15 high population, cities or anything. Our biggest
16 town is like 5,000 people. Overall on the Indian
17 reservation, we probably have 10,000 people, and
18 within 15 miles of reservation 75,000 people. So
19 it's that kind of area.

20 There are casinos. We operate casinos, and
21 we have sawmills. We have timber, mountains and
22 water. We're rich in resources. We have probably a
23 hundred million dollars of operations in our
24 businesses.

25 I guess one problem that we have as a tribe

1 is that we don't own all of our reservations. In the
2 termination era through BIA's help, about half of our
3 tribe was basically given away. So since 1970 to
4 today, we've been buying land back as fast as we can.

5 And so a lot of our land purchases have been
6 for tribal revenues. Whenever we can make a dollar
7 anywhere, we get a percentage of that and buy land
8 back. It's been pretty successful. I think we went
9 from a 50 percent land ownership to about probably
10 80 percent now. We've spent quite a bit of our money
11 on land purchase.

12 We've had high unemployment and poverty, but
13 generally our tribe believe to buys land back. And
14 one of the reasons we buy the land back is because of
15 the uncertainties in jurisdiction.

16 And so our tribe is reluctant to bring in
17 any kind of development if there are questions about
18 whether we can control that development, questions
19 about the regulatory powers of the tribe, the
20 jurisdiction over zoning and jurisdiction over
21 anything. If we can't control it and it presents a
22 possible risk of quality of life to our tribe, we
23 don't want it.

24 We've turned away a lot of potential
25 businesses. We don't get a lot of businesses coming

1 in. The only businesses we have have been the
2 waging. We limited with so much money, so much
3 capital, so much borrowing. If an outside developer
4 comes in, we really wonder about that.

5 And generally if outside businesses want to
6 come in and go outside the tribe, we kind of wonder
7 about that too. We're not sure if we want them or
8 not. And, quite frankly, we're not sure if we can
9 really stop them either. After the Rendell case and
10 there was a three-way split decision on land use,
11 what does that mean?

12 So most developers, they'll stay away if you
13 scare them out. We've got like 96 lawyers. So if
14 you want to sue us, go ahead. But they'll go
15 somewhere else usually with a lot of noise. And so
16 we restrict ourselves and try to operate our own
17 businesses.

18 Also the lease situation where people want
19 to lease land, develop it, and invest. We welcome
20 them. But they have to come in on our terms where we
21 control the lease.

22 Danny Gettner with Gettner Corporation, he's
23 a big apple operator. He comes on the reservation.
24 He negotiates lease terms. He promises to invest
25 millions, etcetera, et cetera. We want to make sure

1 it's done environmentally and we control the lease.
2 And so he consents to the lease, comes in, and we do
3 business that way.

4 I guess in the future, we'd like to be able
5 to designate zones like some other tribes have done
6 in industrial park areas, commercial park areas, and
7 we'd like to get outside investors in the reservation
8 at some point. But we don't want to do that until
9 it's clear that we have taxation authority, that we
10 have land use authority. And I think we can control
11 our business operators through leasing mechanisms.

12 There's going to be vendors involved,
13 suppliers involved, contractors involved, employees
14 involved. If a business brings in employees, where
15 are they going to live? 20 percent of our land, we
16 think we can regulate it, but we don't know for sure.
17 I think the existing laws are gray enough to where
18 there's still risk involved. People don't want to
19 take the risk right now. That may change in the
20 future. I don't know.

21 My education was in planning, and I have a
22 Ph.D. in environmental. I've been tribal chairman
23 and tribal councilman for about 20 years now and
24 chairman right now. We need more jobs. We need more
25 revenues to the tribe. We have a good reservation

1 that's rich, rich, rich in resources. But those
2 resources are in the ground. And to monetize those
3 resources and convert them into businesses, convert
4 them into jobs, we have to go through a process.

5 I think we can deal with a lot of that, but
6 I guess we're just worried about taxation. We're
7 worried about issues of land use control in the
8 future. We have 10,000 people in our tribe. You
9 know, where are they going to live? Where are they
10 going to go to school? All these services they're
11 going to need. It costs millions of dollars for
12 services. How are we going to pay for that?

13 A good example is transportation. Half our
14 roads are state and federal roads. Most of that
15 money goes to the state. They don't spend a nickel
16 on our roads. All the guests that go off the
17 reservation never come back. We do have guest
18 compacts with Washington state, and we kind of work
19 through it that way. But it's kind of like a
20 Band-Aid fix. It's kind of random.

21 I guess to me ideally we should have a line
22 around the reservation. Everything within that
23 reservation should be ours. We should be able to
24 regulate our tax or whatever. I don't know if it
25 will ever be that way again.

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 We live there. We can't move away. We've
2 got to take care of what we got. And so I think
3 there's big pluses. In my area we're the number-one
4 employer for a couple hundred miles any direction.
5 But at the same time we have billions of dollars in
6 natural resources like timber, water, raw farm land.
7 It's not developed because we're kind of sitting on
8 it, and we're waiting until these other little things
9 get fixed.

10 And so on things like a trader license or
11 one more tool that can help us to control and
12 regulate our resources, control and regulate our
13 people, use some of these tax resources, I think
14 those are the kind of stuff. Development in some
15 areas. Increase jobs. Dual taxation is a big issue,
16 I think.

17 We're the cigarette case tribe. We're the
18 ones that brought that on. It's a big issue. I
19 specialize in governments and finance governments and
20 taxation systems. You can go to any city anywhere,
21 any tribe anywhere, businesses and tribes have to
22 work together. They need water, sewer, electricity,
23 internet and everything else. How do you finance all
24 that?

25 I don't have formal comment today, but we

1 will have some submitted. Thank you.

2 MR. JANSSEN: Any other general comments?

3 If not, we can go over question by question.

4 MR. CLARKSON: First of all, thank you for
5 making the time. This is a pretty important issue.
6 My name is Dr. Gavin Clarkson. I'm a finance
7 professor at the New Mexico State University. I'm a
8 faculty advisor at the Native American Business
9 Students Association. And I've been doing tribal
10 finance and economic development for a little while
11 and consistently.

12 The problem with double taxation is
13 something that all of us are familiar with. But
14 Indian Country is the only place in the United States
15 where the race of the counter-parties determine the
16 applicability of taxation, determines civil
17 jurisdiction, and even after the Tribal Law and Order
18 Act determines criminal jurisdiction. And that's
19 wrong.

20 We should not have a race-based taxation
21 system. We should not have a raced-based
22 jurisdiction system. There are existing analogs that
23 we use all over to treat tribes like states. In the
24 environmental regulation, there's a formal tribes as
25 states protocol where tribes get treated and they get

1 valued and they get the same respect as the states
2 with those regulations forward.

3 In the case of Indian Country, there's no
4 reason the states should have any ability to tax any
5 transaction on a reservation. As you go back to the
6 original Colville case, it was tribes selling
7 cigarettes. You had non-Indians going on the
8 reservation to buy cigarettes. You had the same
9 judges who were involved in that opinion, most of
10 them are from Harvard law school.

11 And if you were sitting while you're not
12 studying for your law school exams and you watch -- I
13 think it's WCDV, the TV station of Boston, you'll
14 always see, Hey, come shop tax-free in New Hampshire.
15 So we all went shopping tax-free in New Hampshire.

16 So somehow it was perfectly fine for the
17 State of New Hampshire to market exemption from the
18 sales taxation, but it's somehow impermissible for a
19 tribe to market a sales tax exemption.

20 I'm very cautious to use the term "racism,"
21 but I think it's applicable here. And I have an
22 objective definition of racism that some of you -- if
23 you've read some of my articles, I happen to give
24 credit to Rob Williams.

25 There was a writer, a guy named Albert

1 Demme, who was a Tunisian Jew incarcerated by the
2 Nazis in World War II. So he probably, at least from
3 an essential standpoint, has an understanding of
4 racism.

5 But the way he defines racism as is
6 identification of a difference, making that
7 difference bad, saying that because they are
8 different, they are bad, than generalizing that
9 difference to a whole group of people and then using
10 that negative imputation of value or that difference
11 as a justification for hostility, aggression or
12 privilege.

13 And that's exactly what is happening right
14 now. The Supreme Court is implicit with it.
15 Congress has ignored it. And it's time to stop. So
16 the Indian Trader Regulations, which most people it
17 seems like it's archaic. It seems like, Gee, it's
18 yet another application of paternalism.

19 It's about time we can take that regulation,
20 take that body of law, take that set of regulations,
21 turn it on its head and make it advantageous to
22 Indian Country. If we can have it so that tribes, if
23 there's a licensed Indian trader or some mechanism
24 where any business doing business on a reservation is
25 subject to tribal regulation, all transactions on the

1 reservation, whether conducted in person or via the
2 internet, where the parties contractually agree that
3 the transaction is an on-reservation transaction, the
4 tribe has exclusive jurisdiction vis-a-vis the
5 states. That would be a dramatic change and be a
6 huge benefit.

7 Just some example I've got. I think the
8 Three Affiliated Tribes lost a billion dollars in tax
9 revenue because the Supreme Court, a bunch of stupid
10 opinions, decided that, Oh, gee, the state can
11 interpose itself where it has no business being and
12 literally suck the money out of the ground, along
13 with the oil and natural resources, over land that's
14 been the tribes for centuries, depending on a tribe's
15 origin since the beginning.

16 The state has no right or should have no
17 right. It's like Texas telling Louisiana or Texas
18 telling New Mexico, Hey, New Mexico, you used to be
19 part of Texas. Every time somebody takes oil and gas
20 out of the ground in Hobbs, New Mexico, since that
21 used to be part of Texas, you owe us tax money. New
22 Mexico would never go for that.

23 But somehow because of cotton petroleum or
24 Colville or any of these other -- again, I'm
25 reluctant to use the term, but I think it's

1 applicable -- blatantly racist decisions by the
2 Supreme Court. The state gets to interpose itself
3 where it has no business being.

4 So I think the NCAI's comments, they're very
5 clean, very simple, defer tribal authority to
6 regulate activity on Indian lands.

7 The thing I would add to that is whether
8 that activity takes place in person or whether it
9 takes place electronically. Because, as we all know,
10 much of Indian Country is revoked. Much of Indian
11 Country is not near major metropolitan centers.

12 I was a speaker at the Tribal Electronic
13 College Conference today that Arizona State hosted a
14 few months ago. The tribes need broadband
15 capability, but who's going to invest in broadband
16 capability to help tribes do e-commerce if the tribes
17 aren't going to be able to take full advantage of it
18 because they don't have control of it. Indian
19 Country needs to control its jurisdictional
20 boundaries from a business regulation standpoint.

21 Chief Justice Marshall said it best when he
22 described the Cherokee Nation. The Cherokee Nation
23 has district boundaries in which the laws of Georgia
24 can have no force.

25 Indian Country in the 21st century -- and if

1 you all can get these regulations done in this way,
2 it ought to be within every tribal territory, whether
3 the transaction is natural resource extraction,
4 whether it's commerce, whether it's sales. Even if
5 it's sales to non-Indians, even if the transaction is
6 non-Indian, even if it's gold made by a tribal lender
7 to a non-Indian, if it's on the reservation, the laws
8 of the state shall have no force.

9 You have the capability to do that. The
10 statute gives you broad authority to regulate for the
11 protection of said Indians. It is a direct assault
12 on tribal livelihood, tribal economic prospects, the
13 ability of tribes to attract capital for the states
14 to be able to go in and tax where they have no
15 business taxing, to go in and regulate where they
16 have no business regulating.

17 And so I would urge you to put in as strong
18 of language as you can to fundamentally and
19 completely and forever preempt any state involvement
20 with all reservation transactions. Thank you very
21 much.

22 MR. WATCHMAN: Good morning, everybody. My
23 name is Derrick Watchman, and I'm a member of the
24 Navajo Nation. I'm also the chairman of the board
25 for the National Center for American Indian

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 Enterprise Development. And so I want to say
2 welcome. And I want to also say welcome to our
3 Department of Interior folks.

4 From the National Center as a board, I just
5 want to say we echo what Dr. Gavin Clarkson said,
6 NCAI and others. We think that -- I have mixed
7 feelings about a regulation that is archaic. But if
8 you look at all the points that Gavin pointed out, we
9 think that this is a valuable tool to promote
10 economic development.

11 In my former years, I've done many things.
12 I've been a banker, a gamer, but in one of my prior
13 lives, I was a director of the Navajo Nation Tax
14 Commission. And in those days, one of the biggest
15 and fundamental issues that we dealt with and
16 still -- Navajo still deals with it -- is how do we
17 fairly and adequately and feasibly tax businesses
18 that do business on the reservation.

19 The businesses on the reservation tell us
20 that we have one problem. You're taxing us. The
21 state's taxing us and the feds. We would love to do
22 business on your reservation, but get the states out.
23 Get the states out of it.

24 And so speaking to what Gavin said, we think
25 that this is going to be -- if you rewrite it

1 correctly, it could really be an economic development
2 tool. And that's what we're looking at from the
3 National Center.

4 And that's what we will be talking about
5 over the next several days. Is how do we get
6 fundamentally economic development going in Indian
7 Country.

8 So we plan to submit our comments. We think
9 just fundamentally that this is a good tool to
10 address economic development primarily around the
11 issue of dual taxation.

12 So on behalf of the National Center for
13 American Indian Enterprise Development, I want to say
14 welcome, first of all, here and enjoy the conference.
15 And we look forward to the final outcome. So thank
16 you and good morning.

17 MS. MASHUNKASHEY: Good morning. I'm Mary
18 Mashunkashey. I'm the chairman of the National
19 Intertribal Tax Alliance, but I'm also a member of
20 the Osage Nation.

21 And I just wanted to kind of echo also
22 what's been said up here currently. Number one, dual
23 taxation. We dealt with it at Osage. I was an
24 interim and executive director up at MHA last year.
25 And they're dealing with it there. Now I'm at

1 Seminole. And they're dealing with it there.

2 So dual taxation is a huge, huge issue in
3 Indian Country. I've been in Indian taxation for 20
4 years. 20 years later we're still talking about dual
5 taxation.

6 I'm so excited about this opportunity. I
7 was aware of this probably a couple years ago, that
8 this was coming, and I'm excited that it moved
9 forward. That you are here. You're hearing the
10 comments from all the tribes, from the organizations.

11 Jackie also mentioned licensing, and I think
12 that's such an important issue. At Osage we began
13 doing business licenses probably in 2004 or '5.
14 Since that time I worked at MHA. They do business
15 licenses. Seminole, we do business licenses.

16 So if you're from a tribe, it's so important
17 to issue those business licenses. Get control of
18 that. Know who's on your reservation within your
19 jurisdiction.

20 And I don't want to take up much time
21 because I know we've got a long agenda. But I wanted
22 to come up and just state that -- and Wendy, she's
23 also a member of the alliance. And I'm glad that she
24 was a part of this. And we're going to be speaking
25 on it again tomorrow. Taxes, taxes, fun, fun; right?

1 And it's so good to see so many people here.
2 And please speak up. Feel free. Everything that
3 your tribe has experienced, they need to know that.
4 They need to know all of the battles that we fight.
5 They need to know all of the walls that we hit when
6 we're trying to go.

7 They're talking about economic development.
8 It's such an important issue. With taxation you can
9 do so much for your tribe. And when you have to give
10 half of it and even 70 percent of it to the state,
11 that's just ridiculous.

12 All these compacts and contracts. When
13 you're moving and you're trying to do tobacco, you're
14 trying to do oil and gas, whatever you're trying to
15 do on your reservations. Coal. You have to share
16 that. We should not have to share it. That is ours.
17 It's on our reservation. It belongs to us. So I
18 think it's real important that the dual taxation
19 stop. Thank you.

20 MS. THOMPSON: Good morning. Heather Dawn
21 Thompson. My name is Heather Thompson. I'm with
22 Greenberg Traurig. And I'm actually mostly here for
23 our tribal clients, but I'm getting frantic texts
24 from my investor clients because they feel there's
25 not a lot of investor perspective here.

1 And so while most of our comments are going
2 to be sovereignty and tribal based, I just wanted to
3 do an overarching investor perspective brief comment.

4 About half of our clients are investors that
5 do investments with tribes and do business deals with
6 tribes. My client who wants to go on the record is
7 Haynes Investment, who's texting me frantically this
8 morning saying, Oh, my gosh. Please do this.

9 This is the sink recommend largest
10 impediment to capital coming into Indian Country, is
11 the lack of clarity and the over taxation by states
12 and the fact that the answer to every single question
13 is, It depends. It makes investment in Indian
14 Country so expensive. This is why most people won't
15 do it.

16 And they are particularly concerned because
17 while they're very excited about the new
18 administration and the vision for economic
19 development in Indian Country and the meetings over
20 the last couple weeks, the focus has primarily been
21 on infrastructure and where can we infuse a big chunk
22 of money to build this.

23 And their concern is you can put all sorts
24 of infrastructure -- or all sorts of investment, like
25 we have been, all sorts of projects, like we have

1 been, in Indian Country.

2 But unless you fix the legal infrastructure,
3 it will never, ever, ever, get better because it just
4 costs too much money compared to doing business in
5 other places to be a solid business partner in Indian
6 county.

7 You cannot do business if your rent is \$30
8 one day, a hundred dollars the next month, \$150 the
9 next month, \$10. And with the uncertainty of state
10 regulation and state tax over tribal issues, whether
11 it be located on the reservation, whether it be owned
12 by the tribe and working off the reservation, whether
13 it be e-commerce based, the fact that every single
14 step, it depends what kind of land are you on, who
15 are you doing business with, where is the money
16 coming from.

17 And the amount of money that the business
18 partners have to put aside in a litigation fund is
19 absolutely crippling. So most -- I just can't tell
20 you guys that on our investor side, like I spend most
21 of my time begging them not to leave Indian Country.
22 Because it's just too expensive. And they have to
23 put hundreds of thousands of dollars in litigation
24 funds because there's no straight answers, no federal
25 preemption's been issued. And the states challenge

1 every single time. And it cost too much money.

2 So the rest of our conversation will be
3 total from a tribal perspective and from a
4 sovereignty perspective. But from a practical
5 perspective, we really just wanted to make sure that
6 that was on the record.

7 We can do all sorts of creative things in
8 Indian Country, but unless we fix this legal
9 infrastructure, it's fundamentally never going to
10 change.

11 And just a personal opinion. I think the
12 single-most effective policy in Indian Country from a
13 horrible standpoint was the boarding school era.
14 From a positive standpoint, if you guys can fix this,
15 this could reverse things completely. It could be
16 that fundamentally changing in Indian Country.

17 And this is what it's supposed to be in the
18 first place. We believe you guys have this broad
19 authority. This statute is essentially just a
20 codification of the treaties and a codification of
21 the constitutional intertribal trade provision.

22 So we think that it absolutely covers both
23 regulatory tax and all of these different issues for
24 tribal preemption with tribal delegation. So thank
25 you very much.

1 MR. JANSSEN: Any other comments?

2 MS. KRISPINSKY: So to just go into a little
3 bit more detail. I don't know how many folks will
4 actually have oral comments that they want to come up
5 and make in response to these specific questions.

6 If not, I think we just want to get folks to
7 start thinking about them in more detail in
8 preparation for submitting written comments by the
9 April deadline.

10 Just to sort of tease it out a little bit
11 more, and hopefully tribal leaders and other folks
12 will have some specific comments in response to these
13 questions. But I think we've heard a lot. Go ahead.

14 MS. PERO: Hi. My name is Felicia Pero.
15 I'm here right now with my own thoughts.

16 We were talking with a number of people.
17 And besides the issue of non-Indian people doing
18 business on the reservation, you really need to be
19 thinking in this world of interconnected commerce
20 about tribe to tribe transactions and that those
21 should be subject explicitly to exemption from state
22 taxation.

23 If you're the Amazon of the Indian world,
24 you don't have to agree to taxation by a state. If
25 you do something from tribe to tribe, that is exempt,

1 per se.

2 MS. KRISPINSKY: So the first thing, I think
3 we heard a pretty resounding yes to this question so
4 far. But if folks want to talk about it in more
5 detail, that would be great.

6 But the first question that we specifically
7 put forth in materials and are hoping we'll receive
8 written comments on is should the Federal government
9 address trade occurring in Indian Country through an
10 update to the regulations and why?

11 So we've heard a little bit about how
12 there's a broad grant of authority in the Indian
13 trader statutes. The Department does have the
14 authority to make rules specifying the kind and
15 quantity of goods that may be sold to Indians and the
16 prices at which such goods shall be sold. That's at
17 25 UFC 261 and also to establish regulations
18 governing who is a proper person to engage in trade.
19 That's 25 UFC 262.

20 So we've heard about some of the examples
21 today. We're aware of the fact that many tribes
22 already regulate trade within their jurisdiction
23 under tribal law and authority without any federal
24 involvement.

25 And we're aware of the trust responsibility.

1 And so we're interested in learning how the
2 Department can update the regulations to recognize
3 these facts, that there are already a lot of tribal
4 systems that are in place and that the government
5 clearly has a trust responsibility to tribes in this
6 realm in particular.

7 So if there are any thoughts and response --
8 more thoughts and response. I think we've heard a
9 lot of comments on this already. But if anyone has
10 anything to offer on that first question, we'd be
11 happy to hear comments now or happy to receive
12 written comments.

13 Go ahead. If you wouldn't mind coming up to
14 the microphone, that would be great.

15 MR. KAGI: First of all, I'm Henry Kagi.
16 I'm from the Hopi Nation. I just want to thank
17 everybody for being here. We've been working on this
18 issue for quite some time now.

19 So the first question I'd like to see --
20 rather than reaffirming it, I'd also have you guys
21 recognize where you failed. So some of the things
22 where you dropped the ball and a lot of the things
23 that happened in Indian Country over the years and
24 all these tax cases that we lost.

25 If you go back in history and look at where

1 you guys screwed up. Look at more the things that
2 dropped the ball where the economy has collapsed
3 where you're hearing it today. There's a lot of
4 things that barrelled us down.

5 So think about it that way. Rather than
6 reaffirming it, you need to go back and learn from
7 history, learn from what happened and how to make it
8 right. Okay? That's it. Thank you.

9 MR. CLARKSON: My apologies, but I am, in
10 fact, an absentminded professor.

11 One other thing. My thoughts are my own.
12 I'm enrolled in the Choctaw Nation of Oklahoma. I'm
13 sure the tribe would echo these thoughts. These are
14 not the thoughts of either of the Regents of
15 New Mexico State University.

16 But a lot of tribes are starting to look at
17 import/exports. And one of the things that you ought
18 to include also, there are certain ways where right
19 now I work with some tribes that are right on the
20 U.S. and Mexico border. There are mechanisms by
21 which tribes can take goods across the border without
22 import duties.

23 It's complicated. It's difficult. If you
24 rewrote the Indian Trader Regulations so that any
25 goods brought in either directly to a reservation,

1 directly to a tribally controlled facility, directly
2 to a tribally controlled trade zone, or come up with
3 all sorts of mechanisms whereby goods can be imported
4 into Indian Country and then later either in
5 corporation to manufacturing or distribution
6 throughout the rest of the United States.

7 If you could make Indian Country the
8 ultimate, best port of entry for goods coming in from
9 overseas, that itself would be a huge, huge
10 opportunity.

11 There's all sorts of agriculture crops that
12 could come in from Mexico. For example, I'm the
13 chief economist for Fort Sill Apache. Fort Sill
14 would love to be able to easily import all of the
15 commerce that are coming in from just south of the
16 border and Mexico and be able to do it duty-free in a
17 way that allows the tribe to be able to generate
18 commerce.

19 And, again, I'm not specifically speaking
20 for Chairman Houser. He's very capable of speaking
21 for himself. But any sort of import/export
22 opportunity, whether it's agricultural products,
23 whether it's electronic products.

24 One of the things that the administration
25 has said is that they're trying to stop jobs from

1 going overseas. Well, one of the things we can do is
2 not to stop the jobs going overseas, but we can start
3 making it so that where manufacturing can happen on
4 the reservation for all those tribes, whether it be
5 Kickapoo, whether it be any of those tribes that are
6 along the border, move their facilities back into the
7 United States. Employee Americans but give them the
8 same import and export advantages that the plants
9 have.

10 And the same thing with all our brother and
11 sister tribes up along the Canadian border. We're
12 going to be reworking NAFTA. Tribes were not part of
13 NAFTA in the beginning. Tribes were not consulted as
14 part of NAFTA, to my knowledge. Do you know of any
15 tribal consultation that is part of NAFTA? And yet
16 they have a whole bunch of tribes on both the
17 northern and southern border.

18 Now is the time to be able to have those
19 tribes become economic engines doing import and
20 export again. These regulations, they're archaic
21 regulations. They started out of a paternalistic
22 notion of the Indians as incapable of being economic
23 participants in, I guess, the 20th Century, not in
24 the 21st Century.

25 And now we ought to be able -- to use

1 Heather's point, boarding schools were awful. And
2 unfortunately in many cases for many tribal
3 communities they were effective at eradicating
4 language and eradicating culture and eradicating all
5 sorts of things kinship-wise and everything.

6 If we could turn that notion on its head and
7 make the Indian Trader Statutes, the Indian Trader
8 Regulations, a force for good, a positive economic
9 engine, it can be incredibly powerful. Thank you
10 again.

11 MS. DADA: Jackie Dada, NCAI. And I just
12 want to speak to the question about if tribes are
13 already doing some of these things, how do we
14 recognize that? I think we have many examples on how
15 we already do that. Certainly some tribes have very
16 complex systems because it works with their
17 governmental structures, and they have the capacity
18 to do that. Other tribes are smaller in nature, and
19 their stores and types of businesses are different.

20 And that's why one of our recommendations to
21 recognize tribes and their laws and ordinances the
22 way that they see them to make them work for them is
23 the best opportunity. However, recognizing that not
24 all tribes will instantly have the capacity and
25 believe that the Department still has the overarching

1 responsibility. And, sure, it has overarching
2 responsibility. I have to tend to agree with Henry
3 Kagi that should this have been an active role, we
4 might have seen a different environment today.

5 But in any event, having some standards that
6 could be put into place that are the base and then
7 like many other areas where tribes ought to recognize
8 their own laws and ordinances could supersede those
9 standards that the Department would in place. I'm
10 sure other wise minds will have some good ideas about
11 how that could work. Thank you.

12 MR. MICKLING: Will Mickling with Central
13 Council of the Tlingit Haida Tribes of Alaska.

14 So I just want to briefly speak to the key
15 phrase in 25 UFC to 62, which are rules and
16 regulations that are promulgated for the protection
17 of said Indians is the phrase, and I think that's
18 something that has been forgotten about.

19 The responsibility -- part of the trust
20 responsibility for the federal government is to
21 protect tribes from state and local government. It's
22 a practical matter. It was true hundreds of years
23 ago. It's true today.

24 So what backs that is the Federal Trust
25 responsibility, treaties and grievance, certainly the

1 commerce clause and this specific regulation. And
2 there are many examples of this. So there's two main
3 points I want to make.

4 One is that this revision to federal
5 regulation would promote the interests of Indians
6 through economic development. And, second, that is
7 essential for, as Heather Dawn Thompson referred to,
8 the access to capital and the retention of capital
9 through the restoration of the tribal tax base.

10 And the restoration of the tribal tax base
11 is an essential component of tribal governments that
12 has been narrowed, depleted, diminished to the
13 significant adverse impact on tribal governments and
14 their ability to govern as sovereigns in whatever
15 capacity that the federal government thinks we
16 operate in.

17 But essentially without the ability and
18 attribute of being able to assess and collect taxes,
19 it's very difficult to operate as a government.

20 So the specific example I'll give is I've
21 been CEO for the Ewiiapaayp Band of Kumeyaay Indians
22 for the past 25 years. It's a federally recognized
23 tribe in Southern California. There's no
24 infrastructure on Ewiiapaayp. There's no adequate
25 roads. There's no sewer system. There's no

1 telephone. There's no broad band. There's no radio.
2 There's no cellular. There's no water treatment
3 system.

4 And what it does have since 2004 is a wind
5 conversion project for Turbine's 51 windmill project
6 on the reservation.

7 And what we do know from the County is that
8 the County has asserted its express intent to assess
9 possessory interest tax on the improvements on the
10 reservation.

11 Those improvements are by lease because as a
12 tax exempt entity, we have not been afforded -- the
13 federal government has not provided a means for the
14 tribe to monetize the tax credits, which are
15 essential to the development of this type of
16 technology, the wind technology, which has supported
17 for non-tribal enterprises off the reservation.

18 And, therefore, as a lesser in that
19 capacity, the County is intent on assessing whatever
20 taxes it can but certainly possessory interest tax on
21 the improvements, which are the wind turbines, which
22 currently stands about 1.2 percent of the total value
23 of the improvements on an annual basis.

24 So the tribe participates as a -- through
25 lease rent, participatory rent. So it's base rent

1 plus a percentage of rent revenues. And the value of
2 the possessory interest tax at the rate to satisfy
3 the County is worth three-quarters of the lease rent
4 that the tribe would earn under the lease agreement.
5 So it's a significant economic benefit to stand as
6 the ability to assess and collect taxation.

7 But it's also important because this is the
8 only way for the tribe to fund the improvements on
9 the reservation that supports not just the
10 commercial-scale wind project, which the product
11 flows off the reservation to non-tribal
12 beneficiaries, but also to support infrastructure
13 necessary to maintain their project, maintain the
14 quality of life on the reservation.

15 The County over the past ten years revised
16 this general plan or amended its general plan to
17 reduce, to downsize, the zoning, which increases the
18 parcel sizes.

19 The result is a loss of between 50 and 75
20 million dollars in property tax revenues each year,
21 which the County has -- it is the initiative of the
22 County to reduce its revenues by implementing its
23 designated plan.

24 And yet they are after the tribe for the few
25 thousands of dollars that it takes in fee-to-trust

1 acquisitions asserting that the tribe cannot place
2 land in trust without compensating the County for
3 loss of tax revenues, for seeking to assess excise
4 sales, severance, whatever kind of taxes there would
5 be on that parcel, even after it goes into trust; and
6 in the instance of the wind project, to assess
7 possessory interest tax, which should go totally to
8 the tribe as the tribal government.

9 So we are at every point opposed by our
10 local and state government, who, by the way, in the
11 general plan that I referred to before 2000. And the
12 year 2000 was an important date because that's when
13 the tribal gaming compact began in the state of
14 California under governor Dave's at that time.

15 Well, in the general plan, reservations in
16 the County were an empty space. We did not appear on
17 the County general plan. After 2000 we suddenly
18 appeared. And where we appeared was on the intense
19 initiative by the County to enter into an agreement
20 with the tribes to take monies from the tribe for
21 economic purposes.

22 And it didn't matter whether a tribe had a
23 casino or not. Windpipe certainly doesn't have it.
24 We're one of the four reservations in the County that
25 have no infrastructure on the reservation.

1 But for everyone to impose every initiative,
2 every economic development plan, on the reservation,
3 unless there was a revenue stream directed solely to
4 the County and the State.

5 So when you see the \$2 billion in bond funds
6 go untapped by Indian Country, when you see the
7 guaranteed loans go underutilized within Indian
8 Country, that is not an indication of a lack of need
9 in Indian Country. What it is an indication of is
10 that the federal government has not used the tools
11 that it has in the commerce clause, in the federal
12 regulation and statute, to protect the tribes from
13 the insatiable appetite of local and state
14 governments for the tax revenues that belong on the
15 reservation. And it extended from business-type
16 taxes to property taxes to income taxes.

17 So the State of California is entirely
18 motivated in assessing state income taxes on any
19 individual tribal citizens. This is the pathway of
20 the tribal tax base.

21 And unless the federal government acts to
22 restore the tribal tax base, to keep those revenues
23 flowing today off of the reservation on the
24 reservation, there will always be an economic
25 development plan for Indian Country because there

1 will never be a sustained economy on the reservation.

2 In the state of California, of the hundred
3 percent of tax revenues that flow to Sacramento, 20
4 percent of those tax revenues flow back to the County
5 in direct dollars. Not one penny goes to any
6 reservation.

7 So the intent of the County to litigate,
8 which they promised, the wind project on the
9 reservation once it is in operation, will move ahead
10 even though they do not provide one penny for roads,
11 one penny for utilities, one penny for
12 communications, for anything on the reservation.
13 That should be the standard. That is sort of the
14 test. The different tests that the courts have come
15 up with.

16 But that initiative of the courts for these
17 past 50 years has been to narrow, diminish, decrease,
18 and shut off the benefit of revenues on reservation
19 and allow the spigot to go full open to state and
20 local government. That tax base has to be restored
21 to the tribes, and it's the job of the federal
22 government to protect the Indians, as it's in clear
23 and express language in U.S. code.

24 And that is firmly rooted in the
25 Constitution and in the commerce clause. And I

1 encourage the new administration to make Indian
2 Country great again. And they can do it by simply
3 standing up to their responsibilities. Thank you.

4 MS. KRISPINSKY: If there aren't any more
5 responses to the first question, we can move to the
6 second question, which requires a little bit of
7 homework. There's a copy in your packet of the text
8 of the current regulations, and some of you might
9 have had the chance to look through them before this
10 meeting or as you've been sitting here. And I think
11 reading them, it's apparent pretty quickly how old
12 they are, how long it's been since they've been
13 updated.

14 Okay. We're skipping the first question,
15 then, whether the existing rule should be kept. And
16 then I think we're also interested in places where
17 the Department has issued licenses. Whether there
18 should be a grandfathering clause for currently valid
19 licenses that this Department has issued.

20 So if anybody has any comments on that, in
21 the context of a grandfathering clause for licenses
22 that are out there. And for those of you who say a
23 resounding no, if no sections should be kept, why
24 should no sections be kept. We would like
25 information on that.

1 And then if anyone -- I think we might get
2 more comments on this in writing. But if people have
3 thoughts on what an entirely new rule would look
4 like, sort of what kind of a system should be put in
5 place.

6 And then specifically if BIA were to no
7 longer issue licenses under the rule, what would the
8 federal involvement be or what should the federal
9 government's role be.

10 UNIDENTIFIED SPEAKER: Suing the states.
11 Make them stay out.

12 MS. KRISPINSKY: Okay. So any thoughts? If
13 anyone wants to come up and address any of those
14 specific aspect, that would be great. We would
15 obviously love to hear more detailed comments in
16 writing as well.

17 UNIDENTIFIED SPEAKER: Good morning.
18 (Speaks in Native Indian.)

19 I'm honored to be standing in front of you
20 representing my tribe. The people that are living
21 not only on the reservation, but off the reservation.
22 And I'm all about keeping things simple. What I
23 heard from our sister tribe Alaska, about the wind
24 energy, that's the way, I think, every tribe should
25 go.

1 And I drank the water back there. I'm an
2 environmentalist. It was all bubbling up, and it's
3 scary to me. Where my mother grew up, the water
4 there is sweet water. And I think they could even
5 bottle that water and sell it.

6 But addressing these things like right now,
7 what I think and feel about these invisible lines on
8 our reservations and putting this question about
9 money. Because the taxation in order to feel --
10 well, from being in the plains, all the other tribal
11 people who have been speaking today have been on
12 outlying areas of our nation, this Turtle Island.
13 And they have greater population.

14 But where we are, on the plains, our
15 population and a lot of our children and
16 grandchildren go off the reservation in order to
17 survive and work and get educated. And then there's
18 people like Don that come back and are like a saving
19 grace for us. Because they're helping us to succeed,
20 helping us to get back and fight for this now because
21 this taxation thing.

22 Like Mandan Hidatsa, that's unbelievable.
23 The taking and taking and taking. And it comes in
24 flows every 20 years. They're good paternalistic
25 people. I'm a foster mother, and there is nothing I

1 wouldn't do for my son.

2 And if that intention, even this term
3 "trader," that shows you how archaic all of this is.
4 Come into the 21st Century, like that young man
5 talked about. This is the 21st Century. Let us
6 determine our own. Give us that power back that we
7 had. We lived here for eons. We're productive.

8 And this is one of the -- listening to the
9 people to come together, whether they're sister or
10 brother tribes, that's what I want -- would like to
11 participate in, is that we are able to obtain this
12 for our people.

13 Because my people, it's now only seven
14 generations that we look to protect and prepare them
15 to be a real visionary, take care of our children and
16 grandchildren.

17 MS. GARDNER: Good morning. (Speaks in
18 Native Indian.)

19 I come from the Taakwaaneidi H'it House of
20 the Heinyaa Kwaan people. I am Myrna Gardner. I'm
21 an enrolled citizen of Central Council of Tlingit
22 Haida Indian Tribes in Alaska. We're headquartered
23 out of Juneau. I am the manager of business and
24 economic development for our tribe.

25 The agency at the government is asking us

1 specifically whether to address comments on 25 CFR
2 140. What I have known from the Bureau of Indian
3 Affairs and this policy is that you ask how can
4 revisions ensure that persons are reputable when they
5 want to do business on Indian Country.

6 Today tribes under the Indian Gaming
7 Regulatory Act, under the Indian Child Welfare Act,
8 under the Child Care Development Fund, under our
9 compacts, under Health and Human Services, all of our
10 funding, we require background checks for people who
11 conduct and do business with us. We're required to
12 check them, to ensure that they're not on the
13 debarred list.

14 Today we already do multiple layers of
15 processes to ensure that the people who are coming to
16 work on our countries, to work for our people, to
17 work in our communities, are not people of ill
18 repute.

19 You ask that today tribes conduct -- how
20 tribes regulate and how might the revisions help.
21 I'm not from a reservation tribe. I'm from a
22 landless tribe. But I've worked with different
23 tribes in the lower 48, and we tried to work with
24 them.

25 And what we understand and have experiences

1 is that the application process is not defined. You
2 say in 25 CFR to submit an application. Well, if I
3 want to open up a manufacturing plant in one of the
4 reservations and let's say you mention there's a
5 lease there, how long will it take me to get that
6 lease? It's unknown. The license doesn't stipulate
7 that for doing this, opening up a manufacturing
8 plant, the land lease will take you 90 days. The
9 setting up and getting your background checks will
10 take -- if you want to work for the federal
11 government, there is a very specific process in which
12 you apply and your application's processed.

13 You want to look at specific modifications
14 in your regulation that define the process, define
15 the steps, and define the time length for it. No
16 commercial business will come and work with us if
17 they are told, Well, we're waiting for our lease to
18 be approved. It's like one year or two. I don't
19 know when they're going to do it.

20 Well, no commercial business is going to
21 reserve capital and wait for the agency to decide
22 when you can actually open up a business on that
23 area.

24 The other thing is how might revisions
25 provide economic viability and sustainability?

1 Anywhere in the United States, just like here in
2 Nevada, they have a very specific streamline process
3 for business licenses. They have a very streamlined
4 process for getting land use from the state or from
5 the city. It's simple processes like that and
6 identified, and clearly identified, that make a
7 difference on the viability of economic development.

8 I know from working with our tribe when we
9 try to work with agencies, the timeline in which you
10 wait is so detrimental that people will lose this
11 interest. You can't have sustainability in an
12 unknown world. You can't have regulation and
13 processes that are unknown because you won't get
14 sustainable. You won't get economic development.

15 And so if you're asking specifically, you
16 need to define the process. You need to stipulate a
17 timeline for it. You need to have specific venues
18 for disputing, for processes. It's a simple request.

19 And I understand the agency is big in and of
20 itself, and it does have all the different
21 departments. But your task is to help the tribe be
22 sustaining and economically strong. If you take it
23 from a streamlining process to meet those two
24 objectives, I think you would get -- we'd be a lot
25 more successful. Thank you.

1 MS. DAVIES: My name is Lydelle Davies, and
2 I'm from Dineh Nation, Navajo Nation. I'm the vice
3 chair of the Dineh Chamber of Commerce. And I just
4 wanted to offer some comments.

5 I realize I might be jumping ahead to
6 Question 6. But I think we kind of figured out
7 that's how we're doing that.

8 The Dineh Chamber of Commerce is a tribal
9 royalty corporation. And we struggle on the nation
10 with economic development issues, just like many,
11 many, many tribes across the country and in Alaska
12 native tribes as well and in Hawaii.

13 But one of the things that we have that's
14 important to us on the nation is that the former
15 business site leases that were given to trading
16 posts, actual trading posts back in the day, many of
17 them are abandoned. And almost all of them have some
18 form of hazardous waste, contamination on the site.
19 Many of them have encumbrances or are in arrears with
20 respect to lease fees, leasing fees.

21 So we've got a lot of land that's tied up by
22 these issues that the nation is not able to address.
23 And we really feel like the revision of this
24 particular statute would benefit many tribes if they
25 contain provisions that, one, possibly establishing

1 hazardous waste remediation fund for these particular
2 sites, as well as maintaining a database of the
3 leases that are available.

4 Because right now we just don't know. You
5 can drive around our nation on your way out from
6 Window Rock to Ganado. I don't know if any of you
7 have ever had the privilege of going out that way.
8 But there is an old trading post halfway between it,
9 a place called Cross Canyon. And that land is there
10 to be developed. It's right on the highway. People
11 in the area could use a convenient store, a gas
12 station. But that's not going to happen.

13 And these leases have been tied up for years
14 and years and years. Any community on the Navajo
15 Nation, you will drive by and see a derelict, old,
16 trading post. And again, like I said before, they're
17 usually contaminated. So we'd like to see that.

18 We would also like to see a movement toward
19 revising the process of leases. Right now we still
20 have -- the BIA has to sign off. And as the previous
21 person mentioned, it could take years. And that's an
22 issue. As you know, private business, you can't
23 function that way, wondering and speculating five,
24 six, seven, even ten years. Some of the people who
25 try to do business on the nation cannot get it done

1 because of the massive red tape it takes to march
2 through the DOI process, the BIA process.

3 The Navajo has a process where they're
4 working on streamlining things. But that's not going
5 to do any good because it hits BIA, and it can take
6 years. And, of course, that's just detrimental to
7 business and economic development on the nation.

8 So we will be submitting our comments in
9 writing before the deadline, and I appreciate your
10 time. Thank you.

11 MS. KRISPINSKY: I think since we started
12 addressing some of the other questions, we don't need
13 to go through them one by one. If there are folks
14 that have comments on any of the remaining questions
15 that are included in the handout, please feel free to
16 come up now and address them in order or a couple
17 questions at once. That's fine.

18 MS. LANCE: Hello. My name is Courtney Two
19 Lance. I'm with the Oglala Sioux Tribe credit
20 office. I want to go off with something that she had
21 stated on the leases. We have abandoned buildings on
22 most of our reservations.

23 The one thing that I have been working on
24 with my attorneys is letting the tribes become a
25 title company for the building or the existing

1 infrastructure. We can cancel those leases as per
2 our tribal law. If there's no activity within 120
3 days, then that should be deferred to the tribe's
4 ownership.

5 But I think where you guys would help us is
6 the initial lenders for those buildings. If they
7 don't have somebody to go into that infrastructure,
8 that building, then the tribe can become the title
9 company. But we need something to help us do that.
10 And I do not want to revert to the state saying,
11 "Well, you can't do that." You're not going to tell
12 me that. This is my tribal jurisdiction.

13 We have put together our own Uniform
14 Commercial Code. And what we really need from the
15 Bureau is financial support for the judicial part of
16 it, our court systems. Our court systems, anybody
17 knows that our backlogs are anywhere from 5,000 to
18 8,000 cases. And that doesn't even hit commercial.
19 And so we need some financial assistance for that.

20 And I think what we had put in our log was
21 an arbitration panel. And thankfully we haven't
22 gotten to that big scope yet, but it's there. But
23 how many other tribes have that opportunity or how
24 has the Bureau helped getting that set up.

25 With our UCC we are of the opinion that they

1 are not involved with the commercial transactions of
2 the tribe. And so we note that when our investors or
3 vendors come to our reservation, Well, what does the
4 Bureau say? And I say, They have nothing to say
5 about this. This is tribal law. This is our
6 jurisdiction.

7 And so kind of going off of that, the one
8 thing that I would ask the Bureau to do because of
9 what has happened up at Standing Rock and what it is
10 happening to our other natural resources, our threat
11 to our natural resources is water. And there are
12 laws where the tribe does own the water treatment
13 plant in South Dakota.

14 So when the river goes down, it goes to our
15 treatment plant, and we do supply clean water to many
16 cities and municipalities along the river that comes
17 to the reservation, but you still go through all of
18 these cities.

19 And you're not helping us when it comes to
20 protecting our natural resources. We need that help.
21 We need to have you guys help us enforce those
22 regulations when it comes to NEPA, you know,
23 everything that comes within environmental
24 protection. And we're not getting that assistance.

25 It's kind of like if you were following the

1 story, it was too late at the end when the Bureau
2 finally stepped in and said, "Okay, you can't do
3 that."

4 And I'm not here to bash you, but I am
5 bashing you, okay, because a lot of people are
6 sitting there, and they're like, "Where's our
7 protection?"

8 And we are really concerned about our
9 treatment plan because we work with cities that are
10 sitting there saying, "Where's the Bureau to help
11 your tribes?"

12 Right now we're dealing with possibly
13 uranium mining, which we were successful in getting
14 the injunction. But now we have the possibility of
15 nuclear waste sites. And that's along the Missouri
16 river too. It's very scary for us.

17 But as for the trader's law, if the states
18 are not going to help the tribes in establishing or
19 recognizing their jurisdiction regarding their
20 uniform commercial codes in Gackle, North Dakota,
21 will not set up a system where we can work together.
22 They are trying to charge the tribes a hundred
23 thousand dollars to set up their system. And if
24 they're going to pay for that system, then we should
25 have more say-so.

1 But they just want the money to set up the
2 system. They've cut off their aid to tribal
3 organizations because of the result of the NODAKO,
4 for North Dakota tribes. And we're not going to let
5 that happen in South Dakota. We will fight that. We
6 have, I think, a very good relationship with our
7 Secretary of State, but she also recognizes our
8 jurisdiction.

9 So if you come to our tribe and you want to
10 set up shop on Pineridge, you will go through due
11 process. You will go through the -- we call it a
12 tech team, where you get your permits. And it takes
13 a long time. It does. But we're protecting our
14 assets.

15 And for me, it's to weed out the people that
16 are trying to come in and scam on the tribe. So
17 we're very protective of that. And those who have
18 successfully gone through the process, we have a very
19 good working relationship with them.

20 But I look at the other tribes. And I said
21 to them, like, "We need some kind of alliance where
22 we can all work together." What if we work tribe to
23 tribe through an alliance? That's something that you
24 guys can support with us. We can buy from each
25 other. We can work with each other.

1 Well, if we're working tribe to tribe,
2 government to government, then why can't we keep our
3 own taxes if it's just tribe to tribe investing in
4 each other.

5 We will comment on more things, but I was
6 just saying you should entrust responsibility to us.
7 It's region by region. We're all different. We're
8 not all the same.

9 And so come sit with us. Don't hold
10 conferences that are so far away that we can't afford
11 to get there. Come to our region and find out what
12 really needs to happen.

13 Because we are all different. And some of
14 us have a lot more land base and a lot more natural
15 resources to protect. But we will give you more
16 comments. Thank you.

17 MS. DADA: Jackie Dada, National Conference
18 of American Indians. I recognize that you are doing
19 these consultations throughout the country and
20 getting a lot of similar comments.

21 But my bigger question is really going to be
22 the process moving forward, to you. I think that
23 generally I've heard across Indian Country very
24 strong support for us to move forward with the
25 regulations and to update the regulations. And, you

1 know, there's a lot to update for so many decades to
2 be covered and modernizing what they are.

3 And we also knew one of the reasons why it
4 took a while -- it did take a while to convince the
5 administration to move forward. And we're really
6 glad that the administration chose to do that.

7 But we also recognize that we will have
8 opposition outside of Indian Country, strong
9 opposition, and particularly the environment where
10 we're seeing more and more states' rights.

11 It's really, really important for us to make
12 sure that we are balancing that parody of states'
13 rights and tribes' rights. And that's one of the
14 reasons why I think these regulations are a critical
15 tool. Because they actually go back and set the
16 stage, right, in a period of time where it was an
17 early part of our economic engagement and the federal
18 trust obligations and responsibility.

19 And so it sets the tone for that point of
20 time what should have happened to protect these
21 rights. And I think part of -- so to me, there seems
22 to be a couple of things. One is making sure that we
23 have a historic perspective, because a historic
24 perspective being drafted and crafted out is going to
25 help us when we deal with the external opposition to

1 tell the story, to tell the story honestly and
2 truthfully. And so to me, that's a really important
3 piece.

4 And then it also helps us tell the legal
5 context and how that might have changed from a
6 variety of decisions that have been out there, which
7 I think is just, once again, part of telling the
8 story.

9 But the next part of it, which is going to
10 be very complex, which is in your question when you
11 said what should this cover and what shouldn't it
12 cover. And I agree with everybody who's made
13 comments. This should be about licensing, the tax
14 structures.

15 We've had lots of conversations for years
16 and years when we were dealing with the internet tax
17 and how do we deal with that the tribes get included
18 in the tax issues and other kinds of things.

19 So I'm feeling like we need to have working
20 sessions, not just consultations where we can
21 actually roll up our sleeves and really just work on
22 these things. And whether it's a formal negotiated
23 rule making is definitely a mechanism for having
24 working sessions that you can make them very subject
25 matter appropriately, and we could get folks

1 involved.

2 The challenge with negotiated rule making is
3 sometimes putting together the right group of folks
4 and keeping it inclusive. But I still think that
5 structure works, as well as some kind of ongoing
6 working sessions to be able to develop the
7 complexities that you heard in this room.

8 Every tribe does something a little bit
9 differently, and we want to be able to make sure that
10 we aren't minimizing the tribal capacity to implement
11 a rule that would work and still have that strength
12 behind it.

13 So to me, I'm curious to see if you had any
14 thoughts about how you might proceed in that at all.

15 MR. JANSSEN: I'd say that we haven't had
16 those thoughts yet. I think we're trying to get
17 through all the consultation sessions that we have
18 planned for now, to go back and look but that
19 certainly we will keep that idea in the back of our
20 heads.

21 MS. DADA: Thanks.

22 UNIDENTIFIED SPEAKER: So add that to your
23 comments.

24 UNIDENTIFIED SPEAKER: (Speaks in Native
25 Indian), Fort Mojave Nation. I would recommend that

1 we think about this. I'd like to be at the table
2 when you're drafting these. I don't know if you're
3 going to take it not only to entrust responsibility
4 but government to government. Meaning that if you're
5 going to rewrite these regulations, I think the
6 tribes should be involved in working with you hand
7 and hand here to make those things work.

8 I don't know if that's a thought or not, but
9 we've got a lot of good, smart people out there that
10 could work on this. And I'd like to see recommending
11 that the tribes be part of this drafting when it
12 begins. Right now you're just listening. If we
13 could put this together in a good way, it all comes
14 together very nicely.

15 The biggest problem is going to be the
16 states. The states, again, our relationship is with
17 you. It's not with the states. So the states have a
18 different way. They're going to protect what's
19 theirs, what they think is theirs. But, again, it's
20 federal land, a federal relationship, and we want to
21 make that stronger.

22 So, again, just think about government to
23 government. And, again, I'd like to see us be at the
24 table. There's no reason why we can't come up with a
25 regulation that is a win-win for both the feds and

1 the different tribes. Okay. I think that's my last
2 comment, I think.

3 But, again, I want to thank some of the
4 organizations that are here. We've been at this for
5 a long time. We want this to come to a conclusion
6 too. We run our tax with the IRS. And, again, the
7 IRS is something that we also need to factor in, what
8 that looks like. So as we move forward with these
9 regulations and the reporting, the IRS has to be
10 factored in. Thank you.

11 MR. JANSSEN: Any other comments to the
12 questions?

13 MR. BROWN: My name is Roy Brown. I'm the
14 chairman of the Northern Arapaho Tribe. We are
15 located on the Wind River Reservation in Wyoming.

16 The Northern Arapaho Tribe's membership
17 currently stands at 10,210 individuals. We share the
18 reservation with the Eastern Shoshone Tribe. And
19 historically on our reservation, our biggest revenue
20 generator are quality gas leases, from which we
21 collect royalties and severance. That money is split
22 evenly between both tribes. Both tribes then have
23 historically used that money to provide government
24 services to their people.

25 It is becoming increasingly difficult for

1 the Northern Arapaho Tribe to provide services given
2 our membership has increased. Just about a year ago,
3 our membership was under 10,000 members. Now we're
4 at 210 above 10,000 members.

5 And for a number of years, the money we
6 received from our oil and gas leases has not been
7 enough to provide the government services that our
8 people need and that our people deserve.

9 We have since gone into exploring different
10 economic development opportunities and have
11 successfully operated and managed the Wind River
12 Hotel and Casino, which brings in a significant
13 portion of revenue.

14 However, because of the unpredictable nature
15 of the oil and gas industry and because we are not
16 right now taxing -- receiving taxation from those
17 leases, the State of Wyoming receives that money.

18 We have been forced to use the money that we
19 bring in from our businesses to provide government
20 services. And that is not fair to our tribe. That
21 is not fair to our people.

22 We are forced to choose between whether or
23 not we allow the State of Wyoming to be the sole
24 taxer on those leases or to explore dual taxation and
25 potentially lose out on significant revenue.

1 So at this time, we allow the State to tax
2 the oil and gas companies, and we get the royalties,
3 operate businesses. And that barely covers the
4 government services that we do have, especially now
5 considering the state of our energy and the oil and
6 gas prices that we are currently seeing.

7 So in terms of economic viability and
8 sustainability, eliminating this dual taxation,
9 deferring the jurisdiction to tribes would only
10 enhance our ability to provide the government
11 services, as well as provide an economy within our
12 reservation that is viable and sustainable.

13 We are forced to use our business to supply
14 taxation basically. I started this term. It's my
15 first term as councilman. It's about three months,
16 and I couldn't imagine how difficult it is to use our
17 business as a replacement for the taxation to provide
18 the government services.

19 It is incredibly difficult to try and, one,
20 conceptualize that; but, two, to really understand
21 the gaps that we're seeing in the services that are
22 needed within our reservation and to try and explore
23 the economic development opportunities but knowing
24 that the reality is that the revenue that we generate
25 from them -- from that isn't going to go toward

1 exploring other economic development opportunities.
2 It will go to provide government services. And
3 that's not fair. That's not going to move our tribe
4 into the future.

5 I can't imagine the State of Wyoming being
6 in that same position where they are forced to go
7 into business to provide the child care services, to
8 provide -- forced to go into business to be able to
9 pave the roads, to be able to clear the snow from the
10 roads in the winter.

11 They rely on the taxation that they receive
12 from oil and gas and energy throughout the state,
13 including on our reservation, to provide those
14 services to the people of Wyoming, and we aren't
15 afforded that same opportunity.

16 So eliminating the dual taxation, deferring
17 the jurisdiction to the tribes, would only enhance
18 our ability to provide a viable economy that we are
19 able to sustain long-term for the people of the Wind
20 River reservation.

21 MS. KRISPINSKY: We'll give the floor one
22 more chance. Any other questions or comments that
23 anyone wants to make?

24 MR. CLARKSON: So thank you again for the
25 opportunity to address all these. I tried to

1 organize my comments based on the questions you
2 asked.

3 But in terms of the first one you were
4 asking, you know, what do you do about existing
5 licenses, I think that there's already an existing
6 mechanism where if you have an existing federal
7 license, you can 638 those to the tribes.

8 And if you have a trader license with a
9 given tribe, you basically would have a tribe take
10 over the management of that under a federal contract.
11 And that way the tribes do that all the time with all
12 sorts of other federal organizations. So it's
13 nothing new. It's an existing mechanism.

14 And, therefore, that trader in effect has
15 that federal license. That federal license is just
16 administered by the tribe. For those particular
17 licenses, the tribe couldn't do anything more or less
18 than what the federal government could have done in
19 the beginning because it's being done pursuant to a
20 federal 638 contract. So that would be a pliable
21 grandfathering mechanism that would maintain
22 stability and certainty for the existing licensees.

23 My remaining comments deal with Questions
24 Number 5, 6 and 7. So for Question Number 5, which
25 is what types of trade should be regulated and what

1 types of traders should be subject to the regulation,
2 I would take that expansively. I would have a very
3 expansive definition of what constitutes trade, what
4 constitutes trader.

5 Because the ultimate objective would be
6 for -- if we're going to use arcane statutes and
7 regulations, well, let's go back and teach Justice
8 Marshall. Let's have it to where the tribe has
9 complete and exclusive jurisdiction exclusive of any
10 state influence where the laws of the state shall
11 have no force.

12 So anybody doing business on the
13 reservation -- and not even just on the reservation.
14 We can even have a broader -- in Oklahoma they have
15 tribal jurisdictional areas that are not formal
16 reservations.

17 So I think you should have an expansive
18 definition not only of who, not only of what, but
19 also of where. Because there are going to be times
20 where it's not, quote/unquote, a reservation. Yet
21 the tribes still should be able to engage in activity
22 and traders should be able to engage in activity
23 subject to regulation controlled by the tribe to the
24 exclusion of state regulation, control, and taxation.

25 I would make sure that your expansive

1 definition would include any form of electronic
2 commerce. I would have it cover any sort of resource
3 extraction.

4 And I would include in your definition of
5 trade taxation of transactions. Because if you look
6 at Section 261 of the statute, it discusses that the
7 Department of the Interior has the ability to control
8 prices. And clearly the State gets to impose
9 taxation, change the prices. And so I think there's
10 authority just in that section alone to exclude state
11 taxation.

12 So I think if you define trade as anything
13 and everything, including anything that may affect or
14 alter or adjust or increase prices, you have the
15 authority already. You have the authority based on,
16 you know, 1787, the Constitution, the Indian
17 governance laws. The Indian trader tax is not going
18 beyond what is specified in the Constitution. It's
19 merely just delineating the existing Constitutional
20 authority to regulate trade with the Indians.

21 And so you ought to be able to have an
22 expansive definition of trade that basically covers
23 any economic transaction irrespective of the race of
24 the parties as long as it's within the tribe's
25 jurisdiction.

1 In terms of Number 6, how might revisions to
2 the regulations promote economic viability and
3 sustainability in Indian Country. Clearly a lot of
4 what we're looking at is elimination of dual
5 taxation, establishing clearly and concisely tribal
6 jurisdiction over all of these commercial
7 transactions.

8 But I want to echo Heather's point about
9 investments. Indian Country is the most underbanked
10 segment of our society. We have the largest
11 infrastructure deficit of anywhere in the
12 United States. There's a \$50 billion automatic
13 capital investment gain. There's also -- I have
14 another article dealing with private equity
15 investment with a \$55 billion private equity deficit.
16 I believe that's what we calculated a few years ago.

17 So anything and everything that these taxes
18 can do to make investment in Indian Country more
19 certain, more viable, less subject to the ambiguities
20 that we talked about.

21 Anybody who's doing an investment in Indian
22 Country where it's uncertain because the state -- you
23 know, states get greedy. They just said, "Oh, we'll
24 go tax the Indians." They shouldn't be able to. And
25 if you write these regulations properly, they won't

1 be able to. And that will attract capital.

2 The way to think about this is Indian
3 Country is a domestic emerging market. And so all
4 the strategies that you can use in emerging markets
5 to grow the economy can be applied to Indian Country
6 as well. So the more you can do to attract capital,
7 to attract outside investments, will be beneficial.

8 Also by doing this, if you eliminate the
9 state taxation, the tribes -- I know that Navajo
10 Nation has no sales tax, and those tribes are
11 imposing their own taxes. Because of the dual
12 taxation, tribes cannot add their own taxes to the
13 transaction without making it economically and
14 completely unviable. Why would you pay extra just to
15 be doing it on the Indian reservation?

16 So if you eliminate the state taxation, you
17 then give the tribes the ability to impose their own
18 taxation, which increases tribal governmental
19 revenues.

20 The other thing you can do by structuring
21 these regulations properly, if you create an
22 incentive for job creation on the reservation, you'll
23 create jobs for Americans.

24 And if you make it in such a way that you
25 can create incentives for foreign corporations to set

1 up shop on the reservations, to move all the
2 facilities along the U.S. and Mexico border, move
3 them along the reservation. You'll create jobs for
4 American. And not just for tribal members. You'll
5 create jobs for non-tribal members as well.

6 There are some tribes. Mississippi Choctaw
7 is a good example. They're the single largest
8 private employer in the state of Mississippi. They
9 employ thousands of non-Indians.

10 So the job creation in Indian Country does
11 not just benefit tribal members. Job creation on the
12 reservation can benefit everybody.

13 The Citizen Potawatomi in Oklahoma has a
14 very expansive view on their economic development.
15 And they prioritize first benefiting the Citizen
16 Potawatomi. Next, benefiting anybody who is a member
17 of a tribe. But they also recognize that economic
18 activity benefits the surrounding county. So they
19 try and foster economic development among their
20 neighbors.

21 If you come up with good regulations that
22 create economic development on the reservation, the
23 surrounding counties and the surrounding communities
24 will also get the benefit.

25 You'll help foster entrepreneurship. The

1 most difficult place to start a business right now is
2 in Indian Country. It is the most difficult
3 environment to be an entrepreneur. If you create
4 these regulations properly, it can become the best
5 place to be entrepreneurial.

6 Again, you can attract foreign corporations
7 and foreign investment. Instead of having money
8 flowing out and jobs flowing out, you have money
9 flowing in and jobs flowing in. And what this will
10 do is eliminate something called "economic leakage."

11 How many of y'all have been to Gallup,
12 New Mexico? How many of y'all have been to Gallup,
13 New Mexico on the first of the month? What can you
14 not do in Gallup, New Mexico on the first of the
15 month at the Walmart? You can't find a parking spot
16 because everybody gets paid at the end of the month,
17 and they all go down to Walmart.

18 So you have this huge problem of economic
19 leakage, money flowing off the reservation. In a
20 healthy economy, money will cycle five and six times
21 before it leaves that economy.

22 But because the federal government has made
23 it so difficult to do business on a reservation, to
24 engage in economic opportunity, there's no place to
25 just spend money.

1 The example I give is my Haida
2 mother-in-law. For Mother's Day we were going to
3 build her a garden in Crownpoint. And if you've been
4 to Crownpoint, the soil isn't really good for much
5 other than growing weeds. So we had to import it.
6 We had to go get some dirt and some manure.

7 We had to drive an hour each way back and
8 forth to Gallup to buy the lumber, to buy dirt, and
9 to buy poop. We certainly could not buy poop in
10 Crownpoint even though it's a rodeo town. There's
11 poop everywhere. Plus there's politicians. So
12 there's poop everywhere. That was a joke. But
13 literally we had to drive an hour each way to get a
14 truck that's full of manure.

15 There ought to be ways to create
16 entrepreneurial sectors on the reservations, and
17 these regulations can empower entrepreneurship on a
18 reservation. So that's Number 6.

19 Number 7. What services do tribes currently
20 provide individuals or entities doing business in
21 Indian Country and what role do tax revenues play in
22 providing those services? I have a little more
23 expansive view of that question. What role do tribal
24 tax revenues play in benefiting the tribal members?

25 I know of several tribal governments. The

1 one I can tell you is the Upper Lake Band of Pomo,
2 where the tax revenues they have on regulations where
3 the states are trying to interpose themselves is 100
4 percent of their government revenue.

5 If the tribe was not able to tax electronic
6 commerce engaged on the reservation or it became
7 economically unfeasible because the state interposed
8 themselves where they have no business being, that
9 tribe will not have sufficient revenues to meet the
10 needs of its members.

11 And for the tribal leaders here who will be
12 submitting comments, I would encourage you to point
13 out all of the things that you would be able to do
14 for your membership if you were able to effectively
15 tax the transactions without driving them out of the
16 range of economic feasibility.

17 If all the powers right now where the money
18 is just getting sucked up to the state -- I mean for
19 Mandan Hidatsa Arickara tribe, how much of that
20 money, the billion dollars that the state sucked it
21 off, how much of that went back to the tribe? None.
22 Zero. That was a billion-dollar extraction by the
23 state for no benefit whatsoever to the tribe.

24 The tribe could have imposed its own taxes,
25 and then the tribe would have had that billion

1 dollars to pay for scholarships, to pay for elder
2 care, to pay for health care, to pay for prenatal
3 care, to pay for early childhood development, to pay
4 for all the things that governments need to pay and
5 which Indian Country currently is in such dire
6 financial straights, it's very difficult to do that.

7 But now if what we want to do, if we're
8 talking about local empowerment, we're talking about
9 making tribal sovereigns truly sovereign, give them
10 the economic tools to do that.

11 I bet the Three Affiliated Tribes could do a
12 tremendous amount right now that they are potentially
13 looking for the federal government to fund, they
14 could fund it themselves if just they had the ability
15 to tax the resources coming out of their own
16 ancestral territories.

17 So keep in mind unemployment on the
18 reservation is really expensive. It costs the
19 federal government, it cost the state governments,
20 hundreds of millions of dollars, billions of dollars,
21 because of the devastating economic conditions that
22 their regulations and their statutes have imposed.

23 Some of the tribes I work with, unemployment
24 nationally -- in New Mexico, for example, the Pueblos
25 and other tribes in New Mexico, unemployment is 56

1 percent. Unemployment is 56 percent. At the height
2 of the great depression, the worst employment we as a
3 nation suffered was 33 percent. This last economic
4 disaster we had, everybody was epileptic that
5 unemployment was 15 percent in some places. Most
6 tribal leaders I know would love to only have
7 unemployment 15 percent.

8 These regulations can go a long way to
9 foster entrepreneurship, creating jobs for Americans,
10 both tribal members and non-tribal members, giving
11 tribal government the opportunity to collect revenues
12 from our services to our people. In the end that
13 will save the American taxpayer money. So if you
14 create these regulations in the proper form, they
15 will be revenue enhancing in terms of the federal
16 government.

17 And I know we're in a situation of tight
18 budgets. These regulations can actually generate
19 revenue for the federal government. And why?
20 Because if you're unemployed and you're not making
21 money, you're not paying income taxes. You create
22 jobs on the reservation, you're going to create an
23 entire class of American citizens with income, who
24 then pay income taxes. And that can be very
25 powerful. Thank you.

1 MS. THOMPSON: Heather Dawn Thompson,
2 Greenberg Traurig. I'm a member of Cheyenne River
3 Sioux here speaking on behalf of Rosebud Sioux tribe
4 in South Dakota, the Fort Belknap tribe of Montana,
5 the United Tribes of North Dakota, which is the five
6 tribes in North Dakota, their intertribal, and the
7 tribal e-commerce coalition.

8 What Gavin said pretty much actually, but I
9 just wanted to elaborate on a few things. And I
10 think Jackie was saying it exactly right. This isn't
11 something new. It feels really scary and new. It's
12 like this is exactly what it was supposed to be in
13 the first place. It's just gotten so messed. So how
14 do we get back to what the federal government had
15 intended, which is we lost everything else and got
16 put into these places, but these places were supposed
17 to be a safe haven for us to be able to continue to
18 thrive. And so how do we make it look like how it
19 was supposed to look like in the first place?

20 And so I think -- I know there's not sort of
21 a finding section in a regulation versus a statute
22 but maybe creatively in the definitions or something
23 like that, making sure that the historical components
24 are really integrated into this. It's going to help
25 from a litigation standpoint, from a long-term

1 standpoint, to make sure these regulations stand
2 strong.

3 With regard to your question about what
4 trades should be regulated and what type of trader
5 should be subject to the regulation? Just to
6 reiterate some of the things that were brought up
7 here to make sure that not just trust land is
8 included but for those that do have large land base,
9 that everything is within the exterior boundaries
10 because it doesn't fix the problem if you still have
11 that checkerboard issue and you have to figure out
12 what piece of land is what.

13 To make sure that tribal owned entities are
14 included in that. So if the tribal government or a
15 tribal corporation owns that commerce, even if
16 they're doing business off the reservation, that
17 still counts and is included. That obviously
18 includes any e-commerce that's emanating from the
19 reservation or from the Indian territory.

20 And then two other things that I think got
21 overlooked but basically were brought up today. One
22 is intertribal trade, and the other is import/export.
23 The intertribal trade is sort of, I think, the
24 cleanest thing to put in these regulations. There's
25 nothing more traditional than tribes trading amongst

1 themselves.

2 And frankly I don't know a single tribe that
3 doesn't either do commerce with their sister tribes
4 or is trying to revitalize some of those traditional
5 commerce routes. I know we're working on buffalo,
6 wild rice, and then salmon trade. A lot of people
7 are working on that.

8 And that's what gets us in trouble. As soon
9 as it leaves the reservation borders, even though you
10 can bond and get it directly to another reservation,
11 the states jump on that. So protecting the
12 intertribal trade when it's going from reservation to
13 reservation, either physically or electronically.

14 And then import/export. Did Mr. Kagi leave
15 the room? So as Henry was talking about, this is a
16 huge issue for particularly the tribes that are along
17 the border and have other tribal communities on the
18 other side of their borders.

19 And interestingly enough, the definition of
20 "U.S. customs territory," which puts on all the
21 tariffs, doesn't include Indian territory. But
22 people have been afraid to utilize that because the
23 federal government hasn't spoken in this arena, and
24 it's just going to cost so much money to litigate it.
25 So you actually have a lot of protection already

1 there statutorily and in plain language.

2 So that is what should be included. Again,
3 I agree with Professor Clarkson. Pretty much
4 everything and however that is possible.

5 And then what should be included as a
6 trader. Just to highlight a few things that often
7 get left out of regulations or statutes.

8 Tribally owned entities were always
9 litigating this and fighting this even though it's
10 relatively well established. Not only like at OST if
11 you have a tribal office, that's a little bit more
12 clear. But some people, some jurisdictions, have
13 difficulty with tribally owned corporations as a
14 corporate arm.

15 But then additionally, a lot of tribes, like
16 Navajo, have local tribal governments, and they have
17 been delegated the power. In some tribes. Navajo,
18 OST, Standing Rock, Talala, at least that I know off
19 the top of my head. And they have been delegated
20 economic development authority too.

21 So whereas for states, this is super simple.
22 We know they have counties. They have cities. They
23 have economic arms. They have energy companies.
24 When it comes to tribes, people get really confused
25 sometimes. So you want to make sure that any

1 definition includes tribal subsidiaries and tribal
2 political subsidiaries and tribal economic arms.

3 So those are just a few things that I wanted
4 to highlight and to echo everybody else. And thank
5 you guys for being here. I know that these are
6 uncertain times, but this is important for Indian
7 Country. So thank you.

8 MR. JAMES: I'll try not to do a mic drop
9 like Gavin Clarkson did. Hi, everyone. I'm Chris
10 James. I'm president and CEO for National Center.
11 This will be my first welcome to everyone. So
12 welcome to RES.

13 First of all, I want to thank Interior for
14 not only doing these series of consultations but
15 adding one for us and being here at RES. That was
16 tremendous. I hope you're pleased with the comments
17 and the turnout today. So thank you. We really
18 appreciate it.

19 Just to touch base on a couple of things.
20 One, of course, the comments we heard are really
21 important and strong, and we want you definitely to
22 hear our voices.

23 I would encourage the audience to also
24 continue to physically send in the comments. They
25 will read all the comments that you receive. Is that

1 correct? Every one of them. I know this just from
2 some past experiences of leading consultation. Any
3 comment, they have to read it. So they want to get
4 as much comments. It helps this process.

5 So I would encourage to tell your friends
6 this is very important, as we all know. So please
7 written comments. They'll read them. It will help
8 make the decision and help form the regulation.

9 Secondly, as Jackie has said, the National
10 Center wants to be part of those roundtable
11 discussions. We want to be part of helping you
12 formulate the regulations. We want to be a resource
13 to the Department of Interior.

14 Jackie and I partner almost on a weekly
15 basis, but definitely we talk every other week for
16 sure. And we want to make sure that you know that
17 the various trade associations, we want to have a
18 strong voice on this. And we will continue to
19 collaborate with you.

20 I have a little list. And, lastly, we have
21 a tax session coming in later on today. Wendy, is
22 that right?

23 MS. PEARSON: Tomorrow.

24 THE WITNESS: Tomorrow we'll be having a
25 session. So for the audience, this will be discussed

1 tomorrow afternoon. So please attend those sessions.

2 And thank you, the Department of Interior.

3 And thank you all for attending RES. Those are all
4 my comments.

5 Oh, and one last thing. I do have at the
6 back, those of you that are formulating the comments,
7 we do have a little handout with some guidance that
8 can help you sort of think about some of the things
9 you want to say. In the back Kate's going to raise
10 her hand there. Yup, right there. Okay. Thank you
11 very much.

12 MR. JANSSEN: So if there are no -- does
13 anyone else have any comments? Oh, one more.

14 MR. JULIAN: I'm just a question. Good
15 morning. Ronald Julian with the Jic Apache Nation.
16 I'm a new counsel member even though I don't look
17 that new. I've been there for two months.

18 Mine is very basic. My understanding of the
19 regulation is to implement the law. Has the law
20 changed? I really don't understand. If you have
21 current regulation, are you updating it or just
22 giving a new interpretation? That's the part I don't
23 understand.

24 MS. KRISPINSKY: So, yes, the statutes and
25 the regs -- well, the statutes in particular have

1 been on the books for a long time. The regs are old
2 as well. They've been revised a couple times.

3 But the Department started hearing from
4 tribes and tribal organizations that this was an area
5 that the federal government should really reexamine
6 and look at, whether there was a way to revise and
7 update the regulations to make them more effective
8 and really to sort of breathe some life back into
9 them just because there's a sense that they've been
10 underutilized.

11 MR. JULIAN: But the law hasn't changed.

12 MS. KRISPINSKY: No. There's been
13 continuing -- there's been case law. I think that's
14 really sort of the one. And I think a lot of that --
15 some of that is viewed as -- we've heard some of the
16 negative impacts of those court decisions,
17 particularly out of the Supreme Court and some other
18 circuits. So I think that's the one thing that we've
19 seen evolve over the years, is the court decisions.

20 MR. JULIAN: Would there be problems if you
21 go to court with an updated regulation and no
22 regulation, a different interpretation?

23 MS. KRISPINSKY: You mean if we -- depending
24 on how -- on whether we update the regs. You're
25 asking if there could be differing -- if the case law

Tribal Consultation - 3/13/2017
Indian Trader Regulations

1 could change? Is that what you're asking?

2 MR. JULIAN: Yes.

3 MS. KRISPINSKY: Yes. I think there could
4 be -- I think it sort of remains to be seen. I think
5 if we were to update the regulations, I think there
6 might be litigation over that effort. And there
7 would also probably be regulations over sort of the
8 impacts of it.

9 So, yes, I think there could be changes that
10 come out of any updates to the rule making or any
11 sort of new rule.

12 MR. JULIAN: Okay. Thank you.

13 MR. JANSSEN: Okay. So if no one else has
14 any comments or questions, we are going to close this
15 consultation. All right. Thank you so much.

16 (Thereupon the proceedings were
17 concluded at 11:19 a.m.)

18 * * * * *

19

20

21

22

23

24

25

**Tribal Consultation - 3/13/2017
Indian Trader Regulations**

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3 SS:

4 COUNTY OF CLARK.)

5 I, Jane V. Efaw, certified shorthand
6 reporter, do hereby certify that I took down in
7 shorthand (Stenotype) all of the proceedings had in
8 the before-entitled matter at the time and place
9 indicated; and that thereafter said shorthand notes
10 were transcribed into typewriting at and under my
11 direction and supervision and the foregoing
12 transcript constitutes a full, true and accurate
13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto affixed
15 my hand this _____ day of _____, 2017.

16

17

18

19

Jane V. Efaw, CCR #601

20

21

22

23

24

25