OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

TRIBAL CONSULTATION ON

WHETHER/HOW TO REVISE

25 CFR 140 - TRADERS WITH INDIANS

Taken March 14, 2017

Commencing at 8:43 a.m.

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Dawn Workman Bounds, Certified Shorthand Reporter and
Notary Public of and for the State of Minnesota.

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PROCEDINGS

MS. APPEL: Welcome to the tribal consultation on our Indian trader regulations. My name is Liz Appel. I'm the director of the Office of Regulatory Affairs and Collaborative Action for Indian Affairs at the Department of the Interior.

And this is...

MR. PORTER: My name is Jim Porter. I'm with the Office of the Solicitor.

MS. APPEL: And since we have a small group today, why don't we just go around and introduce ourselves.

MR. QUADE: Ron Quade, Tribal Secretary, Sokaogon Chippewa Community.

MR. PEARMAN: My name is Seth Pearman, P-E-A-R-M-A-N, and I'm the tribal attorney for the Flandreau Saute-Sioux Tribe.

MS. JOHNSON: Kim Johnson, and I am the tribal paralegal for the Flandreau Saute-Sioux Tribe.

MS. APPEL: Thank you.

So we're meeting today to discuss the possibility of updating our licensed Indian trader regulations. You probably saw on December 8th of last year we published an Advanced Notice of Proposed Rule Making, which we call an ANPRM. And in that we asked to
get input on whether to update 25 CFR Part 140, which is the regulation addressing licensed Indian traders.

And this ANPRM was really a response to proposals and inquiries the department has been receiving over the past year from tribes and tribal organizations requesting that we revise and update Part 140. So we are at the very early stages. We haven't drafted any revisions because we first want to hear from tribes on whether to leave the rule as it is, repeal it, or revise it; and we're also interested in anyone else's comments.

And if the answer is that we should revise the regulations, what would those revisions look like?

And our public comment period is open until April 10th, I believe.

So just a little bit of background. Part 140 governs trade occurring on Indian reservations, and the regulation is -- Indian reservations -- reservations, not regulations. So Part 140, the regulation, is based on the lesser known Indian trader statutes, and the most recent of those statutes was passed in 1903, and they sought to protect tribes from unlawful traders on the reservations.

The regulations currently envision a framework where BIA would issue licenses to anyone who wants to do business on a reservation, and the department
recognizes that tribes fully regulate businesses operating within their boundaries currently. And this is just a testament to how old the Part 140 regulations are. They were first published in 1957, revised in 1965, and modified in 1984 in a piecemeal fashion. So it's about time that we take a look at them.

So our goals in looking at whether and how to revise Part 140 are to modernize the implementation of the Indian trader statutes in a way that's consistent with federal policies of tribal self-determination and self-government that supports current tribal business practices and strengthens tribal economies across the country.

And while we don't know -- we have a new administration, we don't know what the specific priorities of the new administration are for Indian Country yet, but we do anticipate that taking a look at this rule will align with the president's priorities for economic development.

So you received in your packet in the handouts a list of questions that we'd like you input on. These are the same questions that are in the ANPRM. And we'll be going through each on the questions today, but briefly they address whether we should revise Part 140 in full or in part and why. Federal involvement in business
practices and the extent to which BIA should be involved in those practices. How to make sure traders in Indian Country are reputable and accountable. And what type of trade and who should be regulated.

We're also interested in learning how tribes currently regulate trade occurring within their jurisdictions and how revisions to this regulation could promote economic viability in Indian Country and address taxation issues.

So I mentioned we're accepting written comments until April 10th. We're here today to listen and get your thoughts on how to modernize the regulations and promote tribal self-determination and economic development.

So with that, I'll just open it to any comments and -- general comments. And then if you don't know, go through the questions and see if that prompts any other thoughts.

Does anyone have any comments they'd like to make?

Okay. So I know it's hard to -- this is a complicated -- complicated issue, and it's sometimes hard to come up on the fly with some comments. So just a reminder that we are accepting written comments until April 10th, so I'll go through some of the questions and
the background -- oh, great.

MR. QUADE: Like we were talking about outside here, my tribe's main area of concern is the dual taxation possibilities available...

THE REPORTER: I can't hear what you're saying. I'm sorry. Can --

MS. APPEL: Do you have a --

THE REPORTER: Can you go to a mic?

MR. PORTER: There's a mic right beside you there.

MR. QUADE: Okay.

THE REPORTER: Thank you.

MR. QUADE: Dual taxation --

THE REPORTER: Turn it on.

MS. APPEL: I think it's on.

THE REPORTER: Is it?

MR. QUADE: Dual taxation within the tribe's boundaries we'll be looking at here.

MR. PORTER: So clearly that's been important to a lot of the groups that we've met with. I don't know how much of this discussion is in your material, but we feel like there's a lot of problematic case law to overcome if we want to address dual taxation by means of these regulations.

So part of -- part of our hope is that
we'll get creative ideas that will help us address those
issues when we get good comments. So got some smart
people in the room. I mean, I don't know how much you
guys have thought about specifics to try and bring the
issue of dual taxation into the trader reg statutes,
which are not -- not obviously relevant to the dual
taxation problem.

MR. PEARMAN: Good morning. I'm here on
behalf of the Flandreau Saute-Sioux tribe, and we
appreciate the Secretary of Interior of BIA's
consultation today, and we look forward to some
meaningful conversation about Indian trader statutes.

As you discussed earlier, you know, these
were passed as a protectionism measure for tribes, you
know, 100-plus years ago. Since then tribes have really
come into being sophisticated governments that have
massive industry within their reservations. And I think
that the -- the revision of this statute is incredibly
timely.

As it is now, it's ineffective on our
reservation. It's not used, I don't think. And
obviously we're within the Aberdeen area office, but we
don't use the statute at all. I mean, it's --

MR. PORTER: Can I jump in?

Do any of you know of any tribes that are
having tribe -- traders licenses issued for them?

MR. PEARMAN: I don't.

MR. PORTER: Okay.

MR. PEARMAN: In fact, I've had conversations with our area office stating that, you know, we have a large construction and renovation project on our casino, and I'd asked whether or not I could have a traders license issued for our construction manager, and we haven't had any movement on that.

But I think that if we formalize that with this in mind, that perhaps our area office will issue an Indian traders license, but I just don't think it's been done for quite some time.

We're also very concerned about the -- the actual regulation of trade, and really trade within our reservation is regulated through business ordinances and codes, in addition to our tax office, which issues licenses to vendors. On the Flandreau reservation at least, the majority of the business is done by the tribe. You know, we don't have a lot of tribal businesses that are owned by tribal members and things like that.

So it's really the tribe who is the economic driver there. And, you know, it's different throughout every reservation obviously, but I think that the regulations could be drafted in a way that was
beneficial to each tribe.

I would also state that I think the -- you know, we've had great success with our 638 contracts and those types of mechanisms that would take the -- I know that the general position of the Bureau of Indian Affairs is they need health service. And utilizing those contractual methods to actually run the programs ourselves, we've had great success with that. We've been operating under those contracts for decades. And I think that a mechanism that would allow tribes and their business departments to implement Indian trader licenses in accordance with some federal guidelines, I think would be beneficial to all of us, including timeliness of getting licenses issued.

MR. PORTER: So you -- the tribe is issuing -- or has fully developed their need for regulating business on the reservation.

What is it you perceive would be the additional contribution of having a traders license for your contractor?

MR. PEARMAN: I think there are various reasons where it would be beneficial. One would be that the actual -- that the -- the licensee would, one, be vetted through a process that could actually benefit all tribes. I know that we set some -- some guidelines that
stated that, you know, you'll have to prepare a -- or
you'll send in a yearly audit, and you'll have to ensure
that you're not -- what's the list for Sam -- is it a
department?

MR. PORTER: I don't know.

MR. PEARMAN: There's a federal list that
people who can't participate in federal contracting
anymore if they've violated some laws. I can't remember
exactly what it's called, but I think it's on Sam.gov.

But some traditional vetting I think would
be beneficial so that the businesses that are truly
participating, commerce on the reservations are actually
doing good work. I think it'd also be worthwhile -- I
mean, we've had various litigation throughout the years
for vendors who -- and companies who actually weren't
doing good business on the tribe -- or on the
reservation.

And I think that having a mechanism that we
could utilize and say, you know what, you don't have a
traders license, you don't follow the general criteria
that are useful to the tribe in vetting out these
companies; then you therefore are in violation of
state -- or excuse me -- of tribal and federal law. And
there may be some teeth to these statutes that would
allow us to remedy existing situations that have been
tough for the tribe.

Also, with the -- you know, the Indian commerce clause, it would make sense for the government to continue to regulate commerce within Indian Country and for us to therefore preempt state taxation so that we can use our sophisticated tribal codes to actually implement and benefit from the taxes that we are, you know, paying and implementing into our tribal programming that benefits tribal members themselves.

That was a mouthful.

MR. PORTER: Well, that's why you're here.

MR. QUADE: That was well said.

MR. PEARMAN: Thank you.

MS. APPEL: Thank you for that input.

And that -- that -- you touched on several of the questions, I think; but the one that strikes me the most, what you last said about the taxation sort of relates to our last question, which is what services do tribes currently provide to individuals or entities doing business in Indian Country, and what rule do tax revenues play in providing those services.

So we're interested in hearing more about what types of infrastructure tribes currently possess and what role tax revenues play in building and maintaining that infrastructure. We know that tribes provide a wide
range of services and infrastructure to Indians and non-Indians doing businesses in Indian Country, so we're interested in what types of services you offer, whether it's law enforcement, health inspection, transportation, or other infrastructure. And are you able to rely on tax revenues to provide those services and infrastructure.

MR. QUADE: The Sokaogon Chippewa Community in Northern Wisconsin is a very, very small reservation. Tax revenue is zero. It's -- we don't have it. We don't have the business on the reservation. We don't have the population. Just the geographic area where we live doesn't allow us to tax, for us anyway. It would be more of a burden than an advantage for us.

MR. PORTER: What would?

MR. QUADE: The taxation on additional businesses. We just don't have -- we don't have the people for that.

MR. PEARMAN: I'll come a little closer over here, but...

The Flandreau Saute-Sioux Tribe is operating a tax ordinance that's I believe the 60s or 70s. We revised that tax ordinance quite frequently so it can encounter new -- or changes in the business environment and things like that.

In the state of South Dakota, the majority
of the tribes do contracting with the State. So they agree on a certain amount of percentages with the state, and a certain percentage of that given back to the tribe.

We do not do that. We implement and collect our own sales taxes, and it's been fairly easy for us because we have -- like I said, a majority of the businesses are tribally owned, so it's beneficial for us in that manner.

The tax revenues that we collect are pivotal to our existing programming, and they directly benefit tribal membership. It's -- we have substantial actual litigation within the state right now. And during that discovery process, we have identified all of the areas in which we help not only the tribe, but visitors to the reservation and the surrounding community; and the results and the discovery has been overwhelming and has shown that we provide tons of services.

Not only do we write checks to our local -- to our local fire department for fire trucks, we provide just a plethora of things that are really beneficial to the community as a whole. The tribe is a smaller, land-based, you know, around 6,500 acres. So it's -- we don't have an existing boundary, but we do the best we can with the tax dollars that we have and the limited 638 contracting funds to really implement successful
programming.

MR. PORTER: To me one of the challenges is going to be the fact that there's so many different tribal sizes, schemes, structures. We've got two tribes here, and here we've got tremendous difference in what trader regulations would accomplish and how to structure them.

So just from the mechanical aspect of how to structure and revise modern useful regulatory scheme, that to me seems like a big challenge. How do we make this work for Navajo and Flandreau and Sokaogon Chippewa and -- you know, when the reservation's in California.

I'm imagining a -- like a menu of options that tribes -- folks can adopt on a reservation, but --

THE REPORTER: You need to get by the mic.

MR. PORTER: I'm sorry.

THE REPORTER: That's okay.

MR. PORTER: I'm imagining a menu of options within the regulatory scheme that tribes then could choose to adopt.

MR. PEARMAN: I think that makes sense.

When you look at like the Hearth Act and some other major legislation that was passed from the Federal Government to Indian Country, that's exactly what the Hearth Act does; it, you know, provides a tribe the opportunity to
execute leases and do some other things within Indian Country with less Bureau of Indian Affairs intervention.

And actually the -- you know, Flandreau hasn't implemented the Hearth Act yet, but it's on its radar, and it would like to implement soon. But I believe that the tribes that hadn't been implemented that -- have found very successful results.

So it would make sense that if the statutes and regulations are written in a way that, you know, so long as, you know, the tribal business corporation code or the tribal tax ordinance has these certain requirements, that, you know, the tribe could really implement and do this themselves.

What I did like -- or what I do like about the process is that there's still the opportunity for the Federal Government to take action against somebody who would be violating tribal law and the Indian Trader Statute as they're written now, and I think that would be beneficial to Indian Country, too, and give the tribe some real authority to say, you know, this is -- this kind of company has breached contracts, this company has, you know, caused damage to its natural resources.

It's -- you know, there's a lot of things that bad business practices can do to negatively impact the tribe and its membership.
MS. APPEL: Thank you for that.

So let's -- let's go through the other questions and see if that prompts any thoughts.

Starting with the first one: Should the Federal Government address trade occurring in Indian Country through an updated Part 140 and why?

We talked about this a little bit already.

Congress granted the department broad authority to regulate trade in Indian Country and specifically the Indian trader statutes provide the department with the authority to make rules specifying the kind and quantity of goods that may be sold to Indians and the prices at which such goods shall be sold. And that's at Section 261.

And one of the sheets in your handout has some excerpts from the Indian trader statutes if you want to use that as a reference.

Section 262 allows the department to establish rules and regulations governing who is a proper person to engage in trade on Indian reservations for the protection of Indians.

So we know that many tribes currently regulate trades that occur within their jurisdictions under tribal law and authority without federal involvement. And we also acknowledge that we have a
trust responsibility to tribes.

Are there any other thoughts on how we can update these regulations in a way that recognizes those facts? We heard about the Hearth Act model with the opportunity for federal enforcement.

Are there any other thoughts on that?

MR. PEARMAN: I'd also like to note that, you know, the -- the implementation of gaming on the tribes has -- you know, within Indian Country has allowed tribes to license and really take a strong look at its vendors and things like that in accordance with some federal standards, including management agreements and things that would be run through the Bureau of Indian Affairs and the NIGC.

So I think that's another mechanism that kind of shows there's less -- excuse me -- there's more intervention in that type of model; but, you know, really it's -- it's still one and the same. Those people are still being vetted by a process. The process is in place to -- you know, to protect the tribe from poor business, and it's been useful to the tribes I think.

MS. APPEL: Great. Thank you.

The second question we have is are there certain components of the existing rule that should be kept? And if so, why?
So if you look through the current regulation that's also in your packet, there are some varied provisions in there; some that appear to have been superseded by law, such as I think there's a provision on gambling and on liquor. So should any of the existing sections of the existing rule be kept? And this may be just something to flag for you to think about for your written comments. Because we wouldn't want to comprehensively overhaul or repeal and then later determine that there was something helpful in Part 140.

And in cases where the department has issued Indian trader licenses, should there be some kind of grandfathering clause for any valid license -- licenses that have been issued and are currently in effect?

If no sections of the current Part 140 the way it is now should be kept, we'd like some information on why you think that is and what would an entirely new rule look like. So if BIA would no longer issue licenses under the rule, what would the federal involvement be; what would the scope of it be; and what would that look like?

MR. PEARMAN: Does the BIA have any instances where the Indian trader licensing is being utilized in the United States?
MR. PORTER: I know of one, one instance where a tribe is getting trader licenses from the BIA for businesses on the reservation.

MR. PORTER: The third question the ANPRM poses is how can revisions to existing -- to the existing rule ensure that persons who conduct trade are reputable and that there are mechanisms in place to address traders who violate federal or tribal law?

So recognizing that tribes often have comprehensive schemes in place regulating traders already, how could the rule ensure that there are reputable traders in Indian Country and ensure that violations of federal or tribal law are properly addressed?

MR. PORTER: I think you spoke to this earlier with the...

MR. QUADE: I think Seth spoke to this earlier with -- it seems as simple as putting together a vetted list that is available to the tribes.

That's what you're saying, right?

MR. PEARMAN: Yeah.

And just some -- some typical due diligence procedures, too, of what every business will need to have to obtain an Indian trader's license, too.

MS. APPEL: Great. Thank you.
Any other thoughts that you have on that for the written comments would be appreciated.

MR. PORTER: To me there's three -- three components of this discussion that we've had. The actual trader regulation, which is largely what we've talked about here, how we might extend this revision to cover dual taxation and help with that problem.

The third one that we haven't discussed explicitly here today is using this as a mechanism for clarifying tribal court jurisdiction over businesses on the reservation. To me, that kind of fits into that -- that specific question of how we self-govern in the tribes, obtain relief against bad -- bad traders.

So either in discussion here or as you think about it and submit in written comments, the mechanism for enhancing the clarity of tribal court jurisdiction. We all know the Supreme Court case currently weighing on -- that they 4-4 tied in Dollar General, right, that exact problem. And maybe this is a -- gives us an opportunity to clarify that as well.

MR. PEARMAN: I think that when you talk about tribal court jurisdiction, there are really a couple of things that need to be kept in mind. One is that when you're working with financial institutions or you're issuing bonds or things like that, the majority of
those institutions will prefer that you are choosing
jurisdiction outside of the tribal jurisdiction, you
know, to include state and federal courts.

And then I think that basic contracting
with the tribes and with businesses you end up about half
and half, I guess, with businesses that are willing to --
to purposefully avail themselves of tribal courts and
some that just simply won't.

So pushing the statutes into a method that
says, you know, only tribal courts would -- would be the
applicable without some venue options I think would be
challenging for the tribes and might eliminate some
financing opportunities. So that would definitely need
to be taken into consideration, but that could be easily
done with just a small sense that said -- you know, or as
the tribe otherwise agrees to by contract.

MS. APPEL: Thank you.

So the fourth question, how do tribes
currently regulate trade and how might revisions help
regulate trade in Indian Country sounds a little
repetitive, but what we're trying to get at here is some
information from you-all and suggestions about how you
regulate trade currently and in recognition that there --
that tribes are not monolithic, and there are different
levels of regulation. How can the Federal Government
bolster those tribes that currently regulate trade, and
as well as those tribes that don't have any trade
regulations in place now?

And then what types of trade should be
regulated, and what types of traders should be subject to
regulation?

We received proposals from various tribes
and tribal organizations, and some suggested that trade
should include not only commercial activities, but also
mineral and energy development and any form of natural
resource extraction or agricultural. So we're looking at
what the scope of this should be.

Do you have thoughts on that?

MR. QUADE: I think that what we're talking
about here today, we're talking about reservations; and
we're thinking inside the lines of the reservation. I
think we can't forget the boundaries and outlying areas.
What affects those areas also affects us. Most of the
time we're landlocked, most of our reservations. So I
haven't heard that brought up yet, regulation regarding
outlying areas, you know, not just reservation lands.

MR. PEARMAN: I think you also have to look
at when you -- when we're trying to encapsulate all
reservations, too, we need to take a look at not only the
businesses that do direct contracting or business with
the tribes themselves, but also with tribal members. I think that would be beneficial to -- to really put something in place so that, you know, any operator of business that is coming on the reservation that are actual tribal membership would also be subject to regulations.

MR. QUADE: I just want to go back to the tribal court thing.

I'll be honest, our tribal court system isn't that strong. We're taking steps right now to strengthen our tribal court. We have problems, you know, making the people within our reservation abide by our laws through our tribal courts.

But something that Seth had spoke about earlier with the tribal courts, I think if we're not holding these vendors and people that are going to apply for an Indian traders license accountable in tribal courts, it's not going to mean much. There has to be repercussions of somebody that violates an Indian trader license in tribal court. It has to mean something there first I think.

MR. PORTER: What do you mean by mean something?

MR. QUADE: Currently, it doesn't seem like penalties or sanctions or whatever is handed down from a
tribal court is really taken with that much credibility,
or I don't see a push to make people follow, you know,
fines or, you know, whatever sanctions are put against them.

MR. PORTER: So even where the tribal court has had a hearing and issued a ruling against, for instance, a vendor, the ability of the court to -- or the tribe to collect on the judgment is weak. Is that --

MR. QUADE: Absolutely. Yes.

MR. PEARMAN: Yeah, I'd definitely echo that to say that, you know, we've -- we've been in tribal court and had cases that we've litigated for years and years, and we -- we won in our court of appeals.

And now after that point, we'd have to jump into some other state courts or the federal court to even have the honor to start to remedy the situation.
And it's -- it's --

MR. QUADE: It's costly as well.

MR. PORTER: Sure.

MR. PEARMAN: Absolutely.

MR. QUADE: Why go through the process to start all over again?

MR. PEARMAN: So I would say within the business realm, litigation is really the only option the tribes have to -- to remedy bad business or breach of
contract and things like that, and it's cost prohibitive. I mean, it's very expensive to have an outside law firm come in and represent you to run through tribal court and then have your jurisdiction immediately challenged into district court and then be back in tribal court.

And by that time, you know, five years down the line, the company could be insolvent, so there's no remedy for the tribe then.

MR. QUADE: Which has happened to us. That exact thing has happened to a company that disappeared, so we're out.

MS. APPEL: And do you have any thoughts on -- because listening, it sounds like we're talking mostly about commercial business.

Are you also including natural resource extraction or people who -- you know, coal companies or grazing on your land, do you consider them to be within the scope of traders; or you are thinking more just the business/commercial side?

MR. QUADE: Everything. Everything under the umbrella, it seems like -- I mean, we're in a casino having this discussion. People like to suggest or assume that most of our revenues do come from gaming. A lot do, but that's just a starting point for other businesses.

MR. PEARMAN: Flandreau doesn't do a ton of
mineral extraction, if any; but the -- it does lease out -- quite a bit of its land is a lot of farmland. And I think that throwing into the lease agreement that you will obtain a Indian traders license wouldn't be that burdensome; and it, again, adds that second layer of protection for the tribe.

MR. PORTER: Flandreau is one of the tribes that put together the -- the wind energy consortium, right?

Is anything being developed yet?

MR. PEARMAN: They worked pretty tirelessly. It's the -- I believe it's the Wind Power Development Authority, something like that. And they've -- I believe they've had a lot of challenges because most of the infrastructure in South Dakota is owned by local cooperatives, so I think it's challenging for them to connect to the grid, but that'd be another -- a method that -- you know, energy production we'd definitely be taking a look at, too.

I think when -- when all of this is said and done, if there are requirements and codes or ordinances that need to be put in place, that the Department of Interior should work on some model codes. I think that'd be really beneficial to the tribes to ensure that we're complying with the federal
requirements.

MS. APPEL: And the last part of that question number 5 that I wanted to point out is whether the rules should define the type of trader, as in the proposals that we've received would apply to any person conducting trade in Indian Country, including non-Indians.

So do you see any reason for distinguishing the type of trader in any revised Indian trader regulations?

MR. PEARMAN: Within the regulations itself, it says trading means buying, selling, bartering, renting, leasing, permitting, or -- and any other transaction involving the acquisition of property or services.

That's pretty all-encompassing as it is, so I think that it would really encapsulate any and all trade that happens within the reservation.

MS. APPEL: So you would keep it that broad?

MR. PEARMAN: Well, I think so. I mean, that's -- even a small contract that -- that is initially started could lead into something larger, and the magnitude of that would be a lot larger, so...

MS. APPEL: Okay. Moving on to question 6.
How might revisions to the regulations promote economic viability and sustainability in Indian Country?

And how could the rule facilitate economic activity and tribal economic self-sufficiency?

MR. PEARMAN: I know that some of the companies we've worked with -- and not necessarily by our tribe, but some of them have taken some hits while working with tribes or in Indian Country that makes them somewhat reluctant to participate again.

I've encountered some companies like that. They say, well, you know, we've worked with, you know, Tribe A; and we had a bad experience there, so we might not even participate again. So we'll say, you know, obviously we have codes that are on our website; you know, you can take a look at those.

And then having a -- having sustainability in the economics of any area are going to directly -- excuse me -- are going to directly benefit trade and commerce. There's no company that wants unreliable law or courts or anything like that because it's -- it's something they can't count on, and they won't make those business decisions.

So I think stability that would come from this would promote economic activity within the tribes.
And as we discussed, if we can keep out of court to
defend the tribe against bad practices and businesses,
then we can really use that money that we're spending on
litigation to further develop the economics of the tribe.

MR. QUADE: I guess my own expectation
would be not that we would be -- we wouldn't have to go
into court. Eventually in a dispute you go to court.
But that the -- the outcome would be far more predictable
and quickly arrived at, which means that, you know, maybe
you negotiate a settlement, or you accomplish what you
need before getting to full litigation.

But if you've got a regulatory scheme that
spells out precisely where the liability lies, right? I
mean, I'm totally in agreement with what you're saying;
the most certain outcomes are, the happier business is.

MS. APPEL: And I think you're referring
back to how you have to resort to litigation to collect
on judgments; is that right?

MR. PEARMAN: Right. I'd also include
that, you know, any considerations and regulations made
should also include provisions and protect sovereign
immunity that's enjoyed by the tribes because that's
pivotal to -- one of the defenses that we have in these
type of situations is that, you know, even if we do waive
sovereign immunity, it's in clever and limited fashion
that is -- that protects the tribe and its other ancillary businesses that may not be involved in specific contracts or other business arrangements.

MR. PORTER: Have you experienced any reluctance from business partners, potential partners to enter contracts with the sovereign?

MR. PEARMAN: Absolutely. I mean, it's -- it's something that when I draft a contract, I put in every contract just letting them even know that, you know, that the tribe enjoys sovereign immunity so that they're aware of it and so that they're not taken aback by it in the future.

Some companies choose not to do business with the tribe, and some companies choose not to do business based on not wanting to accept our taxation scheme or our taxation laws, so -- and at that point, we just say, well, we'll see you then; you know, we'll find somebody else who can provide these services to us.

MR. QUADE: Ditto.

MS. APPEL: We already discussed the last question.

So I'll just open it up for any other thoughts; or do you have any questions for us?

MR. PORTER: I do know, just looking at 7, there -- the -- in a majority of the communities that
tribes exist, they provide a bulk of the services to all individuals living within that area. I mean, it's -- it's pivotal to use the, you know, tax revenues and business opportunity and economics created by the tribe to directly benefit its members and the community. So it's pretty pivotal that we have certain economic practices.

MR. PEARMAN: Do you have anything?

MS. JOHNSON: No, you're hitting it.

MS. APPEL: Are there any other thoughts?

MR. QUADE: Something I'd like to add, going back to the geography of things.

Unless you're doing a real big project - you know, a huge project - as far as people that we're able to do business with, they're mostly local entities. So any concern about what additional regulations might limit that group of people that we're able to pull from and do business with, because we are very limited where we live there.

So I don't think a bigger -- I don't want to put everybody in the same -- same bucket here. I think more consultation needs to be done. I wish more people would have shown up today, but I think we need to have more talks about this.

MR. PORTER: Off the record.
(Off the record 9:31-9:31.)

MR. PEARMAN: I think with this administration, too, it's -- it seemed that overregulation is something that is not favorable, and I think that's true. And with these ordinances as well, we can -- if the tribes have the option to adopt portions that are beneficial and actually fit within -- within their body of law, that makes sense to me.

I would really hate, like -- like he was saying -- that I would hate to have some expansive regulation that would force all tribes into, you know, a certain method of practice that isn't feasible for them, so...

MR. QUADE: Most of our business relationships are built on long-standing friendships, and this something we need to protect. These are the people that we do business with every day, you know, on a local level. So I'm concerned with additional regulations, it endanger that relationship.

MS. APPEL: So it would be great in your written comments if you could provide any ideas about how -- how we could have an option or craft a whole rule to protect that kind of business relationship and make it as minimally burdensome as possible.

MR. QUADE: What is currently being
proposed?

    MS. APPEL: So that is the interesting --
the interesting thing.

    MR. QUADE: Because I think --

    MS. APPEL: Yeah, we don't have a set
proposal. That -- we're really in information gathering
mode now trying to get ideas from you-all as to what this
should look like. Because we didn't want to presuppose
and come out with a draft that looked entirely different
from what an Indian tribe would want, and then the focus
would be on why the proposal was wrong, rather than...

    We're trying to get some initial direction,
since this is such an, I guess, archaic regulation,
archaic statutes, that we want -- we want some -- wanted
to get some direction before putting pen to paper.

    So it's a great opportunity to help -- help
get -- so that's a great segue into the next step. If we
move forward with revising these regulations would be to
likely go to a proposed rule, and that proposed rule
could be anything in a menu of options, from repealing to
comprehensively revising to surgical revisions.

    But that proposed rule would be published
in the federal register, and then we would go through
another round of tribal consultations for input. But we
want -- we want to get input now before coming up with a
proposed rule.

Any other thoughts?

MR. QUADE: That's it.

MR. PEARMAN: No.

MS. APPEL: Okay. Please remember April 10th, if you can provide your written comments. Probably the easiest way is by e-mail to consultation at BIA.gov. And we hope to see your written comments then. Thank you so much for braving the cold and coming out today.

MR. PORTER: Thank you for being here.

MS. APPEL: We've got some good input, even though we had a small crowd. We appreciate it. Thank you very much.

(Proceedings adjourned 9:36 a.m.)
REPORTER'S CERTIFICATE

STATE OF MINNESOTA  )
    ss.
COUNTY OF HENNEPIN  )

I, Dawn Workman Bounds, hereby certify that I reported the above proceedings on the 14th day of March, 2017, in Prior Lake, Minnesota;

That the cost of the original has been charged to the party who noticed the proceedings, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality.

WITNESS MY HAND AND SEAL THIS 21st day of March, 2017.

_________________________
Dawn Workman Bounds
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2019