

NWX-DOI-BUR OF IND AFFAIRS (US)

Moderator: Elizabeth Appel
June 18, 2014
1:00 pm CT

Coordinator: Welcome and thank you all for holding.

I would like to remind all parties that your lines are on a listen-only mode until the question-and-answer session segment of today's conference.

Also, today's call is being recorded. If you have any objections, please disconnect at this time.

I will now turn the call over to Mr. Kevin Washburn.

Kevin Washburn: Thank you very much. This is Kevin Washburn, Assistant Secretary for Indian Affairs. This is the kickoff telephonic consultation on our proposed land into trust in Alaska rule; our proposed amendment to 25CFR151.

We wanted to make sure we gave everybody a chance to participate, even if they didn't want to travel to Anchorage for the in-person consultation that we had - gosh, was that just last week? That was just last week. It's been a busy time.

Basically, what this rule - this proposed rule would do is get rid of our Alaska exception in the 151 Regs. So our 151 Regs, our land into trust regs, currently provide that we can take land into trust in the Lower 48 but not in general in Alaska, with one small exception.

So the proposed rule basically strikes the Alaska exception, and we would thus treat Alaska tribes in essence as - in the same way for land into trust as we treat other tribes, and that's the goal here, or the proposed rule's goal.

We are interested in broad public comment and views, especially from tribes. This is a tribal consultation under the President's Executive Order, directing agencies to conduct consultation on matters that are - effect tribal interests, and so this is that kind of consultation.

We have determined that we have the legal authority to issue a rule like this, and - but we need to hear from tribes as to whether we should proceed with this rule.

We have been encouraged to delete the Alaska exception in 151 in several contexts recently. One of them is a district court decision here in the United States District Court for the District of Columbia. But in addition to that, a Secretarial Commission on Indian Trust Administration Reform came out with a similar recommendation last fall, as did the Indiana Law and Order Commission.

And so, we believe that there is - well, there's been some impetus for the change that this rule proposes and now we need to hear from tribes.

The comments that - this is a proposed rule, and that means we are in notice and comment rule making. Comments are due by the end of this month, June

30, 2014, and the way to get those comments to us is to email them to Consultation@bia.gov. Consultation@bia.gov. And, we will - the next steps for us would be to remove - to review those comments, make any changes that might be appropriate and determine whether to proceed with a final rule on land into trust in Alaska.

That final rule would then not become effective until 60 days - 30 days after publication of the rule.

So this is a tribal consultation, so the main goal here is to hear from you know interested - tribal interests and to get their viewpoints on the rules. So we don't need to talk long, and we don't necessarily need to take the whole time, but we are interested in hearing views. And so I think that I may be able to stop there to - (unintelligible) staff, do you think I need to cover anything further?

Great. Okay.

Well why don't we then open it up to public comment from the people that have been waiting to make comment?

Coordinator: Thank you.

At this time if you would have a question or comment, please depress Star, 1, and record your name when prompted -- Star 1, please.

It'd be just one moment for our first question.

First we have John Brower. Your line is open, and please state your affiliation sir.

John Brower: I'm a tribal consultant with the Chilkat Indian Village in Klukwan, Alaska.

Coordinator: Go ahead with your comment, sir.

John Brower: I just wanted to let you know that I'm also sitting here with our Tribal Vice President, Kimberly Strong, and Tribal Administrator, Brian Willard, and the Tribal Council Member Johnnie Gamble.

The question - there's some questions that our Tribal President had left behind with me. He's on the road right now and not available.

His first question was what will happen to all the comments that were went in on this proposed ruling?

Kevin Washburn: Thank you, Mr. Brower, for the question.

So the - what we need to do - under APA rulemaking, that's the federal process through which we do rules, the Administrative Procedures Act, whenever we propose a rule like this, or any agency proposes a rule for notice and comments, we get those comments, we gather the comments that are submitted during the comment period, and before we issue a final rule we have to look at those comments, review them carefully and then address them.

And so typically when a final rule comes out, it will come out with a preamble. It'll be a rule but it'll have a preamble in front of it. It goes through the significant public comments that we got and explains them or addresses - or explains how we have addressed them. So that's basically it.

We will look at every comment that comes in and we group them into themes and similar comments from - that we address as a group, but we basically

need to address all the substantive comments that we get as we issue the final rule.

Kimberly Strong: This is Kimberly Strong, and I'm the Vice President of the Chilkat Indian Village, and I'm curious - would you like us to just give you all of our questions and then you can answer all of them instead of waiting?

Kevin Washburn: Well - so yes.

Let me say this. The whole purpose here is to figure out kind of what the questions are. This isn't necessarily supposed to be a question-and-answer type session because you know this is just a proposed rule, and so we may not have answers for every question. We can address process type questions, but we may not be able to address - you know, provide substantive answers yet because again in some respects this is, you know, merely a proposal.

It's a proposal we know a lot about, but you know ideally - or in a perfect world, we would sort of be hearing your comments.

But to the extent you have questions, why don't you go ahead and present them all and then we can address the ones that we have answers for or think are appropriate. We're happy to do that I think.

And by the way, I have a team of people here, so it might not just me talking and helping to answer these questions. So go ahead, Madam Vice President.

Kimberly Strong: Okay. So these are from President Hotch, and will be able to see the comments that other tribal governments have made? And, when will we see the final version when you do put it out? And, what will be possible changes to that version, given additional comment?

Where will all the land trusts be kept at? Is that with the BIA? Will it be subject to a budget and budget approval and cuts? What are the criteria for accepting or rejecting land? And, will that be made on a case-by-case basis?

Who will be making the decisions and who is - on who is in or out of the trust status?

The federal government will have oil - will the federal government have oil and mining rights, and other rights to them on use of the tribal lands? What if the government decided - for instance, what if the government decided to mine on Klukwan and we all have to - will we have to move our village?

We will need to get permission - will we need to get any permission to use our land for development of our land? And if so, what about what we've already got planned in projects if we turned around and wanted to get into the trust?

What about the natural resources like our river being protected if we were in trust, or is it just the land?

Will we be able to opt out of the change - out of the trust relationship if we change our mind at any time?

And, what does the agreement - what will the agreement look like and - (unintelligible) - like have some generic copies we can see that shows the trust of other lands that have been brought into the BIA?

Those are questions from our President Jones T. Hotch, Jr. Thank you.

Kevin Washburn: Thank you, Madam Vice President, and that's - and please congratulate the President for - that's a very comprehensive set of questions.

Let us - and I'm not sure I'm going to answer every one of them exactly on point because some of them are - well, I mean - well let me start and then we'll see if we - if we want to - if you have some additional questions.

So the questions with - so the first question can you see other comments by other members of the public, and that's - yes. In general, there will be an opportunity eventually at least for that to happen. We put those up on the Web site frequently, and there's always a question - I'll tell you as a fact of the matter, we don't often get the comments in until right about the time of the deadline, so sometimes it's impossible to get see the comments in time to - before you submit your own comments.

But, we do make those public. You know ultimately, those are all public.

The question about a final rule. What the timing is for the final rule is we have to go through all those comments, and so it depends on whether we get 10 comments or 10,000 comments, and frankly we've had rules where - you know, run the gamut between those two. So we have to read every one and think it through and formulate a response.

And of course, we have to decide whether to go forward, so there's no guarantee that we will issue a final rule because we have to figure out - you know, we have to assimilate the information that we've seen and you know we - the proposed rule is an intent to adopt a rule, but it's just a proposal, and so we have to look at all the comments first.

So the timing is, in other words, somewhat unclear. It'll take at least a matter of weeks or months to get through all the comments, depending on how many there are.

You asked a question about where will the trust's land be kept, and - so the fact is the inventory - we keep our - well, it's in a system - it's inventoried in a system called TAAMS. The acronym is T-A-A-M-S, and it's the tribal asset management system. I'm missing one word, but - so I'm not sure what the additional A stands for.

But basically, the inventory of our trust land. And so it would be held - I mean, that inventory is kept here in the Department and it is - it's the United States that holds the title, but we tend to be the ones to administer that title under our TAAMS system. And it's - the TAAMS database is a very expensive database that has lots of details about the land, including land descriptions and acreages and that sort of thing.

You asked whether this process would be subject to budget approval, and you know everything we do is subject to some degree to having the resources to accomplish those efforts, and you know we often feel fiscally constrained, so we often feel like we don't have the resources to deal with all the things we need to do.

And so absolutely, you know this process like all of our processes at human resources, we are in a time of constrained budgets and what we do will depend on how much money we have in our budget that's been allocated to this sort of work.

So if we went to a final rule and we had you know 1000 applications for land into trust, it would take a long time to work through those applications

probably, so there's certain aspects of this that are certainly subject to budget constraints. And, I'm not sure exactly if that's what you were getting at, but you know that's certainly true.

The criteria - you asked what the standards are or what the criteria are for taking land into trust, and the criteria are set forth in our regs, that 25CFR151, and they are - it is done on a case-by-case basis. We don't say we're going to take all land into trust for a particular tribe or anything. We look at every single application and sometimes tribes will take more than one parcel and put it in a single application. But generally, it - you know, it's at that level, but it's a parcel-by-parcel type analysis and we look at the parcel and we apply the standards that are in the Reg - in 151 to do that.

And the tribe has to want to take its land into trust. It's never an involuntary process. It's the tribe - the tribe usually has acquired the land already. It's the land that the tribe owns and (unintelligible) and it comes to us and says, "We would like to apply to take the - the Federal Government to take this land into trust." So we look at it at that point. And in some circumstances there might even be an environmental evaluation, like National Environmental Policy Act, environment impact statements, or environmental assessments that need to be - that need to occur before we can decide whether to take that land into trust.

That's particularly true where a tribe says, "We would like this land taken into trust and we plan to do some development on that land."

So there - you know, there are very specific criteria, and we will follow this criteria, and you know though we generally have been in the - we've generally sought to take land into trust because we think tribes should have you know home lands that will last forever. We take each of those - one of those - one of

those applications very seriously and look at it very rigorously. And honestly, it often takes many months to process one of those applications.

The decision. He said who will - you asked who will make the decision? Typically under our 151 regs, the land into trust regulation, our regional director or someone in the field, a superintendent, will make the decision about most land into trust applications. Land into trust applications for gaming are treated differently, and those tend to come to my office, to the Office of the Assistant Secretary. But the vast run of these cases are done at that - the field level, and those decisions are made, you know again, at the region or at the agency. And then, they may be appealed on occasion. And sometimes - and those appeals often go to the Interior Board of Indian Appeals, and so then they would have the opportunity to make a decision.

But most of these decisions are made in the field, so we would presume that they would be made within the Alaska region by officers of the BIA within that region.

You asked a question about oil and mining rights and that sort of thing, and there - you know, there's sort of surface rights and subsurface rights. And typically - I think most commonly when we take land into trust we are taking surface lands into trust. And I think that there's split estates in Alaska, and in many places, and so we certainly have the ability to take mineral resources into trust or subsurface rights, but - and that's - you know, that adds additional complications. But in the vast (unintelligible) of cases, it's surface land.

And you asked the question if the government wanted to mine on trust land, would there be a need for federal approval? Or I'm sorry. I've got the - blending two questions. That's - I was trying to scribble my notes as you were talking.

If the government wanted to mine on trust lands, if those were trust lands held by the tribe, it would do so only in close consultation with the tribe that owned those subsurface rights. So - but you know - and it would be doing so in essence on behalf of the tribe because those - the revenues that were produced from that mining would presumably be the tribe's revenues.

You asked the question would the tribe need federal approvals to do things on its land, and the answer is in some circumstances it would need federal approvals.

So for example, certain things that a tribe could do on its lands that it owns in (fee), it doesn't need necessarily federal approval. But if the land is in trust for the tribe, there may well be federal approvals that would apply, and that's - you know, so tribes tend to be kind of careful and cautious about which lands they want taken into trust because it does create potential obstacles for development on that land in some circumstances.

You asked a question could you opt out after having decided to take land into trust, and the answer to that is it's pretty complicated to remove land from federal trust once it has been taken into trust. Congress can do that, but it's really complicated. And so in general, once we take land into trust, the idea is that it is forever going to belong to the tribe, and it's going to be forever held in trust. And so that's not an easy thing to unwind.

And so once you've made a decision it's hard to opt out after that has happened.

You certainly - the tribe has the choice in the front end whether to - you know, to seek to have land placed into trust, and so - but after that decision has been made, it becomes much harder to opt out.

Now I'm not sure I answered all your questions, but I answered all the questions that I could sort of quickly capture. And so if you have any follow-up, you're welcome to answer those - sorry, ask those - re-ask.

John Brower: Yes, this is John Brower again, and I just wanted to make a comment that you know the Chilkat Indian Village was one of the original Indian reserves up here through Executive Order many years ago, and we - we're one of the few Alaska tribal governments that actually own (unintelligible) land. And we own approximately 2000 acres.

When we were first awarded the initial land, that was in trust at that time, and then ultimately through the Indiana Reorganization Act and then the creation of the Village Corporation and stuff, our land - we were able to keep our land based in the village here in fee simple status.

Our village corporation was able to select land in a different location in southern southeast because the tribal government did not want to relinquish its rights to its land ownership.

So we looked at the possibility of getting land in the trust about 15 years ago and we discussed it, so we've been thinking about it. Now with this proposed ruling, it's an option that we are considering if it passes through.

I guess I have one question related to this. I understand the State of Alaska is appealing the decision that was made in the District Court, and if that were - ultimately, will that decision on that appeal, well that may or may not effect

this proposed ruling once it goes through, assuming it goes through. I guess it potentially can affect it. I don't know if it will, but that might be a hard question to answer.

Kevin Washburn: Well, you're exactly right, Mr. Brower. That's - we are watching that case closely. It will - it could potentially have the effect - an effect on what we are doing here. But, we are going to continue moving forward until we are told by a court that we have to stop. So - and I should say unless and until, because we don't foresee that happening, but you know this whole issue it to some degree bound up in litigation. And so, we do know that there is that litigation going on and we don't know at this point if or how it will effect what we're doing here.

But, we - you know, we've made a decision to move forward on a proposed rule, and we will -- like I said -- keep going until someone with authority tells us to stop.

Kimberly Strong: Thank you, Mr. Washburn. This is Kimberly again. And President Hotch had one more question that I think is pretty relevant and important, and that is what about the natural resources? We live along the Chilkat River and up - we were at the confluence of three rivers, and so water protection rights for the river and its bounty is a question that Mr. Hotch has in regards to the trust and land.

Will the waterway in front of our tribal lands be protected as well?

Kevin Washburn: Well you've raised a question with a lot of complexity, but let me answer it this way. If we owned land in trust that you know bounds the waterway or contains significant natural resources, it does in some ways provide great protection to that land because it means the United States is a landowner. Now

it's in trust for the tribe, but the United States is technically a landowner and so the United States in that case would be much more engaged in issues related to natural resources protection of that land because that land would be held into trust and it would be our duty to make sure that that land is - you know, is protected.

So it does - you know, the United States tends to be the big gorilla in the room when the United States is involved in something, and so you know that perhaps is one of the benefits of having land into trust is suddenly you have the United States in the room when someone's talking about you know impact on resources and that sort of thing.

So it can have some effect on natural resources and natural resources development.

We have natural resources on lots of the lands we hold in trust. For example, timber resources throughout the Pacific Northwest. A lot of timber resources are on federal land, and we've got complicated statutes on how we have to manage those timber resources and that sort of thing. And, those timber resources are trust assets that - you know, ultimately belong to the tribe. And so when the land is in trust, it brings that whole regime into play of federal timber management.

So the same can be said for some other types of resources as well. So in general, yes, it does have a big effect on sort of natural resources in many respects.

John Brower: I think with the native allotments also - I think this ruling would be to - the allotments are under restriction, but they're not in trust, but I think this

proposed ruling allows for tribes - for native allotments to be actually under trust responsibility?

Kevin Washburn: Potentially. If those native allotments -- yes -- are - I mean one of the things we've heard is a lot of those native allotments are falling out of native ownership, and through inheritance and that sort of thing. And so our - you know one of the goals through this is to you know prevent the loss of land to native people, and this provide a vehicle for putting lands into trust so that they don't get lost out of you know native ownership in essence.

John Brower: And the village, our land base is bordered by native allotments to the east and west of us, and if we were to go into trust, I imagine the concept of Indian country applies to basically the allotments and the tribal land and the allotment - you know, basically right along the river there for about seven miles we have native allotments and our land - tribal land. So it would be I think subject to the concept of Indian country - or protection of Indian country.

Kevin Washburn: Yes. And there's a fair number of complications with regard to issues around Indian country in Alaska, but trust land generally is Indian country, and so - and we have - you know, we have got a lot of additional questions and maybe policy decisions to make if the land is determined to be - I mean if we do take land into trust in Alaska around jurisdiction and authority over different matters and that sort of thing.

Kimberly Strong: Does anybody else have any questions?

Is it possible to get a copy of what the trust agreements look like?

Kevin Washburn: So we don't - I don't think an agreement is really the right way to characterize what happens whenever we take land into trust. Usually it's an application by a tribe and we - you know, we either accept the application or we deny the application. And so there certainly are lots of laws that apply, but there's not - it's not done by - through an agreement particularly. Once it obtains its status, then all the federal laws apply that - so in other words, it's not negotiated terms through a contract that apply to this agreement. There's no agreement like that. It - once it becomes trust land, then suddenly there's a bunch of federal laws that apply that sort of govern the way we have to treat that land.

So there's not really an agreement. There's just an application to take the land into trust and we sort of - it's either - it's a yes or no question basically. And if we do say yes, then a whole federal regime begins to apply to that land.

Kimberly Strong: Okay, so can we get a copy of the application and also the permanent laws that would apply?

Kevin Washburn: So on our Web site there is a fee to trust handbook, and it shows the steps in the process and it does show a sample deed that you can use - you can see so you would see what that looks like, and that - so let me invite you to look at our Web site to look at that handbook and a sample deed. That might kind of get you what you're interested in seeing.

Kimberly Strong: Thank you.

We're finished here I believe at the Chilkat Indian Village.

Coordinator: Thank you.

Once again, please depress Star 1, if you have questions or comments at this time -- Star 1, please.

It'd be just a few moments for the next question.

Kevin Washburn: And while we wait for that, I've got a whole team of people here that are working with me and helping me answer these questions, and Deputy Assistant Secretary Larry Roberts is here. Counselor to the Solicitor Jody Cummings is here. (Liz) Appel, who runs all of our regulatory affairs is here. And (Jennifer Truner-Vanderburg) from the Solicitor's Office are here, and their help is invaluable in this process. So you can - I'm the one doing the talking, but we got a whole bunch of people that are helping answer these questions.

Coordinator: Next we have (John Barry). Your line is open, and please state your affiliation.

(John Barry): Hello. My name is (John Barry). I'm the Chairman of the (unintelligible) Tribe. We're not affiliated with Alaska at all, but I was just wondering - and I appreciate you having this forum and this opportunity. Can you talk to me a little bit more about the budgeting and if it would affect say the Eastern Oklahoma Region in terms of the realty budget going forward and how you've thought that through with the title plans?

Kevin Washburn: Yes. So we have - we do have realty personnel in Alaska already, and we have in fact already kind of begun the process of getting some training for those folks just in case this rule goes into effect.

We don't - we view this as a - you know, making the Alaska - giving Alaska tribes the same opportunity that you know the other tribes in the United States

have. And so, we don't - I mean, it's not our intention to you know move 50 staff members to you know Alaska and start running three shifts of land into trust. We will - you know, we will likely run this like we do land into trust everywhere else, with our existing staff.

And, that existing staff, by the way in the you know Lower 48 has taken - I think we are near 1700 applications for land into trust. We've approved over 1700 - or roughly 1700 applications in the past five years. And so, that's a very active part of the work that we do outside of the Alaska region, and we would start to do it within the Alaska region.

The folks that we sent from Alaska to get trained up, we did send them to the Great Plains region where some of this work happens, and so that certainly was a burden on the Great Plains region to you know have a bunch of folks in Alaska in town who were - they were helping to train.

But the general notion is that you know the Alaska region would stand on its own feet on doing this sort of work, and we're not going to move all land into trust really officers to Alaska or anything like that, or necessarily even dramatically increase the staffing.

You know, that's something that we will have to monitor and look at, but we - it's really important - we've made great strides in land into trust, and we would want to keep making those strides all across the country. So, this wouldn't be an effort to devote extraordinary resources to Alaska to accomplish this there.

Is that helpful, Chairman?

(John Barry): Yes, sir, it is. Thank you very much.

Kevin Washburn: Thanks, (John).

Coordinator: Again for further questions or comments, please depress Star 1.

And we have nothing further at this time, sir.

Kevin Washburn: Let's wait a minute or two just to see if anybody comes up with a question after scratching their head. And we don't need to - certainly don't need to stay on the phone the whole time, but let's give them a minute or two to - if they're shy, if they want to speak up.

All right, let me say thanks to everybody for participating and for making these comments. Frankly, just some of the questions end up informing our thinking and help develop our thinking around these issues, and it's important for us to be responsive to Indian country, and we can't do that unless we know what the questions are.

So, I really appreciate everybody who's participated in the call. And those who have just listened, glad you're here too to help educate the rest of the community about these important issues.

We, as I said before, are - our public comment period will close on June 30. We encourage people if they're interested to give us comments because we - as I said, we look at them very carefully and we learn from those comments, and so we are happy to take more comments.

In addition, we will be having one further tribal consultation, and that will be Thursday, June 26, 2014, from 2:00 to 4:00 pm Eastern Time here in Washington DC at the Omni Shore Hotel at 2500 Calvert Street Northwest,

Washington DC. Again, that's next Thursday, Thursday, June 26, and that's right following - immediately following the Res conference, the National Center for American Indian Enterprise Development DC Conference, the Res conference. So we will have that one final opportunity for you know tribal consultation. That will be an in-person consultation and anyone's invited that's interested in making you know further public comment. We would love to hear from people.

In the meanwhile, please submit your comments to Consultation@bia.gov. Consultation@bia.gov. And once again, let me say thanks to everyone who was on the call. We were grateful to have you participate.

And with that, I think that we will go ahead and conclude. Thank you.

Coordinator: That does conclude today's conference. Thank you all for joining. You may now disconnect.

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