

**Tribal Consultation**

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TRIBAL CONSULTATION ON THE PROPOSED  
FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES  
PROPOSED RULE 25 CFR 83

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TRANSCRIPT OF PROCEEDINGS  
HELD ON JULY 24, 2014

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LOCATION: Crowne Plaza Hotel  
Billings, Montana  
TIME: 8:34 a.m. to 10:07 a.m.

**Tribal Consultation**

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A P P E A R A N C E S

PANEL MEMBERS:

Larry Roberts - Deputy Assistant Secretary -  
Indian Affairs

Kaitlyn Klass - Office of the Solicitor

Elizabeth Appel - AS-IS, Office of Regulatory  
Affairs

EASTERN BAND OF CHEROKEE:

Terri Henry  
Perry Shell  
Tunney Crowe  
Dennis Taylor  
Brandon Jones

CHEROKEE NATION:

Karen Ketcher

CROW TRIBE:

Dana Wilson  
Melissa Holds the Enemy

GOVERNOR'S OFFICE OF INDIAN AFFAIRS:

Jason Smith

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I N D E X

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Dennis Taylor.....	22-24, 69-71
Karen Ketcher.....	24, 33-38, 47-49, 71
Perry Shell.....	39-44, 71-73

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## Tribal Consultation

1 WHEREUPON, the following proceedings were had:

2 \* \* \* \* \*

3 MR. ROBERTS: Okay, good morning,  
4 everyone. We're going to go ahead and get  
5 started. And before we get started, I'm just  
6 going to pass this microphone around so that  
7 everyone can introduce themselves. We have a  
8 small group here today, and so I just want to make  
9 sure that everyone introduces themselves and says  
10 who they're here on behalf of.

11 TERRI HENRY: Good morning, everyone. My  
12 name is Terri Henry. I am the Tribal Council  
13 Chairwoman for the Eastern Band of Cherokee  
14 Indians.

15 DENNIS TAYLOR: Good morning. Dennis  
16 Taylor, Eastern Band of Cherokee Indians, Vice  
17 Chairman Tribal Council.

18 TUNNEY CROWE: Tunney Crowe, Eastern Band  
19 of Cherokee Indians, Tribal Council.

20 BRANDON JONES: Good morning. Brandon  
21 Jones, Tribal Council for the Eastern Band of  
22 Cherokee Indians.

23 KAREN KETCHER: Karen Ketcher, Cherokee  
24 Nation of Oklahoma.

25 MR. ROBERTS: So getting started this

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1 morning, I guess I would start off with a couple  
2 of things. One is that Assistant Secretary  
3 Washburn wishes he could be here. He had planned  
4 to be here at this consultation. This was  
5 scheduled in coordination with the Tribal Interior  
6 Budget Committee, the advisory committee on our  
7 interior budget, and so he had to testify  
8 yesterday before the Senate Committee of Indian  
9 Affairs, so he is unable to attend here today, but  
10 he will be attending the consultation at Mashbee,  
11 so I wanted to address that.

12           And then the other thing I want to  
13 address at the outside is, a number of tribes,  
14 including the Eastern Band here, has made requests  
15 for an extension of time in terms of the comment  
16 period, and a number of offices within the  
17 Congress have made similar requests. And so I  
18 don't have anything to announce today with regard  
19 to that request. If I receive information, either  
20 during this consultation or during the public  
21 meeting today, I will let you know. Otherwise, I  
22 know that the deadline is coming up next Friday.  
23 We're trying to get a decision made at Interior as  
24 soon as possible, and so as soon as I know  
25 something, I will let you all know.

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1           So for purposes of the consultation here  
2 this morning, I'm going to run through a  
3 PowerPoint and then open it up for questions and  
4 comments. And I'm happy to have a dialog in terms  
5 of the Proposed Rule itself.

6           So Liz is going to be sort of flipping  
7 through the PowerPoint here. If you want to  
8 follow along, it's in your handout, or you can  
9 just follow on the screen.

10           Basically, I'll go through the  
11 background. By way of background, we have a  
12 number of ways that tribes can be recognized by  
13 the U.S. Government, either through a federal  
14 court decision, by congressional action/  
15 congressional legislation, or administratively by  
16 the Department of Interior.

17           Prior to 1978, the Department approached  
18 acknowledgment on an ad-hoc basis, basically, as  
19 groups requested to be recognized.

20           In 1978, the Department promulgated  
21 regulations to establish the uniform process.  
22 That's what we're here consulting about today.

23           In 1994, those regulations were revised,  
24 primarily to include previous acknowledgment as a  
25 factor within the acknowledgment process itself.

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1           And then in 2000, 2005, and 2008, the  
2 Department issued guidance for internal processing  
3 changes. So for example, the Department issued  
4 guidance prior to, I believe it was 2005 or 2008,  
5 the Department had been examining groups from the  
6 time of first sustained non-Indian contact to the  
7 present. Under one of those guidance documents,  
8 the Department said, "We're going to change that  
9 to 1789 to the present." So there's been various  
10 implementation guidance issued over the years.

11           In terms of the --

12           TERRI HENRY: Excuse me. So kind of the  
13 bright-line was from 1789, the year 1789 to  
14 present?

15           MR. ROBERTS: So prior to that guidance  
16 being issued in 2000 or -- do you guys know when  
17 that guidance was? It was like 2005, 2008 time  
18 period.

19           TERRI HENRY: Okay.

20           MR. ROBERTS: In one of those guidance  
21 documents, there was a change from rather than  
22 time of first sustained non-Indian contact to  
23 1789. So first sustained non-Indian contact could  
24 be earlier than 1789, but the Department decided  
25 to look at it from 1789, the formation of the

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1 United States, to the present.

2 TERRI HENRY: Okay.

3 MR. ROBERTS: That's just an example of  
4 some of the guidance documents.

5 And I guess I should say, you know, we  
6 have a small group here, so I'm happy -- in the  
7 past we've sort of gone through the PowerPoint and  
8 then had questions. But I guess I'm happy to  
9 entertain the questions as we go through the  
10 slides, if that's what you all would prefer.

11 And I would just ask, I know we've been  
12 joined by a gentleman here. Can you, sir, can you  
13 just tell us who you are and who you're with?

14 UNIDENTIFIED GENTLEMAN: I'm with the  
15 Crow Tribe. I don't know if I'm at the right  
16 place.

17 MR. ROBERTS: I'm sorry?

18 UNIDENTIFIED GENTLEMAN: I'm with the  
19 Crow Tribe. I don't know if I'm at the right  
20 place. They said Crowne Plaza. Then I seen some  
21 Indian-looking people coming up this way, so I  
22 kind of followed them.

23 MR. ROBERTS: Are you here for the  
24 Federal recognition regulations?

25 UNIDENTIFIED GENTLEMAN: I don't know,

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1 but I thought there was some type of budget type.

2 MR. ROBERTS: That was yesterday. That  
3 was yesterday, sir.

4 UNIDENTIFIED GENTLEMAN: Okay. Public  
5 comment, is there like public comment taken after  
6 this afternoon?

7 MR. ROBERTS: There is for Federal  
8 recognition, but not for the budget.

9 UNIDENTIFIED GENTLEMAN: Okay. All  
10 right, I think I'll go ahead and go. Sorry about  
11 that.

12 MR. ROBERTS: Nope. Just want to make  
13 sure you're in the right place.

14 All right, so many have criticized the  
15 process as being broken: It takes too long, that  
16 it's burdensome, that it's expensive, that it's  
17 unpredictable, that the criteria are not being  
18 applied uniformly under the existing regulations,  
19 and that it's not transparent.

20 And so in 2009, Secretary Salazar  
21 testified before the Senate Committee of Indian  
22 Affairs, and one of the questions he was asked was  
23 whether he would look at the Part 83 process for  
24 improvement. And he committed to examining ways  
25 to improve that process.

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1           And so in 2010, the Assistant Secretary,  
2           Solicitor's Office, Office of Federal  
3           Acknowledgment, they all started working on  
4           preparing the revisions to the Part 83 process.

5           In 2010 I believe, the Department again  
6           testified before the Senate Committee of Indian  
7           Affairs, and the Department was asked when we  
8           would issue proposed regulations on the Part 83  
9           process. And at that point, the Department  
10          testified that they hoped to get out proposed  
11          regulations within a year of 2010.

12          So in 2012, the Department again  
13          testified on the Federal acknowledgment process,  
14          and the members of the committee basically asked  
15          the Department, you know, "You had committed to  
16          putting out proposed rules a year ago. Where are  
17          you in the process? Why haven't proposed rules  
18          been issued?"

19          And the Department identified guiding  
20          principles, which are set forth in this PowerPoint  
21          below: Transparency, timeliness, efficiency,  
22          flexibility, but maintaining the integrity and the  
23          standards of the process.

24          So shortly after that hearing in 2012  
25          where those principles were laid out, the

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1 assistant secretary and I joined the Department,  
2 and Secretary Salazar at that point told the  
3 assistant secretary that this was a high priority  
4 for the Department, they hadn't made as much  
5 progress as they had hoped, and that, you know,  
6 the secretary passed on to the assistant secretary  
7 with making progress on this issue.

8           So in 2013, the assistant secretary  
9 testified before the Native American Affairs  
10 Subcommittee, the House Resources Committee,  
11 talked about that, the Department was going to  
12 issue a Discussion Draft in the summer of 2013 and  
13 would have tribal consultations and public input  
14 on that Discussion Draft. That was issued in  
15 June. We held public meetings and tribal  
16 consultations in July and August of 2013. We  
17 received over 350 comments from roughly over 2,000  
18 individuals or tribes, both governments.

19           And from those comments, we worked on  
20 developing a Proposed Rule. And so as part of  
21 both the Discussion Draft and the Proposed Rule,  
22 we convened a team of people within the  
23 Department, folks from the Solicitor's Office like  
24 Katie Klass who's with us today, folks from the  
25 Assistant Secretary's Office like Liz Appel, folks

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1 from the Office of Federal Acknowledgment, to go  
2 through, not only preparing the Discussion Draft,  
3 but also going through all of the comments and  
4 forming a work group to go through all the  
5 comments that were received on the Discussion  
6 Draft to prepare the Proposed Rule.

7           So that team reviewed all the comments,  
8 we rewrote the Part 83 regulations to be just the  
9 plain language requirements of OMB, we submitted  
10 the rule to OMB, they distributed it to all the  
11 different federal agencies, and then we issued the  
12 Proposed Rule in the Federal Register on May 29th.  
13 We released it on May 22nd.

14           Comments are currently due next week  
15 Friday, but again, as soon as I know something  
16 about an extension, I will let you know, because I  
17 know it's a topic of interest. And we're not --  
18 we want to get that information out as soon as  
19 possible.

20           In terms of an overview in terms of the  
21 rule itself, so we'll first touch upon sort of the  
22 primary revisions to the process, the revisions  
23 and clarifications to the criteria, clarification  
24 of previous federal acknowledgment, clarifications  
25 to the burden of proof, allowances for

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1 re-petitioning under limited circumstances, and  
2 then additional notice requirements.

3           So in terms of the revisions to the  
4 process and eliminating -- one of the things that  
5 we have is -- in terms of the process itself, is  
6 the Letter of Intent, which some of you may be  
7 familiar with, where a group can just submit a  
8 letter that says, "I'm going to -- this group is  
9 going to submit an application," and we may never  
10 see any additional information from them ever  
11 again.

12           Our website will list all of those  
13 letters that we've received. A lot of them are  
14 bad addresses, we've either received incomplete  
15 additions or nothing at all. And so we're  
16 proposing to eliminate the Letter of Intent  
17 process, that step in the process, I should say,  
18 and start with the application, similar to how we  
19 start our other processes in the Department for  
20 approvals.

21           We're also proposing a phased review of  
22 petitions, basically trying to get expedited  
23 decisions out in a more timely fashion. So in the  
24 past, we've issued decisions on all seven  
25 criteria. And, you know, a group to be recognized 13

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1 as a tribe under this process has to satisfy all  
2 seven criteria. If they fail one, they can't be  
3 recognized. And so what we're proposing is that  
4 we start the review process looking at a handful  
5 of criteria first, and if they fail those, issuing  
6 a proposed negative finding just on those to save  
7 everybody time and resources.

8 And so what we would start with is  
9 descent from a historic tribe, the genealogy, are  
10 they Indian; and if they're not, issuing an  
11 expedited decision saying, you know, "You can't be  
12 recognized under this process."

13 If they satisfy criterion (e), then we  
14 would look at some of the other criteria under the  
15 Proposed Rule, and that would be criterion (a),  
16 which we're proposing to change, but I'll touch  
17 upon that soon in the next few slides, and then,  
18 have they been terminated? If so, they're not  
19 eligible for our process. We have to abide by  
20 federal law. Are they a splinter group? Are they  
21 already part of a federally recognized tribe? If  
22 so, we're not recognizing splinter groups. We're  
23 not recognizing spinoffs if they're not eligible.  
24 We're not suggesting we change that. We're just  
25 in the processing to issue more timely decisions,

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1 we would address those criteria at the outset.

2           Then, let's say we have a petitioner that  
3 satisfies all of those initial criteria, then we  
4 would look at criterion (b), community, and (c),  
5 political authority. Because those are the  
6 criteria that are more resource intensive in terms  
7 of documentary evidence and time that we need to  
8 take a look at those.

9           So we've had comments at other tribal  
10 consultations in terms of how those criteria  
11 should or shouldn't be looked at for expedited  
12 decisions. It's something that we're seeking  
13 comment on, and it may make sense to move some of  
14 those criteria to either earlier in the decision  
15 process. So we're open to comment on -- we're  
16 open to comment on all of this, but that's one of  
17 the things we're looking at, is, "How can we have  
18 a more streamlined process?"

19           In terms of the Proposed Finding, how it  
20 typically works now for the existing rule is we  
21 issue a Proposed Finding, that's put out there for  
22 public comment, it's put out there for -- and then  
23 we review those comments and issue a Final  
24 Determination.

25           What we're proposing under the rule in

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1 terms of process is that, if we issue a Proposed  
2 Finding that's positive and that there are no  
3 comments with substantive opposition to that  
4 recognition, that we would issue a Final  
5 Determination that's positive.

6           And that's -- we've done that in the  
7 past. And so again, if we receive no comments, no  
8 substantive comments in opposition, we would move  
9 forward with just basically issuing that Federal  
10 Register notice that the proposed favorable  
11 decision is not final.

12           If the proposed favorable decision is  
13 negative -- and so let me back up. If the  
14 proposed favorable is positive and we receive  
15 negative substantive comments, then we're going to  
16 continue with our current practice, which is to  
17 review those and then move forward with a Final  
18 Determination.

19           If the Proposed Finding is negative, what  
20 the Proposed Rule provides is an opportunity for  
21 the petitioner to ask for a hearing before the  
22 Office of Hearings and Appeals before an  
23 administrative judge. And third parties could  
24 then intervene in that hearing.

25           The judge doesn't decide the petition

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1 itself. What the judge would decide is a  
2 recommended decision to the assistant secretary as  
3 part of that process. We've -- so the purpose of  
4 the hearing is to sort of narrow the issues in the  
5 dispute and have a third-party judge weigh that  
6 evidence and make a recommendation to the  
7 assistant secretary. The assistant secretary,  
8 under the Proposed Rule, remains the final  
9 decisionmaker for the Department.

10 One of the things that we propose  
11 changing is that, as it currently stands right  
12 now, when the assistant secretary makes a decision  
13 on a Final Determination, that is subject in  
14 limited respects to the Interior Board of Indian  
15 Appeals' review. And what we've proposed in the  
16 Proposed Rule is to eliminate that final review by  
17 the IBIA. It's the only decision that the  
18 assistant secretary makes that is subject to IBIA  
19 review, and parties go directly to federal court.

20 In terms of the hearing on a negative  
21 Proposed Finding, the Office of Hearings and  
22 Appeals has proposed basically civil procedures  
23 for how that hearing would be conducted. The  
24 Office of Hearings and Appeals is separate from  
25 the Assistant Secretary's Office, so they have

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1 their own Proposed Rule out there on those civil  
2 procedures of how a hearing would be conducted.

3           One of the questions that they've asked  
4 in their Proposed Rule is who -- if we end up  
5 having a hearing process, who should preside over  
6 that hearing? Should it be an administrative law  
7 judge? And it all relates to the level of  
8 independence of the administrative judge. So  
9 should it be an administrative law judge who is  
10 most independent within the Office of Hearings and  
11 Appeals? And the Office of Hearings and Appeals  
12 is within the Secretary's Office, not the  
13 Assistant Secretary's Office, and it's independent  
14 from the Department. So should it be an  
15 administrative law judge? Should it be an  
16 administrative judge who reports to the Office of  
17 Hearings and Appeals' director, and so therefore  
18 has a little bit more supervision? Or should it  
19 be an attorney who is designated by the Office of  
20 Hearings and Appeals' director who reports  
21 directly to the director itself? And so there are  
22 three sort of options there that they're looking  
23 for feedback on or any other ideas that folks  
24 have.

25           And then the other question they've asked 18

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1 is, the Office of Hearings and Appeals judge's  
2 decision, the recommended decision to the  
3 assistant secretary, what should that look like?  
4 Should be it limited to the hearing record?  
5 Should third parties be able to provide additional  
6 information that wasn't before the Office of  
7 Federal Acknowledgment before a Proposed Finding?  
8 Those sorts of questions.

9           So in terms of further revisions to the  
10 process, we're providing for a petitioner who can  
11 withdraw a petition at any time, but it has to be  
12 before the Proposed Finding is issued, is  
13 published. And if they withdraw their petition,  
14 the consequence of that is that when they resubmit  
15 that petition, they lose their place in line, so  
16 they go to the end of the line in terms of  
17 resubmitting their petition if they withdraw it.

18           The other revisions to the process is, we  
19 are proposing to put more of the information of  
20 the petition directly on the Internet itself to  
21 the extent allowed by law. So if the Privacy Act  
22 prohibits some things or what have you, we're not  
23 going to release that information. But right now,  
24 we provide notice to tribes and the public about  
25 the petition itself. We're trying to get those

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1 materials on the Internet so people have easy  
2 access to those.

3           So in terms of the criteria themselves,  
4 so with criterion (a) as it currently stands, it  
5 requires external identification of the group from  
6 1900 to the present. And so how we've applied  
7 that in the past is, essentially, third parties,  
8 whether it be a state, a local government, a  
9 newspaper, an anthropologist, somebody external to  
10 the tribe had to identify that tribe from 1900 to  
11 the present and write something, basically put it  
12 in writing in terms of that.

13           And so the proposal basically says, "If a  
14 group satisfies all of the other six criteria:  
15 That they've been exercising political authority,  
16 that they're a community, that they're Indian,  
17 they haven't been terminated, that they've been in  
18 existence, it doesn't matter whether a third party  
19 has written about them or not. Does that make  
20 them any less of a tribe if they satisfy all those  
21 other characteristics?

22           So what we've proposed instead for  
23 criterion (a) is, we're not creating tribes in  
24 this process; we're not recognizing tribes that  
25 haven't existed. We're requiring them to provide

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1 a narrative of their existence as a tribe prior to  
2 1900 with evidence. And so, it's essentially a  
3 requirement of a "Tell us where you come from,  
4 because we're not making up tribes. We're not  
5 interested in recognizing tribes that are made  
6 up."

7           So that should be a criteria that should  
8 be able to be satisfied by legitimate tribes. It  
9 should be a really difficult criteria for those  
10 petitioners that have come into existence in the  
11 1940s, the 1950s, 1960s, 1970s, '80s and '90s. It  
12 should be very difficult for them to satisfy that  
13 criteria, because they need to show their evidence  
14 and their history as a tribe prior to 1900.

15           And I will say, we say "a brief summary,"  
16 and we've gotten some comments at other tribal  
17 consultations and public meetings that says,  
18 "Well, what does that mean?"

19           And what we've said before is that, it's  
20 not intended to be a treatise or a multi-volume  
21 treatise of history, but you know, we need ideas  
22 from you all in terms of how that should be  
23 clarified.

24           So you know, we've heard that it needs to  
25 be clarified, and while that's a helpful comment

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1 to hear that it needs to be clarified, you know,  
2 specific ideas as to how it should be clarified or  
3 whether it should be changed at all are, you know,  
4 things that -- is why we're going through this  
5 process. Sir?

6 DENNIS TAYLOR: Dennis Taylor, Eastern  
7 Band of Cherokee. Again, thanks for allowing us  
8 to ask some questions. And you know, I think the  
9 question was asked as well about the brief  
10 narrative. Have we determined what the brief  
11 narrative is going to consist of? Is it just one  
12 page? Ten pages?

13 You know, for instance, the Eastern Band,  
14 we have a long line of history. I mean, we're in  
15 the history books; we're in textbooks. What is a  
16 "brief narrative"? Has it been decided yet?

17 MR. ROBERTS: It hasn't been decided, and  
18 that's kind of what we're asking for your input  
19 on. So I don't know -- I don't know that the  
20 Department has -- I don't know that the Department  
21 has said, "Oh, a one-page would be sufficient,"  
22 but it's something that we need clarity from you  
23 all.

24 So I understand that -- you know, I think  
25 we all understand that it could be clarified,

22

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1 right, and I guess what I'm trying to provide is  
2 the thought behind the suggestion, which is, the  
3 narrative shouldn't take, you know, years and  
4 years and years and decades to develop and  
5 millions of dollars to put together. It shouldn't  
6 be binders upon binders. But it should be  
7 something that is, you know, with evidence saying,  
8 "This is who we are; this is where we come from."

9 DENNIS TAYLOR: Just a for instance, in  
10 North Carolina where we're from, there's a tribe  
11 back home in North Carolina that pre-1934 has, you  
12 know, claimed to be Cherokee for 40 years, and two  
13 or three other tribes prior to that as well before  
14 1934. So how serious could you take a brief  
15 narrative, you know, from a petitioner as claiming  
16 to be four or five different tribes between 1904  
17 and 1934? So you know, those are some types --  
18 some of the issues that we have with a brief  
19 narrative.

20 MR. ROBERTS: So what I would encourage  
21 is -- and we encourage this in all of our rule  
22 makings. And for those of you, I don't know if  
23 you were at TIBC at the time when we were talking  
24 about contracts, court costs, and otherwise,  
25 but -- and I appreciate your comment on this

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1 matter, but what we need is a specific  
2 recommendation. Because we can hear your comment  
3 and say, "This needs to be clarified," and -- but  
4 that's going to leave it to the team to write what  
5 that should look like as opposed to what Eastern  
6 Band of Cherokee thinks that should be written to  
7 look like.

8 DENNIS TAYLOR: And I think after final  
9 consultations, I believe that we will be sending  
10 those responses in.

11 MR. ROBERTS: Perfect.

12 DENNIS TAYLOR: Thank you.

13 MR. ROBERTS: So --

14 KAREN KETCHER: Karen Ketcher, Cherokee  
15 Nation. It says that this is required, so the  
16 brief narrative is required; it's not a maybe  
17 thing; it is required for a pre -- for pre-1900?

18 MR. ROBERTS: That's right. Yep, all  
19 seven of these are required. And I guess, I mean,  
20 I cover this a little bit later in the discussion,  
21 but I'll just address it right now, and that is,  
22 we'll talk a little bit about notice later in the  
23 discussion, but one of the things that we've tried  
24 to do in the Proposed Rule is broaden notice,  
25 provide more notice than what we're typically

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1 providing right now under the existing rule.

2           So under the existing rule, let's say  
3 there is a group and they claim to be Cherokee for  
4 whatever reason. Under the existing rules and  
5 under the Proposed Rules, under both rules, the  
6 existing and the proposed, we still would provide  
7 notice to the federally recognized Cherokee tribes  
8 of that petition and get their input on it. And  
9 so that's not -- that's not changing.

10           We've heard at some consultations that  
11 the way that the regulation is written, they were  
12 concerned that we were somehow limiting notice. I  
13 think some of that has to do with the change in  
14 the plain language of it. But as we stated at  
15 earlier consultations and public meetings, our  
16 intent is to broaden notice. And so if there's  
17 anything in there, in the Proposed Rule, that you  
18 think somehow limits the notice that's provided,  
19 we need to hear that, because that's not our  
20 intention at all.

21           So getting back to the mandatory  
22 criteria, and they're all mandatory, criterion  
23 (b), community, we are proposing in the Proposed  
24 Rule that we start our analysis from 1934 to the  
25 present. And there's two reasons for that --

25

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1 three reasons for that. One is that prior to  
2 1934, the United States had a number of different  
3 policies, war with tribes, treaties with tribes,  
4 allotment and assimilation with tribes. 1934 is  
5 when Congress passed the IRA. It's probably the  
6 first time in federal history where the Congress  
7 is supporting tribal governments and  
8 self-determination, so there's the policy aspect  
9 of the IRA.

10           And then from a practical standpoint,  
11 we've been running the Part 83 process for  
12 approximately 40 years. We've never had a  
13 situation where a failed petitioner has failed the  
14 criteria prior to 1934 but satisfied all the  
15 criteria after 1934. We've never had that  
16 situation, and so we're proposing moving forward  
17 from 1934 to the present.

18           And the third factor is that we think  
19 that that will provide more efficiency and  
20 timeliness than looking at the record as a whole.

21           Some of the other things with criterion  
22 (b) in community, we're requiring that at least  
23 30 percent show a distinct community for each time  
24 period. Under the regs, I believe it's  
25 predominant -- predominant portion, which is less

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1 than objective, I guess. And so we didn't pull  
2 the 30 percent out of thin air. The 30 percent is  
3 from the Indian Reorganization Act, and it's the  
4 percentage of numbers that need to vote on a  
5 constitution. So we're clarifying that  
6 attendance, students at Indian boarding schools,  
7 can be acceptable evidence of community. We've  
8 relied on that in certain decisions in the past,  
9 so we're trying to make that consistent.

10 And we're also saying that if the group  
11 has maintained a state recognized reservation from  
12 1934 continuously to the present, or the United  
13 States has held land for the group at any point  
14 since 1934, that that will satisfy both criterion  
15 (b) and criterion (c).

16 And so I want to be clear that we're not  
17 talking about state recognition, because  
18 there's -- we've heard throughout the  
19 consultations and public meetings and input on the  
20 Discussion Draft that there's all different types  
21 of ways in which states do that, and so we're not  
22 talking about state recognition. What we're  
23 talking about is tribal -- or collective ownership  
24 of land basically, and that basically comes from  
25 Felix Cohen's criteria from the Department of

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1 Interior when they were implementing the IRA in  
2 the '40s. We're not talking about ownership for  
3 an individual. We're talking about collective  
4 rights to land. And that is one of the things  
5 that the Department looked at when they were  
6 implementing the rule -- or implementing or  
7 looking at whether to recognize the tribe on an  
8 ad-hoc basis; they looked at collective ownership  
9 in land.

10 So what we talked about for the 1934 to  
11 the present and state reservation or U.S. held  
12 land at any point since 1934, those would satisfy  
13 both (b) and (c), is the proposal.

14 The other thing is that we're -- so a  
15 petitioner has to show these criteria -- satisfy  
16 these criteria without substantial interruption.  
17 That's what the regulation says. And so we've  
18 heard that that's unclear. What does "without  
19 substantial interruption" mean? And the  
20 Department has applied that differently throughout  
21 the course of the Part 83 regulations, and so  
22 sometimes we've applied it as ten years without  
23 substantial interruption, and we're talking about  
24 documentary evidence without substantial  
25 interruption; sometimes we've applied it for as

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1 much as 27 years, 28 years.

2 And so what we've proposed in the  
3 Proposed Rule is not more than 20 years unless  
4 there is some significant justification for that.  
5 And so that's something that we need comment on as  
6 well.

7 In terms of criterion (e), descent, we're  
8 trying to again sort of codify existing practice.  
9 So under existing practice, if a petitioner has  
10 evidence that 80 percent of their members descend  
11 from a historic tribe prior to 1900, that that  
12 satisfies criterion (e). It doesn't mean that a  
13 group can have 20 percent non-Indians. What it  
14 means is that 80 percent of that group has to have  
15 documentary evidence showing their descent. And  
16 that's how we've applied it over the course of  
17 administrating the Part 83 regulations.

18 In terms of something in terms of new  
19 parts of the rule for criterion (e), we are  
20 proposing that we allow descent to be traced from  
21 a roll, a tribal-specific roll, prepared either by  
22 the Department or at the direction of Congress.  
23 So we're not talking about a roll of California --  
24 for example, there was a roll of California  
25 Indians. We're not talking about a California

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1 Indian roll. We're talking about a tribal-  
2 specific roll. So if there were a tribal-specific  
3 roll for a specific tribe in California, we're  
4 basically proposing to own those federal records  
5 as part of that.

6 If the group doesn't have a roll that was  
7 either prepared at the direction of Congress or  
8 prepared by the Department, then what we're asking  
9 for is evidence -- whatever the reliable evidence  
10 is prior to 1900. And so this is attempting to  
11 provide consistency of how we've applied the  
12 process over time.

13 So for some decisions, for example, we've  
14 relied on evidence from 1880, 1890, 1900, and  
15 moved forward from that evidence believing that  
16 that is good evidence. In other cases, we've had  
17 evidence from, say, 1880, 1890, and we've gone  
18 back in time to time of first contact. And so  
19 going back in time from evidence that we already  
20 feel is good evidence is more costly, takes more  
21 time, and so that's the proposal, essentially, is  
22 to use the most reliable evidence prior to 1900  
23 and move forward from there.

24 TERRI HENRY: Can I ask you a question  
25 about that?

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1 MR. ROBERTS: Yeah, sure.

2 TERRI HENRY: In the -- when you're  
3 talking about using reliance on the most -- or  
4 having reliance on the history before 1900, you've  
5 got Wikipedia, and anybody can write anything on  
6 Wikipedia, and so how are you going to verify  
7 that?

8 MR. ROBERTS: So we're talking about  
9 reliable evidence, and so we're talking -- you  
10 know, yeah, Wikipedia is out there, but also  
11 Ancestry's out there, right, and they have the  
12 federal record of censuses of, I think, Indian  
13 censuses and non-Indian censuses. And so we're  
14 not -- we're not relying on -- we're relying on  
15 reliable evidence. I don't think Wikipedia would  
16 be reliable evidence. We're talking about  
17 historical documents showing that these folks --

18 TERRI HENRY: I just wanted to clarify,  
19 because we are in this Internet age and anybody  
20 can write anything and publish it Online, so I  
21 just wanted to make sure.

22 MR. ROBERTS: Yeah, and we're not  
23 changing the evidence that we would rely upon.  
24 We're just saying, if we have reliable evidence at  
25 a point in time, whether it's 1850, 1860, 1890,

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1 move forward from that as opposed to going back in  
2 time for decades or a hundred years to confirm  
3 what we think is reliable.

4 In terms of criterion (f), membership, as  
5 I mentioned before, we're not recognizing splinter  
6 groups. We're not recognizing groups that have  
7 splintered from a federally recognized tribe. But  
8 we have heard through the consultations and public  
9 meetings and on the Discussion Draft that some  
10 petitioners have said, you know, "We have our  
11 enrollment in our non-federally recognized tribe.  
12 Some of our members are eligible for enrollment in  
13 both non-federally recognized tribes and  
14 recognized tribes, eligible for both. And that  
15 because the Department's process has taken so  
16 long, that, you know, there may be college  
17 benefits, scholarship benefits, real-life benefits  
18 that our members are -- they don't want to leave  
19 our group, but the process is taking so long, you  
20 haven't recognized us, they have no other choice  
21 but to enroll in that federally recognized tribe.  
22 And if we were recognized, our people would come  
23 back to us, but your process is causing this  
24 splintering. There wasn't a splintering before  
25 that."

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1           So what we put in the Proposed Rule to  
2 address that is, if a petitioner has filed a  
3 Letter of Intent prior to 2010, that we wouldn't  
4 hold that against them if their membership leaves  
5 that group after 2010. We wouldn't hold that  
6 against them as a result of our process. That's  
7 the proposal.

8           With regard to criterion (g),  
9 congressional termination, obviously, if the group  
10 has been terminated, we don't have any authority  
11 to recognize them. And so, but the burden right  
12 now is on the petitioners to show -- to prove the  
13 negative essentially, that they haven't been  
14 terminated. We're proposing to shift the burden  
15 on the Department to show that they have been  
16 terminated and that the Department would make that  
17 decision.

18           KAREN KETCHER: Can we go back a moment  
19 to membership?

20           MR. ROBERTS: Yes.

21           KAREN KETCHER: Let me understand you  
22 correctly. In the old recognition process, if you  
23 were eligible for membership in another federally  
24 recognized tribe, then you would not -- if those  
25 members of that group were eligible for membership 33

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1 in another federally recognized tribe, then that  
2 was one of the criteria, that you couldn't be  
3 eligible for membership.

4 Well, now what we're saying is if you're  
5 eligible for membership in the other non-federally  
6 recognized tribe and you're eligible in the  
7 federally recognized tribe, then they can come and  
8 petition or they can come in and make an  
9 application? Because always before I don't think  
10 you were -- if -- it's like a splinter group.

11 MR. ROBERTS: So, and I'll -- and Katie  
12 and Liz can weigh in on this as well, but my  
13 understanding of it is that, so we've had several  
14 tribes that we've recognized through the process,  
15 Poarch Band of Creek Indians, right. I don't know  
16 whether they are eligible, whether their members  
17 were eligible for a membership or not, but at some  
18 point prior to 1900, right, they had their own  
19 government essentially and their own tribe, and so  
20 I don't think -- so the Department recognized  
21 them, so I don't think we viewed them as a  
22 splinter group.

23 KAREN KETCHER: For example, I know of  
24 one group in Oklahoma that applied for recognition  
25 but they were denied because their members were

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1 eligible for another -- for membership in another  
2 tribe there in Oklahoma.

3 MR. ROBERTS: Okay.

4 KAREN KETCHER: And that was the reason  
5 they were denied. So if this is -- if this is the  
6 position that we're going to take now, that you  
7 can -- that group could come back in and apply for  
8 federal recognition and meet the criteria because  
9 they've had, you know, they had membership, they  
10 met all the other criteria, it was just the one  
11 that they were eligible for membership in another  
12 federally recognized tribe.

13 MR. ROBERTS: Okay. I don't think  
14 we're -- so -- and Liz and Katie can correct me,  
15 but I don't think the Department's trying to  
16 change the splinter group criterion. What we're  
17 basically trying to say is that there were  
18 petitioners that had been in the process way  
19 before and they've been -- so quite frankly, we've  
20 heard it from Michigan groups in Michigan said,  
21 "Look, we've been petitioning for how long?  
22 Decades, many years, and we're losing our  
23 membership because of your process."

24 And what we've basically said is that,  
25 "If you've had" -- and it's a proposal, so we need 35

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1 to have this dialog; we need to have comments.  
2 We're trying to provide -- we're trying to address  
3 that situation where their argument is that  
4 through no fault of their own, our process is  
5 taking -- if we had a more timely process, if we  
6 had a process that could make a decision within a  
7 decade, they wouldn't be in this situation.

8           And presumably, we're not changing --  
9 we're not changing the recognition standards  
10 there. So I guess I would assume they would be  
11 recognized, right, and that they would satisfy the  
12 criteria.

13           I think what we're just trying to say is,  
14 "If you've submitted your Letter of Intent by 2010  
15 and from 2010 to the present you've lost 10  
16 percent of your membership because of these real-  
17 life situations, we're not going to hold that  
18 against you." And I don't know if Liz or Katie  
19 want to add?

20           MS. APPEL: Yeah, just to clarify.  
21 Rather than being eligible for membership, the  
22 criterion is that the petitioner's membership has  
23 to be composed principally of members who are not  
24 already members of a federally recognized tribe.  
25 So as Larry was saying, this is to -- that

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1 criterion is staying against the splintering of  
2 currently federally recognized tribes, and this  
3 will just be an exception where they filed before  
4 2010.

5 KAREN KETCHER: I'm trying to get this  
6 clear in my mind. For instance, the five  
7 civilized tribes in Oklahoma, their tribal  
8 constitutions, all of them, their membership is  
9 based on descendancy from the 1906 Dawes  
10 Commission roll. So within, for example, the  
11 tribe that I mentioned earlier that had applied  
12 for federal recognition, all of these five tribes,  
13 their constitutions require that, that you're a  
14 descendent from the Dawes Commission.

15 Well, these people in this community in  
16 this group actually descended from people on that  
17 1906 Dawes Commission roll, so they were eligible  
18 for membership in the tribe. If -- and they were  
19 denied, because I guess you would call them a  
20 splinter group. That may have been why they were  
21 denied, because they were a splinter group.

22 And I don't understand the difference in  
23 other tribes that are in very similar situations  
24 that, for instance, there's two within the  
25 Cherokee Nation: The Shawnees and the Delawares.

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1 Both of them have obtained federal recognition but  
2 through different means than the Federal  
3 acknowledgment process.

4 MR. ROBERTS: Okay, so I don't think  
5 we're -- I don't think we're intending to change  
6 the substantive criteria of this, in terms of  
7 we're not recognizing splinter groups.

8 I think -- I think, you know, we have  
9 your comments here today, but I think we need you  
10 guys -- you all know the best of your communities,  
11 and you need to help us understand  
12 substantively -- I think -- I hope you understand  
13 sort of what the intent was, which is we've heard  
14 from petitioners who, you know, basically they've  
15 been in the process for a very long time and  
16 they're losing -- as a recent phenomenon, they're  
17 losing members.

18 So I think in Michigan basically, you  
19 know, they had their members and one group was  
20 talking about how they've had their membership  
21 initially change in the last year or two,  
22 basically said, "We're only going to provide  
23 scholarships to federally recognized tribes," and  
24 so they said, you know, "We need to account for  
25 how long our process is taking."

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1           So we're not trying to change that  
2 substantive criteria, and we will definitely take  
3 that back to the Department and, you know, we need  
4 to clarify that.

5           MS. KLASS: So in addition to the  
6 membership criteria, we also have the political  
7 authority criteria, so the petitioner needs to  
8 have been operating, you know, politically  
9 independently since 1934. So they're kind -- they  
10 work together, those two criteria.

11           MR. ROBERTS: So before we get to your  
12 question, we've had someone join us, and I just  
13 want them to introduce themselves for the record,  
14 because this is only open to federally recognized  
15 tribes.

16           MELISSA HOLDS THE ENEMY: Good morning.  
17 My name is Melissa Holds The Enemy. I am managing  
18 attorney for the Crow Tribe.

19           PERRY SHELL: Good morning. Perry Shell,  
20 Tribal Council, Eastern Band of Cherokee Indians.  
21 I have a couple of questions.

22           You know, this attendance at boarding  
23 school, that's going to be -- the proposal is that  
24 that be recognized as criteria to be recognized as  
25 a federally recognized tribe, but anyway, does

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1 that include -- we had a boarding school of  
2 Cherokee, and I know there was some of these  
3 groups now that have not been recognized that had  
4 attended that went there as well.

5 We also had Bureau of Indian Affairs or  
6 Bureau of Indian Education, whatever it was,  
7 Department of War, War Department or whatever it  
8 was, operated Indian schools on our reservation  
9 that were basically had other non-Indians went  
10 there. I know Mr. Hatley was a non-Indian that  
11 operated a school in my community. His children  
12 and others attended that were non-Indian. You  
13 know, and I think that -- I don't know if that  
14 criteria -- that needs to be verified whether or  
15 not they were Indian or not if they went there.  
16 The records that were kept and the way things were  
17 done is different than it is now.

18 And I don't envy what you all are trying  
19 to do here, but I don't know that in itself should  
20 be considered as criteria for membership because  
21 you went to an Indian boarding school or you went  
22 to a Bureau of Indian Affairs operating school.  
23 There were a lot of non-Indians that went to those  
24 schools at one time or another. I know Mr.  
25 Hatley, Winston Hatley, he's an old man now, like

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1 90 years old, came back and formed a union. And  
2 there were others, you know, that have done this.  
3 But I question that.

4 I question, too, we talked about having a  
5 narrative prior to 1900, a brief narrative. You  
6 mentioned ten pages. That's not been decided.  
7 But the petitioning group, like Terri said  
8 earlier, could write whatever they want to write  
9 in ten pages and hit on what they want to hit.  
10 There has to still be an investigation, I believe,  
11 into whether or not what all they're leaving out,  
12 what all is being said by who, it should not be  
13 easy. It should be hard. And you say, well, you  
14 need to hear from us on this, but it's your own  
15 Department that's in this situation, that got  
16 yourselves in this situation. And I don't know  
17 how much of this situation, as far as taking  
18 30 years, is the responsibility -- or I guess you  
19 can say "blame" or whatever you want to use, on  
20 the petitioning group who's not getting a  
21 favorable decision, they keep on drawing it out,  
22 drawing it out, rework based on whatever. You  
23 know, I think that that's part -- politics is also  
24 part of why some of these groups get extended for  
25 years and years and years as well. It's not

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1 necessarily because of the criteria things that  
2 you have or the decisions that you made. I think  
3 a lot of arguments are being made with it, and I  
4 think that a lot of that responsibility lies with  
5 that group. If they're not getting a favorable  
6 decision, they keep trying to add other things as  
7 well.

8 I would like to see this expedited and  
9 put into transparent, flexibility, integrity, all  
10 of those words you use right there, but I think  
11 integrity is key. I think you need to go back and  
12 check very closely. We have researched court  
13 records of other petitioning tribes and looked  
14 further than just what it said about their rolls  
15 were from the white, old Baptist Church down here  
16 next to whatever creek. You know, you need to go  
17 further than that. You need to look at court  
18 records, marriage records, and see what they  
19 identify themselves as in court, under oath, what  
20 their race is, or what their background is.

21 Lots of times you'll find what they put  
22 on their roll has to be investigated. And if it  
23 does take some time to get to the truth, that's  
24 what's key here, I believe, also.

25 But just one on this, "Well, they've got 42

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1 to go back and bring all these documents and cases  
2 and cases." This has to be hard to give them this  
3 level of recognition.

4 This part about 80 percent, what you're  
5 going on now, that makes no sense to me.

6 80 percent, that means 20 percent don't have to be  
7 any Indian -- Native American descendency to be on  
8 a roll?

9 MR. ROBERTS: No, sir. That's not --

10 PERRY SHELL: That's just what they're  
11 recognizing?

12 MR. ROBERTS: No, sir. So as I  
13 mentioned, it's documentary proof that at least  
14 80 percent of the group is Indian. And that's  
15 been applied by the Department, I believe, since  
16 the inception of the Part 83 process.

17 PERRY SHELL: Say again.

18 MR. ROBERTS: I think throughout the Part  
19 83 process. This is not --

20 PERRY SHELL: Part 83, when does that go  
21 back to?

22 MR. ROBERTS: Well, that's 1978.

23 PERRY SHELL: Yeah. Maybe that's wrong  
24 too. Maybe you relook at that. Figure if you go  
25 from a roll, you should have been Indian -- should

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1 have been Native American a hundred percent if  
2 that's who you're basing your -- you know, to me  
3 it makes no sense. My wife's not Native American,  
4 you know. I don't know. I don't see 20 percent,  
5 8 out of 10. Should be a hundred percent.

6           Anyway, you all might relook at that rule  
7 as well, you know. Anyway, thank you.

8           MR. ROBERTS: Thank you. I just wanted  
9 to touch upon the comments on Indian boarding  
10 schools. Just because -- just because someone  
11 attended an Indian boarding school, that's not  
12 satisfying the criteria. That's not what we're  
13 proposing. What we're proposing is that that can  
14 be evidence that we can look at. It's not  
15 determinative.

16           And I don't know, Katie, if you want to  
17 talk a little bit about this issue about any  
18 boarding schools and how that relates to  
19 community?

20           MS. KLASS: It's important to note that  
21 the Proposed Rule, in addition to asking for  
22 evidence of attendance at the schools, it also  
23 points out that the kids going to the schools need  
24 to be coming from the same geographic area. So  
25 it's not just attendance at the schools; it's also 44

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1 coming from an area where they can have community,  
2 same geographic area.

3 MR. ROBERTS: So it's not determinative,  
4 it's not a, "You show that your students went to a  
5 boarding school, therefore it satisfies criterion  
6 (b)." That's not how it's written. It's just  
7 evidence that we can look at.

8 TERRI HENRY: And I just want to kind of  
9 further discuss that. My name is Terri Henry,  
10 Eastern Band of Cherokee. That one, to me, is  
11 problematic simply because of the fact that we  
12 know that, for instance, our -- the group that we  
13 have consistently been fighting against in North  
14 Carolina has been the Lumbees. And we know that a  
15 substantial group that went to the Indian boarding  
16 schools, in fact, they were at ABCAI a couple  
17 years ago, Larry, if you recall, there was a whole  
18 effort to have that whole process recognized, and  
19 they went to Haskell, things like that. And so we  
20 have -- it's problematic for us because when you  
21 look from what we know from where we are and us  
22 existing where we've been for thousands of years,  
23 we would have known other Indians around us. And  
24 so I appreciate your comments on the notice part,  
25 because I think that's going to be a critical

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1 factor. But when you look at Indian diplomacy  
2 prior to contact, we would have known every Indian  
3 in our area, right, and we would have known the  
4 Indians far away because we rely on trading with  
5 them, we might have went to war with them, we  
6 might have done who knows what with them, hunted  
7 in the same grounds.

8           So I guess what, you know, when we're  
9 thinking about the Lumbees for instance, and I'm  
10 just going to say it because that's who our --  
11 this fight is with historically, is that we also  
12 know that they pulled the Tuscaroras in.

13           Now, the Tuscaroras were actually in the  
14 Piedmont section of North Carolina, and the  
15 Tuscarora Nation picked itself up and went to New  
16 York, and whoever was left there has now been  
17 subsumed into this Lumbee group. And so I don't  
18 think that, you know, perhaps the -- I don't think  
19 that the Tuscaroras probably comprise 80 percent  
20 of that Lumbee roll. But I -- but I also don't  
21 think that, you know, to me, that would be an  
22 upsidedown equation. And so, you know, whether or  
23 not the Tuscaroras, and I don't know this history  
24 myself, but whether or not the Tuscaroras, who  
25 remained, did as we did after their removal. We

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1 kept ourselves in a governance, political unit of  
2 governance, and in fact, had come together to  
3 create a constitution in the late 1800s after the  
4 removal, after the soldiers had left, and have  
5 maintained ourselves as a political entity.

6 I don't know what they did over there,  
7 but certainly, they have been subsumed into this  
8 other roll that I understand they can now -- they  
9 can now not separate themselves from.

10 And so you know, it really, I think,  
11 makes it problematic, makes this 80 percent and  
12 this boarding school thing, it makes it really  
13 problematic. Because maybe they were Tuscaroras  
14 who went to the boarding schools, but then they  
15 get counted as Lumbee. So you know, to me that's  
16 problematic to consider that as evidence.

17 MR. ROBERTS: Okay.

18 KAREN KETCHER: Karen Ketcher, Cherokee  
19 Nation. I just need clarification on Katie's  
20 statement that if they attended a boarding school,  
21 they lived within the community, that didn't mean  
22 that they were -- that they had to be Indian  
23 living in the community; is that what you're  
24 saying? That they just had to live in the  
25 community?

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1           MR. ROBERTS: So I guess these are  
2 getting a little bit conflated. We're still -- I  
3 mean, we're not interested in recognizing groups  
4 that aren't Indian.

5           KAREN KETCHER: Yeah, and I understand  
6 that. But the statement that she made was that as  
7 long as they lived in the community and attended  
8 that boarding school. You know, I know in  
9 Oklahoma there were missionaries, there were  
10 Indian agents, there were various other people  
11 that lived in the community with the Indian people  
12 that their children attended the boarding school  
13 but they were not Indian. So are you saying those  
14 people are going to be able to --

15           MR. ROBERTS: No, we're not saying that.

16           KAREN KETCHER: No? So in other words,  
17 they do need -- they do need to be Indian?

18           MR. ROBERTS: Yes.

19           KAREN KETCHER: Because I know a judgment  
20 was awarded to one of the tribes in Oklahoma  
21 simply because the government paid for those  
22 non-Indian children to go to the boarding schools.

23           MR. ROBERTS: Right. No, they have to be  
24 Indian.

25           KAREN KETCHER: So they do have to be

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1 Indian?

2 MR. ROBERTS: Right.

3 KAREN KETCHER: They have to live in the  
4 community, but they also have to be Indian?

5 MR. ROBERTS: Right. So going back to  
6 the PowerPoint -- is everyone okay with moving on?

7 Okay, in terms of previous Federal  
8 acknowledgment, we're not trying to -- the intent  
9 here is not to make any substantive change to  
10 previous Federal acknowledgment. Our intent here  
11 is to make it clear as to how we've actually been  
12 applying it. So we'd request your comments on  
13 this if you see it alternately, but the intent is  
14 not to make any substantive change with that.

15 Same thing with burden of proof; we're  
16 not changing the burden of proof. It has always  
17 been "reasonable likelihood." We're trying to  
18 clarify that based on Supreme Court cases. And so  
19 if for whatever reason you think that's a change  
20 from -- how we put it is changing it substantively  
21 in some way, shape, or form, we need to know that  
22 as well, because we're not proposing a substantive  
23 change to the burden of proof. We're not  
24 proposing to change that.

25 In terms of re-petitioning, so it's a

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1 multi-step process. It's not an "Open the flood  
2 gates and everyone gets to re-petition" if this  
3 rule goes into effect.

4           So here's how it works -- how it's  
5 proposed to work, is that we've had roughly 30  
6 groups that have been denied through the Federal  
7 acknowledgment process, and before they can be  
8 reconsidered, they have to show a few things. One  
9 is, if a third party had litigated against that  
10 group, either administratively or in court,  
11 federal court, and prevailed, then before they  
12 could even take the next step of the process, they  
13 would have to get the consent of that third party  
14 that won in litigation. So it is respecting the  
15 rights of third parties that prevailed in  
16 litigation either administratively or in federal  
17 court.

18           Let's say you have a petitioner that was  
19 denied and there were no third parties that  
20 litigated and prevailed against them. It's still  
21 not an open door free-for-all. We have a couple  
22 of steps here process. And so what that  
23 petitioner would need to do is, they would need to  
24 go to the Office of Hearings and Appeals before a  
25 judge, and they would need to show that either a

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1 change between the existing regulations or  
2 whatever the new regulations are, that that  
3 warrants reconsideration, or they would have to  
4 show that the Department misapplied the burden of  
5 proof in the earlier decision that warrants  
6 reconsideration.

7           If they make this showing before a  
8 hearing judge on one of these two things and the  
9 hearing judge agrees, what that means is that that  
10 group can then restart the entire process. And  
11 all the process that we're going to talk about, in  
12 other words, all that -- they basically start from  
13 the beginning. So that's how it's framed.

14           So for example, and I'll give this  
15 example to folks. We proposed 1934 in (b) and  
16 (c), for example, okay. We've just said that all  
17 of the groups that have been denied have failed  
18 both post -- pre-1934 and post-1934. So just  
19 because we're looking at 1934 forward in and of  
20 itself wouldn't be a basis for reconsideration  
21 because they've already failed post-1934.

22           So the '34 date isn't a substantive  
23 change. It's all of those groups that have failed  
24 both pre- and post-1934. So they would have to  
25 show either that there was a substantive change in

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1 the other parts of the criteria other than the  
2 1934 date to the court that would say this  
3 warrants reconsideration, or they would have to  
4 show that the wrong burden of proof was applied.  
5 That's the proposal. We need comments on it.

6 Again, sort of the civil procedure  
7 process, how those hearings would be run, the  
8 Office of Hearings and Appeals has issued a  
9 Proposed Rule on that.

10 In terms of notice, I talked a little bit  
11 about it. We're going to talk a little bit more  
12 about how we're trying to expand notice.

13 TERRI HENRY: Mr. Roberts?

14 MR. ROBERTS: Yeah, sure.

15 TERRI HENRY: I just want to ask. You  
16 gave, in the previous light you gave two  
17 scenarios. One was that if the petitioner lost  
18 the case, the third party would have something to  
19 say; and the other one was that if there was no  
20 case at all. What if the petitioner in the court  
21 case wins? What's the scenario for that? Does  
22 the third party still have to have the right to  
23 speak to that enroll -- that acknowledgment?

24 MR. ROBERTS: So I think if the third  
25 party won -- or if the petitioner won?

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1           TERRI HENRY: Yeah, if the petitioner  
2 won.

3           MR. ROBERTS: They would be recognized  
4 already, so they're not --

5           TERRI HENRY: Okay. I just wanted to  
6 clarify because you gave the two scenarios, and I  
7 just wanted to make sure.

8           MR. ROBERTS: Yeah. I mean, they would  
9 be one of the 17 tribes that would be recognized  
10 for the processes if they won in court.

11          TERRI HENRY: Okay.

12          MR. ROBERTS: So in terms of notice,  
13 we're still proposing to acknowledge receipt of  
14 the application within 30 days. Within 60 days  
15 we're going to publish notice in the Federal  
16 Register, and we're going to post the material  
17 that we can post under federal law on the website.  
18 We're going to continue to notify the governor and  
19 the attorney general in the state, we're going to  
20 continue to notify any other recognized tribe and  
21 any petitioner that appears to have historical or  
22 present relationship with the petitioner or may  
23 otherwise have a potential interest in the  
24 acknowledgment determination. We're going to  
25 continue to do that. That's what we do now.

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1 We're not proposing any change in that.

2 But over and above that, what we're  
3 proposing is now we're going to notify any other  
4 federally recognized tribe within the state,  
5 whether they meet this or not, the thing I just  
6 talked about, that last bullet. We're going to  
7 notify all tribes in the state and we're going to  
8 notify all tribes within the -- federally  
9 recognized tribes within a 25-mile radius of where  
10 that petitioner is located, in case it's something  
11 where it crosses a state boundary.

12 So for example, let's say there was a  
13 petitioner in Wyoming and, you know, there might  
14 be tribes in Montana that are relatively close by  
15 that would want notice of that. So that's what we  
16 propose, is to provide them notice as well if  
17 they're within a 25-mile radius.

18 The next slide just sort of talks about  
19 all of the different notice we're going to provide  
20 in terms of the time frames when we begin review,  
21 when we issue Proposed Finding, when we grant time  
22 extension, when the Secretary begins to review the  
23 decision, when we issue Final Determination. So  
24 all of those different -- those are basically  
25 steps in the process of where we're proposing to

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1 provide notification.

2           So comments are due next Friday. We, as  
3 I said to start things off, we've heard a lot of  
4 requests for the extension of the deadline. As  
5 soon as I know something about that, I will let  
6 folks know. If it happens today, I'll let them  
7 know either while we're sitting here today or this  
8 afternoon. Otherwise, I know we're trying to make  
9 a decision as soon as possible, so I would --  
10 we're going to try to provide notice, probably  
11 issue a press release, we'll probably issue a  
12 Federal Register notice letting everybody know  
13 sort of how we're proceeding, and so we'll get  
14 that information out as soon as we can.

15           Comments on the Office of Hearings and  
16 Appeals' proposal is due August 18th. You can  
17 e-mail comments to [consultation@bia.gov](mailto:consultation@bia.gov).

18           And then sort of the next steps of the  
19 process is, we'll reconvene our team at the  
20 Department from the Solicitor's Office, from the  
21 Office of Federal Acknowledgment, from the  
22 Assistant Secretary's Office. That team will  
23 review all of the comments. The Proposed Rule's  
24 going to change. It's not going to look like it  
25 looks now. It's a Proposed Rule. We need all of

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1 the comments. We're going to take into account  
2 those comments, and then we're going to move  
3 forward with the Final Rule.

4 So that's sort of -- you know, timelines,  
5 it all depends on the extent and nature of the  
6 comments we receive.

7 So open up for questions or statements?  
8 I know we've been taking questions as we've been  
9 going through, but I'm happy to --

10 TERRI HENRY: I'm going to go ahead and  
11 make a statement.

12 MR. ROBERTS: Okay.

13 TERRI HENRY: So I think Eastern Band has  
14 been on the record for every single consultation,  
15 and we know there's one more and we'll be on the  
16 record for that one as well. You know, we have --  
17 we are Eastern Band of Cherokee Indians. We're  
18 located in western North Carolina where we have  
19 nearly 15,000 tribal members. We've lived -- and  
20 we've lived there since the time ending the war.  
21 We have a living language, a culture, a history  
22 and ways that have survived wars, treaty making,  
23 the removal period, allotment, and other  
24 Federal -- the actions that tried to eradicate our  
25 government and turn our Cherokee people into

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1 non-Indians.

2           We have struggled and fought, and many of  
3 our people have died to preserve our separate  
4 identity as Cherokees. We hold our separate  
5 Cherokee language and culture to be sacred, and  
6 our people are still willing to fight to preserve  
7 it, and that's why we're here.

8           We know that there are a lot of people  
9 who claim to be Cherokee. We know that in the  
10 southeast, our experience is that that there's  
11 over a hundred groups out there claiming to be  
12 Cherokees in some way or another. This is one of  
13 our biggest battles, is to try to address that and  
14 deal with that in a way that, you know, makes some  
15 sense to us. We also know that history has  
16 played -- history of the United States, in  
17 particular the removal period, has played against  
18 us in this battle, and that's why we struggle. We  
19 spend a lot of resources on trying to address  
20 these issues within the southeast. We've got  
21 states in, like, Georgia, even North Carolina  
22 where we're from, but also Tennessee, Alabama,  
23 various places that recognize state -- that state  
24 recognized groups of Cherokee people calling  
25 themselves Cherokees. We have problems with that. 57

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1 There are three Cherokee tribes. And in my  
2 opinion, if any one -- if you're a Cherokee and  
3 you can prove yourself, it's kind of to the point  
4 that Ms. Ketcher was making, you can connect to  
5 one of those three tribes. That's what, in my  
6 opinion, folks should do.

7 We believe that these proposed  
8 regulations really water down what the intent of  
9 Federal recognition is. Even though I heard you  
10 say you're not trying to do that, but it's very  
11 problematic for us, and the reason is, because  
12 we've had this -- we've been engaged in this  
13 battle for many years, and so the fact that  
14 petitioning groups -- you know, I like what I hear  
15 on your presentation that they have to demonstrate  
16 a continuous history. What I don't like is these  
17 bright lines of time, the time frames, the dates  
18 that are drawn. Because we believe that a  
19 historical tribe is a historical tribe. And there  
20 are -- this is America. There are no new tribes  
21 out there, you know. And so we feel that if you  
22 are in a historical tribe at the founding of this  
23 nation, and even prior to that, because many  
24 tribes had relations with the monarchs of Europe;  
25 you know, in the northeast it was the English, the 58

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1 Brits; and in the south in the Louisiana/Texas  
2 area would have been either the French or it would  
3 have been the Spanish; and so in the northwest, it  
4 gets, you know, a little -- maybe the fringe on  
5 the northern side because of Canada.

6 But anyway, we feel that, you know, there  
7 should be no new tribes. There should be no new  
8 tribal people out there. Everybody should be  
9 accounted for by now.

10 The piece -- Vice Chairman Taylor had  
11 discussed the piece about the brief narrative. We  
12 find that very problematic for the obvious  
13 reasons. The Cherokees, we have -- we feel like  
14 we have a pretty substantial footprint on the  
15 history of America. Whether you like the Marshall  
16 Trilogy or not as a foundation of the Federal  
17 Indian Law, it is what it is. Our tribe, the  
18 Cherokees, were arguing at a disadvantage, in my  
19 opinion, at the time arguing in a foreign court  
20 for its existence, for its right to be where it  
21 was, and we still lost.

22 So when the Cherokee Nation was removed,  
23 for us Eastern Band, we stayed where we were. We  
24 stayed in our ancestral territory because that was  
25 important to us, and we kept ourselves politically 59

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1 organized as a government in that area, and we can  
2 demonstrate that. I don't think anybody would  
3 question us on that.

4           And as I was stating earlier, tribes --  
5 historically, we would have known who our  
6 neighbors were. You know, we knew the Creeks, we  
7 traded with them; we knew the Choctaw, we traded  
8 with them, we fought with them, you know all of  
9 these things that were recognizing each other's  
10 existence, we did with all of those groups even in  
11 the north.

12           We have -- we are considered an Iroquoian  
13 language, which means that we have relations with  
14 our brothers and sisters in the north with the six  
15 nations, and so we knew who these people were, and  
16 they knew who we were.

17           I think what our primary concerns are  
18 that, you know, as I stated, we know -- I heard --  
19 I hear you when you say you're not out to try to  
20 recognize splinter groups, and we are trying to  
21 prevent that as well; that's our goal, --

22           MR. ROBERTS: Okay.

23           TERRI HENRY: -- for those reasons. And  
24 so the piece -- the piece about the final decision  
25 about the Department will be more political and

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1 less merit based, I think we want to be very clear  
2 that the decisions by the Department should be  
3 made on merit and not on politics. We feel like  
4 that ten-page or, you know, the brief narrative,  
5 to me, to us, it kind of lends itself to somebody  
6 making a political decision. Congress would be  
7 picking up the phone or somebody picking up the  
8 phone and calling saying -- putting pressure on a  
9 political appointee. And that's -- we don't --  
10 we're not going to support that.

11 MR. ROBERTS: Okay.

12 TERRI HENRY: Did you have a comment?

13 Because I --

14 MR. ROBERTS: I just want to clarify, and  
15 maybe I misspoke at our earlier tribal  
16 consultation, but I'm trying to say, you know, I  
17 thought I said, you know, more than ten pages with  
18 evidence. I mean, that's what's in the Proposed  
19 Rule. It's with evidence. So we also hear you  
20 and recognize that that criteria needs to be  
21 firmed up, it needs to be clarified, and needs to  
22 be -- you know, I don't -- none of us, Kevin  
23 Washburn, myself, we're not interested in  
24 recognizing illegitimate tribes. We agree it  
25 should be hard, it should be rigorous, we should

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1 have high standards, but it shouldn't take decades  
2 and millions of dollars to do that.

3           TERRI HENRY: And we agree with that as  
4 well. So once it's turned in, it's the bureau's  
5 process so we don't really know, we're not part of  
6 that process, but we agree we feel like it should  
7 be all of those things and all of the goals that  
8 you are trying to achieve.

9           I do have a couple comments. I made some  
10 notes on your PowerPoint. State reservation. In  
11 most places those are going to be like state  
12 parks, I think, but I would be very cautious about  
13 that. For one thing, I personally believe that a  
14 state does not have the authority constitutionally  
15 to recognize a tribe, that only the Federal  
16 Government has that. And for a state to be  
17 recognizing a tribe in any state, I don't care  
18 where it's at, I feel like is a violation of the  
19 Constitution. So a state reservation, to me, by  
20 extension is to me -- because states have such  
21 varying criteria or lack of criteria, you know,  
22 it's all based on political -- on the political  
23 constituency.

24           So let me give you an example. At the  
25 end of June, the state of Tennessee issued an

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1 apology to Indian people. I went to it to  
2 witness. I found out about it 12 hours before it  
3 was supposed to happen. So I got, literally at  
4 7 o'clock in the morning, got in the car and drove  
5 to Nashville. So I wasn't on the list of  
6 dignitaries to be present. But so I sat up in the  
7 balcony and watched. And without having a better  
8 way to say it, I was embarrassed because I felt  
9 like it was a circus. And they -- you know, there  
10 was a lot of folks sitting down there with regalia  
11 on, feathers, I mean, the whole shebang. You've  
12 seen them; you know what I'm talking about. And,  
13 you know, the legislators, the senators, the state  
14 legislators who were actually there sponsoring the  
15 bills, talking about how wonderful a day this was,  
16 well, yeah, but it was a very solemn day as well.

17           And so the way that it went, everybody  
18 was really happy and, you know, kind of, you know,  
19 whatever. It just really struck me as a circus.  
20 And to me, the state of Tennessee, Councilman  
21 Shell had gone to Tennessee and actually fought  
22 groups that claimed to be Cherokee, so he knows  
23 that state house better than I do, but I felt like  
24 it was just an opportunity for that state to open  
25 the door and start doing state recognition.

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1           When I listened to the comments of those  
2 state legislators talking to their constituents  
3 who were in the audience who had pushed for this,  
4 it really made me think, "My God, here we go  
5 again. We're going to have another battle in  
6 another state. This is going to cost us more --  
7 continue to cost us money and resources that we  
8 would otherwise like to devote to our people who  
9 have diabetic and denture needs, healthcare needs,  
10 roads," and things that the Bureau, that we talked  
11 about in the Bureau yesterday, right, okay.

12           So I just wanted to make a comment about  
13 that on the record, because I was very -- it  
14 disturbed me.

15           MR. ROBERTS: Yeah.

16           TERRI HENRY: Okay. And I know you can't  
17 control that, but I just wanted to share that with  
18 you as something that I witnessed.

19           The piece about the 1934, I understand  
20 that you're looking at that because that's when  
21 the Congress, as you stated, that's when Congress  
22 recognized -- took to take advantage of  
23 recognizing Indians, taking us out of the  
24 Department of War, and bringing us over into a  
25 more civilized way of being. That's a diplomatic

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1 thing. I think that that was a matter of  
2 diplomacy. That's why government-to-government is  
3 about diplomacy.

4 When you look at the way the United  
5 States is dealing with President Putin and Russia  
6 in the current crisis that we've got going on  
7 right now, those are diplomatic things that happen  
8 in the world, and we are no different than that as  
9 governments-to-tribes, but we are just within the  
10 contiguous boundaries of the United States. So we  
11 look at those as diplomatic exchanges, and that's  
12 what this is today, and we appreciate that.

13 Let's see here. I appreciate the  
14 comments that you guys -- that you're going to  
15 expand the notice, because we would certainly like  
16 to be noticed on any groups claiming to be  
17 Cherokee regardless of what state they're in,  
18 because we know that there's Cherokees everywhere,  
19 and --

20 MR. ROBERTS: And that should be  
21 happening now. So for whatever reason the Eastern  
22 Band isn't getting that notice, which I think you  
23 all are, that should be happening now.

24 TERRI HENRY: Okay. Let's see here. And  
25 again, you know, we've talked -- you've heard our

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1 comments about this brief narrative. You know,  
2 you've made the comments about that, so I'm just  
3 walking through the list of things here on these  
4 pages.

5 Let's see here. Talked about -- oh, when  
6 I was talking about the Lumbee roll and  
7 Tuscaroras, I also wanted to highlight, bring to  
8 your attention, if you aren't already aware of it,  
9 in Minnesota around 1997, '8 or '9, there was a  
10 case that was litigated. I believe it went to the  
11 Supreme Court, talking about Indian kids in  
12 boarding schools and the non-Natives that went to  
13 that boarding school as well. And so it had to do  
14 with that tribe getting resources, their resources  
15 restored for their education monies. So I would  
16 ask you to just make a note of that and take a  
17 look at that. I can't recall if that was just a  
18 State Minnesota Supreme Court case or a United  
19 States Supreme Court case.

20 MR. ROBERTS: So we're not familiar with  
21 that. Maybe the other folks on our team are, but  
22 if that's something that -- if you make sure it's  
23 in the written comments so that we have it, that  
24 would be great.

25 TERRI HENRY: And my point about that is

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1 that -- as best I can recall, that case, what that  
2 case was talking about, was that the state -- the  
3 government set up a school -- gave the tribe money  
4 for the school but the tribe allowed the  
5 non-Indians, the people in the area, to send their  
6 kids to that school as well, and I just don't want  
7 that to get confused about the boarding school  
8 issue, and that's really what that -- I'm trying  
9 to make a point of that.

10 MR. ROBERTS: Gotcha.

11 TERRI HENRY: Okay. Let's see here.

12 Will you be putting a website up that would be  
13 able -- for the transparency part of this so we  
14 can see where we stood on -- where any petitioner  
15 stood on any -- in the process?

16 MR. ROBERTS: So we've talked about that.  
17 I think that that is definitely a -- it's not in  
18 our Proposed Rule, right, but we need comments on  
19 that. Some of the things that the group has  
20 thought about, and I think actually give some  
21 credit to Liz is -- actually, Liz deserves  
22 probably 95 percent of the credit in terms of this  
23 whole process here; she's keeping the trains on  
24 track and that sort of thing. But one of the  
25 things she was talking about is, you know, could

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1 you have any -- or we were talking about is, could  
2 you have something like a, when you go to the  
3 airport and you see sort of a status of your  
4 flights, like, where are they, the process, could  
5 we have a website like that that basically shows  
6 the status of where they are in the process.

7           TERRI HENRY: Right. And then the last  
8 comment is that we know that Congresswoman  
9 McCollum and Congressman Cole has made a request  
10 to the Agency for an extension of time and more  
11 locations, and I wanted to ask you guys, why did  
12 you flip the time on this meeting here?

13           MR. ROBERTS: Because we had the Tribal  
14 Budget Advisory Committee here, and so we wanted,  
15 if there were any tribal leaders that were staying  
16 over from that advisory committee, you know, that  
17 needed to go home maybe in the afternoon, it would  
18 be easy for them to attend the morning session.

19           TERRI HENRY: I was just wondering if  
20 folks might have -- because everyplace else it was  
21 not the federally recognized tribes first but the  
22 state groups, and so I just wondered if that might  
23 have messed people up.

24           MR. ROBERTS: No, it was to accommodate  
25 those folks who had already traveled and could

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1 leave earlier.

2           TERRI HENRY: Okay. Well, I just wanted  
3 to say that our, you know, like we stated already,  
4 that our footprint, our Cherokee footprint, is  
5 preceded on the landscape of America, and we have  
6 a very vested interest in what you all do because  
7 we have so many groups that are claiming to be  
8 Cherokee. And then, of course, we have our  
9 friends in the east, the Lumbees, that call  
10 themselves Cherokee for many years, and we have,  
11 you know, fought them as well.

12           And so I'm going to step down and ask any  
13 of my council members if they have any additional  
14 comments that they'd like to make?

15           DENNIS TAYLOR: Dennis Taylor, Vice  
16 Chairman, Eastern Band of Cherokee Indians.

17           Chairwoman Henry pretty much covered  
18 everything, as she usually does, so I'm going to  
19 keep my comments brief.

20           Again, thank you for your time. You  
21 know, our main concern in this whole proposed new  
22 rule is lowering these standards for Federal  
23 acknowledgment and become a federally acknowledged  
24 tribal government. The Tribe of the Eastern Band  
25 has always supported an expedited, transparent,

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1 and efficient process. I think we've done it by  
2 resolutions of tribal council, we've sent letters  
3 to the Bureau of Indians affairs, Department of  
4 Interior. We just -- we do not want to have the  
5 standards lowered. As she said, on a day-to-day  
6 basis, whether it's back home or we're traveling  
7 around the country, you know, every day we hear  
8 "I'm Cherokee. My great grandmother was Cherokee,  
9 Indian princess."

10           You can go Online right now, and there's  
11 probably 30-plus groups, close to 40, claiming to  
12 be Cherokee today. You know, as the chairwoman  
13 said, we do have the living language, culture, and  
14 history, and we feel it to be sacred to our  
15 people. Our forefathers, our elders have fought  
16 and died over our identity, which is our culture  
17 and history and our language.

18           And we feel like if the standards are  
19 lowered and these petitioners, these other groups,  
20 these 30 other groups can claim to be Cherokee,  
21 once they're recognized, they may take our culture  
22 and steal it, water it down, or destroy it, you  
23 know, and that is our main concern.

24           You know, going around the country in the  
25 last six years, I've always heard "The

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1 acknowledgment process is too long, too  
2 cumbersome, and not fair." But my question is, is  
3 it fair to us? We've been recognized since 1962.  
4 Is it fair to the other 500-plus tribes around the  
5 country that had to go through the same process?  
6 I don't think so. All we're asking for is to not  
7 lower the standards, and that's basically it.  
8 Again, thank you for your time.

9 MR. ROBERTS: Thank you.

10 TERRI HENRY: Thank you.

11 MR. ROBERTS: Anyone else that wants to  
12 make comments?

13 KAREN KETCHER: Karen Ketcher, Cherokee  
14 Nation of Oklahoma. The Cherokee Nation echos  
15 those concerns that the Eastern Band echoed. We  
16 do have written comments; we will be submitting  
17 those. We will also submit our recommendations as  
18 to the criteria that's needed for the historical  
19 information that's needed pre-1900. We will --  
20 we'll try to submit anything that's needed to  
21 justify our position that we do not believe the  
22 standards need to be lowered.

23 MR. ROBERTS: Okay. Is there anyone  
24 else?

25 PERRY SHELL: I'll be quick. Perry

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## Tribal Consultation

1 Shell, Tribal Council, Eastern Band of Cherokee  
2 Indians. I appreciate you all doing this and  
3 understand why you're doing it, and I've said this  
4 before, but I'm going to say it again. You know,  
5 the pre-1900 history, the Federal Government,  
6 General Winfield Scott, Andrew Jackson, they had  
7 no trouble recognizing the Cherokee, the Choctaw,  
8 the Creek, the Chickasaw, the Seminole, and the  
9 others when it was the policy of the nation to  
10 move all the Indians east of the Mississippi west  
11 of the Mississippi, take our land, take everything  
12 we had for themselves. So they had no trouble  
13 recognizing us, you know.

14 How you can overlook the amount of people  
15 that are petitioning now for recognition,  
16 especially the tribe as big as 55,000 or more, I  
17 don't see how they were a tribe then. And they --  
18 you know, we say 1900, but you'll find no mention  
19 of them in 1900 by the name they go by now from  
20 that group, and others as well.

21 You know, if you want to find them, you  
22 can go to the Library of Congress and you'll find  
23 our tribes there all over the place. That's why I  
24 say it's so important to verify whatever evidence  
25 is given. Verify it, see if it is actually

## Tribal Consultation

1 factual, go into the records. We have to a  
2 certain extent, and you will find that there are a  
3 lot of contradictions to what was said.

4 Anyway, we'll give our written response  
5 to a lot of this to our position of this at a  
6 later time. Thank you for your time.

7 MR. ROBERTS: Thank you.

8 MS. KLASS: I just want to highlight,  
9 under the Proposed Rule, OFA is still permitted to  
10 go ahead and do additional research beyond what's  
11 given to them by a petitioner.

12 MR. ROBERTS: Anyone else want to make  
13 comments? I think otherwise, we're going to close  
14 this session and -- okay. Just state your name  
15 and affiliation for the record.

16 MELISSA HOLDS THE ENEMY: Okay. Melissa  
17 Holds The Enemy. I am the managing attorney for  
18 the Crow Tribe, and I actually just dropped in per  
19 the direction by our tribal chairman. Being that  
20 our reservation is just right outside of Billings,  
21 about a 45-minute drive, he asked me to drop in  
22 and just kind of, you know, see and listen in and  
23 report back to our tribal leaders. So I just  
24 wanted to thank each and every one of you for  
25 being here and, you know, listening and kind of

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## Tribal Consultation

1 gaining some insight as to what this is all about.

2 And thank you for being here.

3           MR. ROBERTS: Okay. Well, if there are  
4 no objections, we'll end this tribal consultation,  
5 and I appreciate you all joining us here this  
6 morning, and see you this afternoon.

7           [TRIBAL CONSULTATION CONCLUDED AT 10:09 A.M.]

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