

1 U.S. DEPARTMENT OF THE INTERIOR  
2 FEDERAL CONSULTATION WITH TRIBES REGARDING INDIAN  
3 TRADER STATUTES  
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7 TRANSCRIPT OF HEARING PROCEEDINGS  
8 Tuesday, March 7, 2017  
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11 PURSUANT TO PUBLIC NOTICE, this matter came  
12 on for hearing on the 7th day of March, 2017, at the  
13 hour of 8:50 a.m., at the Northern Hotel in Billings,  
14 Montana, before the Departments of the Interior.  
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1 PROCEEDINGS

2 (Hearing proceedings commenced at  
3 8:50 a.m., March 7, 2017.)

4 MR. BLACK: Good morning. I'm Mike Black,  
5 acting assistant secretary for Indian Affairs.

6 MS. KRISPINSKY: And I'm Rebecca Krispinsky  
7 with the solicitor's office.

8 MS. FITZPATRICK: And I'm Tana Fitzpatrick,  
9 the counselor to the Assistant Secretary of Indian  
10 Affairs.

11 MR. BLACK: So, Tana, are you leading off  
12 with talking points?

13 Go ahead.

14 MS. FITZPATRICK: All right. So in December,  
15 the Department issued the advanced notice of proposed  
16 rulemaking on Indian trader regulations. And those are  
17 part of the handouts that are out in front. The ANPRM  
18 is a direct response to requests from tribes and tribal  
19 organizations that the Department received over the  
20 past couple of years requesting to revise the Indian  
21 trader regulations.

22 So at this point, we're at the very early  
23 stages. We haven't drafted any revisions. We wanted  
24 to hear from tribes, so we've been hosting several  
25 consultations throughout the country to see whether the

1 Department should leave the regulations as they are or  
2 if they should be amended in part. If they should be  
3 amended, what part should be amended or what part  
4 should be kept, or should the whole thing be repealed.

5 The part 140, which is the part of the  
6 regulations that talks about licensing traders, governs  
7 trade on Indian reservations. The regulations are  
8 based on lesser known Indian trader statutes which are  
9 very, very old statutes. The last time those were  
10 amended were in 1903, and that's the last time they  
11 were amended. They are even older than that.

12 The statutes are out there to protect tribes  
13 from unlawful traders on the reservation. The current  
14 regulation envisions a framework where the BIA issues  
15 licenses to anyone -- any person that wants to conduct  
16 business on an Indian reservation. And those  
17 regulations were first published in 1957. They were  
18 later revised '65 and then also in 1984.

19 There was another attempt at revision in the  
20 later '80s, but that never went anywhere. So it's been  
21 a little over 30 years since these regulations have  
22 even been attempted to be revised.

23 So what we're looking for are whether and how  
24 part 140 could be revised to modernize implementation  
25 of Indian trader statutes in a way that's consistent

1 with federal policies supporting tribal  
2 self-determination, self-governance, supporting tribal  
3 business practices, and also tribal economies  
4 throughout Indian country.

5           And at this point, we have a -- we're under a  
6 new administrator. We don't know what the specific  
7 priorities are for Indian country, but we can  
8 anticipate that they are going to align with the  
9 President's priorities for economic development.

10           The scope of the consultation -- and part of  
11 the handouts are a list of the questions that are the  
12 same questions that are in the ANPRM. And we can go  
13 through those questions today or turn it over to you  
14 guys, whatever comments you might have. But those --  
15 briefly, those questions address whether, again, part  
16 140 should be revised in full or in part and why, what  
17 the federal involvement should be in business practices  
18 occurring in Indian country, how to make sure traders  
19 in Indian country are reputable and accountable, and  
20 what type of trade and who should be regulated.

21           The Department is also interested in learning  
22 how tribes currently conduct business and regulate  
23 trade within their jurisdiction and how any revisions  
24 to part 140 could promote economic viability in Indian  
25 country and also address taxation issues.

1           So the comment period is open until  
2 April 10th of this year. And I think we have your  
3 names, but for the court reporter, it's always helpful  
4 to address -- to say your name for any comments you  
5 might say. And that's it.

6           Did you have any comments?

7           MS. KRISPINSKY: No, I don't think so.

8           Yeah, I don't know -- we could walk through  
9 each of the questions if that's helpful. I don't know  
10 if you all have anything already prepared in response.  
11 It's totally fine if you don't have anything prepared  
12 to respond to those questions -- okay. Then maybe it  
13 makes sense to walk through them.

14           But, yeah, there's the written comment  
15 period. And then I guess the only other thing we  
16 mentioned in the last session was just that, you know,  
17 we are aware of the presidential order on, basically,  
18 the two-for-one requirement. So the fact that if we're  
19 going to issue a new regulation, we'd have to repeal  
20 two regulations.

21           But at this point we have some interim  
22 guidance on how that works, and it has to be a  
23 significant rule in order for that to kick in. So I  
24 think that's the only other thing we sort of flagged in  
25 the last consultation.

1 MR. BLACK: There's some question as to  
2 whether this would be a new rule or an update to an  
3 existing one.

4 MS. KRISPINSKY: Right, since it's already on  
5 the book. So still sort of uncertain at this point,  
6 but we are aware of the requirements or looking at  
7 whatever OMP puts out on it.

8 MR. BLACK: With that, Leonard, do you have  
9 any comments? They don't have to follow in line with  
10 the questions.

11 MR. SMITH: I do have some comments. Leonard  
12 Smith, executive director of Native American  
13 Development Corporation.

14 We work with the tribes for economic  
15 sustainability basically in a number of different  
16 areas. And, you know, we know that there needs to be  
17 some updating on this and other things that would allow  
18 us to work better and more efficiently, I guess, with  
19 the tribes on their economic development of the  
20 activities that we're involved in. We're currently  
21 here on behalf of the Native American Development  
22 Corporation and also the tribes. We will be taking  
23 this information back to the Rocky Mountain Tribal  
24 Leadership Council at the next meeting. We'll be  
25 reporting on it.

1           But we'd like to help in getting the tribes  
2           in our service area. We service Montana, Wyoming,  
3           North and South Dakota. And we would like to get them  
4           ahead of the curve, I guess, basically, because we see  
5           a lot of these kinds of things coming up. But we  
6           haven't seen a lot of response from the tribes that we  
7           serve. So we're trying to figure out ways to get ahead  
8           of the curve on these kinds of things and use that to  
9           help the tribes become economically sustainable  
10          basically. So we're working on a number of different  
11          things to be able to do that.

12                 At this time, I guess we haven't -- you know,  
13                 we got this, like, three or four days ago. And so we  
14                 really haven't had a chance to really absorb  
15                 everything.

16                 Now, from a perspective of economic  
17                 development, we have a number of things we could  
18                 recommend, but we'd have to -- but we'd have to become  
19                 more familiar with the regulations here to determine  
20                 exactly how that fits in with what -- you know, what is  
21                 part of this Indian Trader Act. So I have to apologize  
22                 for that, but we don't have anything prepared in  
23                 response. But we will be responding before April 10th,  
24                 I believe it is.

25                 MR. BLACK: That would be great. Thank you.

1 well, is there anything else -- I mean, you  
2 got any questions for us, Leonard?

3 MR. SMITH: Unfortunately, I don't know  
4 enough -- like I said, I only got it three days ago, so  
5 we're trying to absorb everything. In the middle of  
6 everything else, we're going into -- I'm sure we'll be  
7 making -- we'll have some responses. We're also trying  
8 to organize an economic summit with the tribes here in  
9 May -- I think it was May, the third week in May, I  
10 believe it is -- and we'll be discussing some of these  
11 kinds of things at that meeting as well.

12 So, I guess my questions are just trying to  
13 become more familiar with the process here that's --  
14 that this is going to and try to determine how to  
15 respond to that and get some input from the tribes in  
16 our service area.

17 MR. BLACK: I guess I can take a stab at  
18 that. Basically, what we're doing right now is just  
19 more or less a notice that we're soliciting input to  
20 determine whether or not the tribes have a strong  
21 interest in amending or changing these regulations as  
22 they stand now. It's been since '57 or '59 since they  
23 were updated. I mean, these are fairly antiquated.  
24 And as you read through them, you'll see that these are  
25 very antiquated regs.

1           And is it something the tribes would be  
2 interested in us really taking a good, hard look at?  
3 And if so, exactly what areas within here would you  
4 like to see changed, or how would you like to see them  
5 changed, what things should be added in here or taken  
6 out that would help the tribes, as you say, for more  
7 economic viability?

8           MR. SMITH: I guess my response to that is,  
9 you know, we -- we're advocating for more economic  
10 development activities with the tribes. But we don't  
11 see that as a priority with the tribes. So we're  
12 trying to raise the level of priority for economic  
13 development.

14           And I guess, you know, the Native American  
15 Development Corporation feels that that is the way to  
16 help them become sustainable. Because of the cutbacks  
17 and everything else that's happening, we're going to  
18 have to work closely with probably the Bureau of Indian  
19 Affairs and Indian Health Services and other agencies  
20 that, you know, that have these kind of tools that the  
21 tribes can use for economic development. But  
22 unfortunately, we don't see much focus on that. But  
23 we'd like to bring better focus to those kinds of  
24 activities. And I think with our growing alliance with  
25 the Montana Tribal Leadership Council, we might have

1 some support for that. It's going to be a process  
2 though. But we're very interested in doing more of  
3 that.

4 we see, you know, on a weekly basis in tribal  
5 work, the regulations through the Bureau of Indian  
6 Affairs. We see lots of ways that we think economic  
7 development could become more efficient, you know. Lot  
8 of it is the timing of everything. Try to get things  
9 processed.

10 By the time we can get a response to get any  
11 kind of documentation you need, the investors have  
12 either moved away or they are no longer interested. I  
13 think, as you know, the Indian tribal sector, those  
14 kind of deals have to be made on a -- more of an  
15 expedited process. So timing is everything to them,  
16 and they are all about money, which would -- isn't  
17 necessarily a bad thing. But it's something you really  
18 got to be careful of, as you know, who those people  
19 are, how they work with the tribes, and those kinds of  
20 things.

21 So we're trying to still work those things  
22 out. I think we'll have to work more closely with the  
23 Bureau of Indian Affairs to more identify what those  
24 things could be.

25 MR. BLACK: Great.

1 MS. FITZPATRICK: I think I would  
2 encourage -- so I know you said there was going to be a  
3 economic summit in May, which is after the  
4 April 10th deadline. But the Department, even before  
5 we issued the ANPRM, received letters from NCAI and  
6 from other organizations and also the tribes requesting  
7 the revisions to the statute. And so while  
8 April 10th is the hard, fast deadline for comments  
9 received on the ANPRM, our office has received comments  
10 for a couple of years now. So I still would  
11 encourage -- if you guys do talk about this, would  
12 encourage comments.

13 MR. SMITH: And we'll facilitate that, I  
14 think, between now and April 10th. We'll facilitate  
15 some of those comments from the tribes that we're in  
16 touch with. So hopefully we'll get some input from the  
17 tribes in our area.

18 MS. KRISPINSKY: I think part of it -- I was  
19 hoping to find out a little more how tribes currently  
20 regulate trade, what their own licensing or, you know,  
21 regulatory requirements are. So to the extent any of  
22 the tribes you work with even submit something like  
23 that, just more so we have a better sense of how tribes  
24 are already -- what they are already doing to regulate  
25 it, how the federal government might be able to better

1 assist with that and have a role there.

2 MR. SMITH: We can do that.

3 MR. BLACK: Anything else?

4 MS. KRISPINSKY: I don't think so.

5 MR. BLACK: Leonard, do you got anything  
6 else?

7 MR. SMITH: No. I'm just sorry we weren't  
8 better prepared for this, but we will be in the future.

9 MR. BLACK: We're just glad we have some  
10 audience.

11 All right. I guess we can call it.

12 (Proceedings concluded at 9:04 a.m.,  
13 March 7, 2017.)

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REPORTER'S CERTIFICATE

I, Vonni R. Bray, a Certified Realtime Reporter, certify that the foregoing transcript, consisting of 12, is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription.

IN WITNESS WHEREOF, I have set my hand at Laurel, Montana this 17th day of March, 2017.

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