

UNITED STATES DEPARTMENT OF THE INTERIOR
INDIAN AFFAIRS

TRIBAL CONSULTATION ON PART 83 CONSULTATION
2ND SESSION

Washington, D.C.
Monday, June 6, 2022

1 PARTICIPANTS:

2 BRYAN NEWLAND
3 Assistant Secretary of Indian Affairs

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1 P R O C E E D I N G S

2 (2:03 p.m.)

3 MS. BOSZHARDT: Thank you all for your
4 patience. You have now been placed into the
5 consultation session. This is the second of two
6 virtual nationwide government-to- government
7 consultations hosted by the Department of
8 Interior, Office of the Assistant Secretary for
9 Indian Affairs, on whether it should reconsider
10 its prior decision to ban re- petitioning under 25
11 CFR Part 83, the regulations establishing the
12 process and criteria for how the Department
13 administratively acknowledges Indian Tribes.

14 This is a government-to-government
15 consultation and is closed to the press. If you
16 are a member of the press, please sign off at this
17 time.

18 The Department will also host a
19 listening session for former, present, and
20 prospective petitioners. This consultation is
21 scheduled to last two hours.

22 For optimum audio quality, please ensure

1 your microphone remains on mute unless you would
2 like to speak. Please take a moment to add your
3 title and affiliation to your name in Zoom. To do
4 this click on the participant list, find your
5 name, click on the blue "More" button next to your
6 name, and choose "Rename".

7 This session will be recorded. If you
8 do not consent to being recorded, you may
9 disconnect at this time. Closed captioning is
10 available in real time at the link in the Chat.

11 I will now turn the meeting over to the
12 Assistant Secretary for Indian Affairs Brian
13 Newland.

14 MR. NEWLAND: Thank you. (Speaks in
15 Native language.) Good afternoon, good morning to
16 those of you joining us from out West. My name is
17 Bryan Newland, the assistant secretary for Indian
18 Affairs here at the Department of the Interior,
19 and I want to thank all of you for taking time to
20 join us for our consultation today.

21 As you know, we try to start these
22 meetings off and these consultation sessions

1 appropriately, allowing for a blessing or a moment
2 to reflect and to pray. So, we don't have a
3 Tribal leader scheduled to give us a blessing
4 today, so what we will do is just take a few
5 moments right now to allow for you to reflect, to
6 pray in your own way for a good discussion, and
7 then we will come back.

8 (Moment of silence)

9 MR. NEWLAND: Thank you so much for
10 that. So, as you heard off the top, we are
11 conducting two government-to- government
12 consultations on the Department's proposed
13 rulemaking for Part 83, 25 CFR Part 83. This is
14 our second session and we will be holding a
15 listening session this coming Thursday, June 9th,
16 from 3:00 to 5:00 p.m. Eastern Time for
17 unrecognized Tribes and groups, former
18 petitioners, current petitioners, and those who
19 have an interest. And because of the unique
20 nature of the federal acknowledgement process, we
21 wanted to make sure that we were creating a
22 process that ensured we would hear from

1 stakeholders and groups of people who have an
2 interest in this process before Federally
3 Recognized Tribes.

4 Since 1994, the Department's regulations
5 at 25 CFR Part 83 have included an explicit
6 prohibition on re- petitioning for federal
7 recognition after the Department has denied or
8 disapproved a petition for acknowledgement. In a
9 2014 Notice of Proposed Rulemaking, the Department
10 proposed giving previously denied petitioners an
11 opportunity to refile or re-petition subject to
12 several conditions. However, the 2015 Final Rule
13 that revised Part 83 did not include those
14 provisions and the Department ultimately decided
15 to retain its prohibition on re-petitioning.

16 In 2020, in litigation that had been
17 filed by two previously denied petitioners, two
18 Federal District Courts in *Chinook Indian Nation*
19 *v. Bernhardt* and *Burt Lake Band of Ottawa and*
20 *Chippewa Indians v. Bernhardt* held that the
21 Department's stated reasonings for retaining this
22 prohibition as articulated in the 2015 Final Rule

1 were arbitrary and capricious under the
2 Administrative Procedure Act. Both courts
3 remanded the ban or the prohibition back to the
4 Department for further consideration.

5 The Department now seeks and proposes to
6 keep the preexisting prohibition on re-petitioning
7 in the Part 83 regulations and we're asking for
8 your input on this proposal. The new Notice of
9 Proposed Rulemaking sets forth the same rule
10 substantively as what was published in 2015, but
11 the preamble of the newly proposed Part 83 regs
12 contains a more thorough explanation of why the
13 Department is proposing to keep this prohibition
14 in place.

15 So, with that, we want to make sure we
16 open the floor up to elected leaders of Federally
17 Recognized Tribes first, designated
18 representatives of Federally Recognized Tribes
19 second, and inter-Tribal organizations and their
20 representatives. I will also ask that if you've
21 had an opportunity to speak and wish to speak
22 again, please be respectful of others on the call

1 and we will make sure that everybody has an
2 opportunity to speak once before speaking a second
3 time. And if you are a representative or a member
4 of a Tribe that is not federally recognized, we
5 would ask that you refrain or hold your comments
6 until the listening session on June 9th.

7 I would also like to make sure that I
8 emphasize that this event is a
9 government-to-government consultation. It is not
10 intended to be on the record for the press. And
11 for any reporters or journalists who have joined
12 us, we appreciate and respect your role, but ask
13 that you disconnect at this time and refer your
14 questions to the Department's Office of
15 Communications so we can continue this
16 government-to- government conversation.

17 So, if you wish to speak, please use the
18 "Raise My Hand" function. You can find that in
19 the "Reactions" button at the bottom of your
20 screen on the Zoom. For those of you joining us
21 by telephone, you can press star 9.

22 We'll hold the floor open for our first

1 Tribal leader comment.

2 I'll also note that you can submit
3 written comments regarding the Department's
4 proposed regulations at 25 CFR Part 83 to us by
5 Wednesday, July 6th, at midnight. You can email
6 those to consultation@bia.gov. Those instructions
7 are in the Chat as well.

8 I'll do a second call for Tribal leader
9 comments. I think everybody's got the Monday
10 afternoon, post-

11 Lunch blues here. I'll do a final call
12 for Tribal leader comment. If we have no
13 commenters today, we'll simply end the
14 consultation early. We're scheduled for two
15 hours. I'm happy to stay on the line as long as
16 needed. And again, for those you who may be
17 listening in from unrecognized Tribes or groups
18 that had previously petitioned, we will welcome
19 you to join us on Thursday for a listening
20 session, 3:00 to 5:00 Eastern.

21 Okay. Seeing no leaders or
22 representatives raising their hand, I will say

1 going once, going twice. I encourage you to
2 submit your comments to the Department in written
3 form. Again, the information is on your screen
4 now.

5 I want to thank those of you who have
6 joined us today, taken some time with us, and wish
7 you all well. That will conclude our consultation
8 session today. Please take care.

9 (Whereupon, at 2:14 p.m., the
10 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby
3 certify that the forgoing electronic file when
4 originally transmitted was reduced to text at my
5 direction; that said transcript is a true record
6 of the proceedings therein referenced; that I am
7 neither counsel for, related to, nor employed by
8 any of the parties to the action in which these
9 proceedings were taken; and, furthermore, that I
10 am neither a relative or employee of any attorney
11 or counsel employed by the parties hereto, nor
12 financially or otherwise interested in the outcome
13 of this action.

14

15 Carleton J. Anderson, III

16 (Signature and Seal on File)

17 Notary Public in and for the Commonwealth of
18 Virginia.

19 Commission No. 351998

20 Expires: November 30, 2024

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