

**Muckleshoot Indian Tribe's  
Remarks and Questions for Canyonville Consultation Meeting on the Proposed Revision of  
Acknowledgement Process  
July 23, 2013**

Good morning, I am Virginia Cross, Chairperson of the Muckleshoot Indian Tribe. The Muckleshoot Tribe appreciates the opportunity to consult with the Department of the Interior today on the Assistant Secretary's draft proposal to revise the regulations governing acknowledgment of groups as sovereign Indian tribes.

The Muckleshoot Tribe agrees that the acknowledgment process can be improved in the areas of timeliness, efficiency, and transparency of the decision making process. However, the problems in these areas are largely procedural in nature and can be addressed without a major revision of the regulations. Adequate staffing of the Office of Federal Acknowledgment, a reduction in the time expended by OFA staff on independent research to address gaps in research submitted by petitioners, adherence by petitioners and the Department to realistic timelines, development of new guidelines more clearly explaining the criteria for acknowledgment and the evidence necessary to satisfy those criteria, and similar measures would address most of the existing problems with the acknowledgment process.

Although a general consensus exists that procedural improvements in the acknowledgment process are needed, we are unaware of a similar consensus for changes in the existing acknowledgment criteria, which the Muckleshoot Tribe believes are appropriate and accurately reflect settled law and long standing departmental policy on the nature of tribal status. Unfortunately from the Tribe's viewpoint, the Assistant Secretary's proposal would dramatically change the existing acknowledgement criteria.

The proposal substantially lowers the threshold for acknowledgment by eliminating portions of the existing regulatory framework that limit the acknowledgment process to groups that can establish a continuous existence as functioning autonomous entities and weakening the existing criteria for acknowledgement. The proposal further lowers the acknowledgment threshold by requiring that the Department view evidence presented in support of a petition in the light most favorable to the petitioner, stripping the Department of its ability to carefully weigh conflicting evidence.

These changes would lead to the acknowledgment of voluntary groups of descendants who have not existed on a substantially continuous basis as tribal political entities, and have neither a history of self-government, nor a clear sense of identity. Groups of descendants that have been denied acknowledgment under the existing regulations, or who would be denied, would become eligible for acknowledgment under the Assistant Secretary's proposal.

The extension of tribal recognition to these groups which have not maintained a continuous existence as autonomous tribal political entities has the potential to redefine tribes as racial, rather than political entities. Moreover, because tribal sovereignty is based on the status of Indian tribes as sovereign political entities predating the establishment of the United States and

continuously existing to the present, the proposal seriously undermines the very foundation of tribal sovereignty and poses a threat to all tribes.

The Assistant Secretary's proposal appears to have been developed without input from recognized tribes, and provides little explanation for the drastic changes in the acknowledgment criteria that are proposed. Many of these changes are inconsistent with longstanding Department policy. Indeed, a number of the proposed changes in the acknowledgment criteria contained in the draft proposal have been previously considered and were expressly rejected by the Department on the ground that they would undermine the essential requirement that a petitioner demonstrate historic continuity of tribal existence.

We find the lack of a clear explanation for the Department's departure from past policies on acknowledgment very troubling. We also believe that the short consultation period scheduled in the middle of the summer and the inconvenient consultation locations chosen by the Department do not allow for the adequate consultation with Tribes on this important proposal. For example, many Northwest tribal leaders who might otherwise have attended this consultation meeting are presently participating in the annual canoe journey.

In summary, the Muckleshoot Tribe views the draft as a one sided proposal that without explanation lowers the standards for acknowledgment in a manner that threatens the sovereignty of all tribes. The Tribe believes the current proposal should be scrapped and a new proposal developed with appropriate tribal input that preserves the existing criteria and focuses on establishing a more timely, efficient, and transparent acknowledgment review process.

Given the lack of explanation provided for the major changes in the acknowledgment criteria contained in the draft proposal, we have a number of questions concerning the Department's current approach to acknowledgment and the draft proposal.

## Questions

1. It has been the longstanding view of the Department supported by well settled case law that continuity of autonomous tribal political existence is the essential requirement for acknowledgment of tribal status.

Has the Department's position changed, and does the Department now believe that it has the authority to acknowledge groups to be sovereign Indian tribes that are unable to demonstrate substantially continuous existence as autonomous tribal political entities from the time of first sustained contact to present?

If yes, could you explain the basis for that claimed authority, and explain the reason why the Department has changed its position on the need for a showing of continuous existence.

If no, what is the reason for deleting the requirement that a group has functioned as an autonomous tribal entity throughout history from §83.3(d)? And, how does the ASIA's proposal maintain the requirement that groups eligible for acknowledgment are only those that have existed on a substantially continuous basis as autonomous tribal political entities from the time of first sustained contact to the present?

2. Under existing case law and the regulations, once a historic tribe ceases to exist, the fact that some descendants of the historic tribe may band together and seek to renew tribal activity does not entitle the group to acknowledgment.

Does the ASIAs proposal, if adopted, allow a group of descendants of a historic tribe that has not maintained a substantially continuous existence to be acknowledged as a presently existing sovereign Indian tribe entitled to a government to government relationship with the United States?

3. In 1994, the Department took the position that it could not presume continuity of tribal existence and specifically rejected 1934 as a starting point for demonstration of continuity of tribal existence.

Please explain the reasons for the change in the Department's position that is reflected in the ASIA's draft proposal?

4. The proposal establishes new burden of proof mandating that evidence be viewed in the light most favorable to the petitioner (§83.6(d)), eliminating the Department's authority to weigh conflicting evidence in making a determination. What is the rationale for this change? Why should the Department be precluded from weighing the evidence presented to it?

5. Under the existing provisions of §83.7(c) the existence of persons identified as leaders of a petitioning group was not by itself evidence that the identified leaders actually exercised political influence or authority over the petitioning group. Similarly, under the modified criteria of §83.8 evidence of existence of individuals identified as leaders was insufficient to satisfy modified criteria c, instead petitioners were required to show that the leaders actually exercised

political influence or authority, and provide one other type of evidence showing the exercise of political leadership or authority.

Is it now the Department's position that the existence of individuals identified as leaders is sufficient to satisfy the requirement of criteria c that a group has maintained political authority or influence over its members in a meaningful way?

In the Northwest after 1900, descendants of historic tribes banded together to pursue historic claims against the United States. Under the proposal is the existence of individuals who are identified in the historic record to be leaders of these groups sufficient to satisfy criteria c under the proposal without a further showing that the "leaders" actually exercised political influence or authority over the group in a meaningful way?

6. How does allowing a group previously denied acknowledgment the right to reapply under the new regulations promote efficiency and timeliness in the process?

7. The proposal eliminates the requirement that a group claiming previous acknowledgment demonstrate that it is the same entity previously acknowledged. In light of this proposed change how will the Department be assured that a petitioner seeking the benefit of previous acknowledgment is in fact the group previously acknowledged?

8. The proposal authorizes a hearing at which the petitioner may present evidence and cross examine OFA staff. Will other interested parties including recognized tribes have the right to present evidence and cross examine OFA staff at any hearing authorized under the proposal?

9. The longstanding policy of the Department has been that state recognition is not dispositive of the question of federal acknowledgment. What is the rationale for making the existence of a state recognized reservation dispositive.

10. It would seem that the Department might continue to hold land in the name of a historic tribe after it ceases to exist in a manner similar to that in which it may hold title to land for an individual Indian after his or her death. What is the rationale for the expedited recognition provision for groups claiming to be a tribe in whose name the US may have at some time since 1934 held title to land? What requirements are there if any that the petitioning group demonstrate that it is in fact the same group as that for which the US held title?