



CALIFORNIA CITIES FOR SELF-RELIANCE JOINT POWERS AUTHORITY

Bell Gardens • Commerce • Compton • Gardena • Hawaiian Gardens • Inglewood

6056

August 12, 2013

Pedro Acosta
Chair, Bell Gardens

Mr. Kevin Washburn
Assistant Secretary of the Interior
Bureau of Indian Affairs
Department of the Interior
1849 C Street N.W.
Washington D.C. 20240

Tina Baca Del Rio
Member, Compton

Dear Secretary Washburn;

Eric Perrodin
Member, Compton

The California Cities for Self-Reliance Joint Powers Authority (JPA) is a coalition of local cities located in Los Angeles and Orange Counties. The JPA is chartered under California state law to represent the interests of the citizens, local businesses, and their employees in our member communities. On behalf of our JPA members, I am pleased to submit our comments on your discussion draft of proposed changes to the regulations for federally recognizing Indian tribes.

Dan Medina
Vice Chair, Inglewood

Before beginning, the JPA would like to take this opportunity to commend you for your initiative to address the important topic of recognition reform. While there are many different perspectives on what changes should be enacted, there is nearly universal agreement that reforms to the process are needed. Having been involved for the past several years as an interested party in a federal recognition petition, the JPA has gained a great deal of first-hand experiences with the strengths and weaknesses of the current system.

Victor Barban
Secretary, Hawaiian Gardens

Based on our experiences with recognition, we believe that any reforms enacted should adhere to several important principles:

Ralph L. Franklin
Treasurer, Inglewood

- **First and foremost, the current criteria for determining if a petitioner qualifies for federal recognition should not be weakened, discarded or loosened in any way.** Weakening these requirements would be unfair to currently recognized tribes who have had to meet these criteria. It also has the potential to generate unnecessary controversy over possible reconsideration of previously denied petitioners.
- **Agency deadlines to petitioners and interested parties in the recognition process should be firm and upheld strictly.** Lax deadlines and easy extensions have helped turn a recognition process designed to last months from start to finish into one which lasts decades. If a petitioner or interested party fails to do the work necessary to meet a deadline, they should not be rewarded with more time to comply. During the petitions we were involved

Rudy Bermudez
Executive Director

Jimmy L. Gutierrez
General Counsel

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with, the JPA witnessed the BIA time and again grant extension after extension to the petitioners to assemble their materials or submit required documents. If a petitioner can legitimately meet the recognition criteria it should have the information it needs to meet deadlines readily at hand, and a government sufficiently well-organized to ensure that it meets them on time.

- **Any group which has already been through the OFA process and has been denied recognition should not be allowed to reapply under these new standards.** Only an overwhelming preponderance of evidence in their existing, previously denied petition that the new standards might provide a different outcome should warrant any limited reconsideration.
- **A hard and fast deadline should be established for all potential petitioners to submit their application for federal recognition.** After this deadline, the list of petitioners eligible to seek recognition should be finalized and closed and no further petitions should be accepted. There is no reason to believe that if a group exists that could conceivably satisfy the seven criteria for recognition that it would not be aware of the need to achieve federal recognition and could not at least submit its interest and petition for doing so now. At some point, the entire process needs to be brought to a close with the realization that no further Indian tribes remain who qualify to be recognized.
- **The BIA should have an expedited denial process for petitioners who obviously do not meet one or more of criteria for federal recognition.** This would save the OFA and American taxpayer significant time and resources better spent elsewhere.
- Communications with interested parties need to be improved. Petitioners and interested parties should be required to provide copies of all written communications they make to the BIA and OFA, along with proof of service. This information must then be made readily available to the public over the Internet. These improvements in communication and public transparency would help relieve petitioners, interested parties, and the BIA/OFA from time-consuming and expensive FOIA requests, and improve the amount of information available to all petitioners and interested parties.
- The JPA recognizes that to implement these reforms, additional resources and funding will be needed by the BIA until all petitions have final determinations and the process is brought to an end. We urge the Congress and the Secretary to ensure that the necessary personnel and financial resources are available.

In keeping with the spirit of these overall principles, we would offer the following observations on the initial discussion draft that has been circulated:

- We would propose that the definition of 'interested party' be sufficiently expansive to include units of local government in the process who wish to participate. The current threshold of proving a legal or property interest can be difficult to quantify in an environment vast as the Greater Los Angeles

metropolitan area. However, given the wide range of aboriginal lands throughout our region claimed by some petitioners, it is entirely feasible that a community in Los Angeles County would be impacted by the decision to recognize a tribe from two or more counties away.

- With regards to tribal membership rolls, we would like to see a requirement put in place whereby a petitioner is not able to revise or change membership rolls after they have been submitted for evaluation. Allowing changes to be made after submission allows petitioners to 'cherry pick' their final rolls by eliminating most or all individuals whom BIA finds do not have the requisite ancestry, and otherwise gaming the system if identity issues are found by BIA.
- Requiring a documented petition rather than a letter of intent to enter the process is a sensible measure. It can be made more effective by both establishing a deadline after which no further petitions will be accepted, and by purging the current list of those who have only sent a letter of intent and taken no further action.
- In several sections of the draft, a key date of 1934 is introduced into the regulations for a petitioner to satisfy various historical requirements, rather than previous dates of 1900, 'historical times', or first contact with non-Indian peoples. While we understand that 1934 conforms to the adoption of the watershed Indian Reorganization Act, tribal history in America predates this time by centuries. The previous requirements have not proven too big an obstacle for several successful petitioners, and they should be retained.
- We agree that there should be some allowance for historical conditions which make evidence for a petitioner limited or unavailable. However the language in the draft is too broad and vulnerable to misapplication and gamesmanship. Since the most notable of these situations evolve from lack of records available due to requirements of Jim Crow laws, a sensible approach would be to both tighten the definition of when these allowances can be made and limit the scope of their application to specific geographic areas.
- For the purposes of providing sufficient evidence to demonstrate a community, a petitioner under the draft must only provide evidence to demonstrate any one of five criteria. In practice, this standard is too low and could be as limited as just having to demonstrate that petitioners have family ties to each other, which is not tantamount to being a tribe. This wording should be changed to two or more of these criteria, a threshold that any historical community would find easy to satisfy.
- The inclusion of a requirement to provide evidence of a continuous line of group leaders and a means of selection or acquiescence to their leadership is a welcome addition to the draft regulations. We once again have serious concerns about language which addresses limitations in the ability of petitioners to document that history. Any exceptions to this standard should be of extremely narrow scope and rare application.

- A long standing requirement for petitioners is that they are able to demonstrate that their membership descends from individuals who were part of a historic Indian tribe, and the standards for proving this have been long-established. We are concerned about the draft proposal containing an additional method that relies on the conclusions of historians and anthropologists drawn not from primary sources, but rather historical records created by historians and anthropologists themselves. While we believe the intent of this to be straightforward, the current language is vulnerable to fraud and manipulation. As currently written, these records could include those specifically created by the petitioner or its paid contractors solely for purposes of achieving recognition. Such records cannot be viewed as credible given the temptation of paid contractors to draw favorable conclusions for their employer. Final regulations need to clarify that the only created records that can be used are those from historical times and whose authenticity is verified.
- In the case of petitioning groups claiming previous federal acknowledgment, there must be a rigorous, fact-based process to determine that the individuals claiming to be the modern-day successors of that historical tribe are the actual descendants and not identity thieves or impostors. Strong safeguards must be put in place to ensure that under no circumstances are impostors legitimized.
- The inclusion of an expedited denial process is an extremely positive step and one which should unquestionably be included in any final rulemaking.
- Finally, we are greatly concerned about the elimination of the role of the IBIA in reviewing recognition determinations by the Secretary. The IBIA acts as an important, independent safeguard to protect the integrity of the process, and as an avenue of appeal should disputes arrive. Eliminating the role of the IBIA increases institutional risks, and results in costly litigation being the only way for petitioners or interested parties to remedy a faulty decision.

The members of the JPA, as well as the citizens we represent, greatly appreciate your time and consideration of our views on recognition reform. We look forward to working with you and the BIA as you evaluate options for making changes to the process. We would welcome the opportunity to participate further in any way possible. If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pedro Aceituno', written in a cursive style.

Pedro Aceituno
Chairman