

September 24, 2013

Office of Regulatory Affairs and Collaborative Action – Indian Affairs
1849 C Street NW
MS 4141-MIB
Washington, D.C. 20240

To Whom It May Concern:

I write this letter as a professional anthropologist and historian in support of the proposed changes to the 25 CFR Part 83 “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” I attended the field meeting in Canyonville, Oregon to learn more about the proposed changes, and, while I did not make public comment at the time, I do so now to draw attention to the benefits of these proposed regulations and some additional changes that I believe would improve final regulations.

Having worked with federally unrecognized tribal groups in California for the past fourteen years, I have witnessed personally the frustrations that tribal leaders have experienced in navigating the current process as well as the difficulties they have experienced in preparing substantive, documented petitions. The proposed changes strike an important balance: they make significant progress toward ameliorating the most onerous and unworkable criteria while at the same time providing key safeguards to insure that the Department of the Interior does not confer federal recognition in cases where such action is unwarranted.

The situation of federally unrecognized tribes in California presents a special problem for the federal recognition process. Many federally unrecognized Indian groups engaged in treaty-relations with the United States through eighteen unratified treaties concluded in 1851. Many of these treaties were signed by multiple bands—the traditional unit of political and social organization in California—rather than single tribal entities. Some bands have achieved federal recognition through a variety of legislative, administrative, and judicial means. Other signatory bands have not.

In the California case, the proposed changes to § 83.8, if enacted as written, will result in significant progress toward resolving the status of federally unrecognized signatory bands. It is my opinion that most of these tribal groups should be able to meet and satisfy scrutiny under the revised criteria of § 83.8(d), (e), (f), and (g). These tribal groups are often small in size—numbering around 200-300, but exist as distinct, political communities with significant social relationships.

Under the present language of § 83.8(d)(3), petitioners must demonstrate “[s]ufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present.” This requirement effectively means that petitioners with unambiguous prior recognition have the greater burden of demonstrating continuity from 1851 to the present, rather than 1900 to the present for ordinary petitioners. The proposed change corrects this obvious problem while also providing a realistic pathway for federal recognition for those tribal groups who already experienced unambiguous federal recognition through the treaty process.

In my experience with California unrecognized tribal groups, nearly all members hold CDIB letters from the Bureau of Indian Affairs documenting their descent from an historic band or tribe (and thereby satisfying the requirement for § 83.7(e)). In many cases, they or their ancestors have appeared on a tribal land claims judgment roll. I know personally of only one case where a member asserts tribal ancestry without a clear pathway for receiving a CDIB letter (in this case, the individual has family members

enumerated on a specially commissioned 1911 Indian Census, but the Northern California Agency will only issue a CDIB letter if an individual can prove a direct lineal connection to the 1928 California Indian Census).

There are two technical corrections that should be made in the final procedures:

First, an additional change is needed in § 83.7(b)(1)(viii). Under the existing and proposed procedures, evidence for the criterion in § 83.7(b) can be met through: “The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.”

While numerical values throughout the procedures are up for consideration, the period of 50 years in this case has not been reassessed. In my view, it should be changed because the length of the evaluated period is decreasing from 113 years to 79 years. At present, 50 years over the last 113 years since 1900, represents 44% of the period. Under the proposed change, 50 years over the last 79 years since 1934, represents 63% of the period. Very few, if any, federally unrecognized tribal groups have maintained a named, collective Indian identity for 50 years of the last 79 years.

A better standard would be to request that petitioners demonstrate the persistence of a named, collective Indian identity continuously over a period of more than 35 years. Thirty five years is the equivalent of 44% of the period from 1934 to 2013, thus keeping parity with the existing standard.

There are several key advantages to a 35 year period. I am aware of several legitimate California Indian groups and potential petitioners who have maintained named, collective Indian entities for around 40-45 years, just outside of the 50 year mark. A 35 year standard encourages their petition at present, rather than waiting another fifteen years to achieve the 50 year standard.

Second, the addition of § 83.7(e)(1)(v) is absolutely vital to the credibility of the federal recognition process. Historians and anthropologists draw conclusions about an Indian group’s present membership based upon multiple sources of primary evidence and rigorous methodology for evaluating that evidence. This scholarship should be considered as evidence when OFA evaluates § 83.7(e) because it offers vital historical and cultural contextualization for the local social processes through which modern Indian groups have become autonomous political entities. This kind of evidence is particularly important for petitioners in California, where multiple signatory bands to the unratified treaties occasionally combine to function as single tribal entities.

The proposed changes to 25 CFR Part 83 are positive and constructive for federally unrecognized tribes. These should be published expeditiously.

Sincerely,



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