



CALIFORNIA INDIAN LEGAL SERVICES

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Dorothy Alther, Executive Director

September 25, 2013

Ms. Elizabeth Appel
Office of Regulatory Affairs &
Collaboration Action—Indian Affairs
1849 C. Street, NW
MS-4141-MIB
Washington, DC 20240

Re: Comments of Proposed Revisions to 25 C.F.R. Part 83

Dear Ms. Appel:

On behalf of my client, the Mono Lake Indian Community (Tribe), also known as “Kuzedika Band of Paiute Indians,” I am submitting the following comments on the proposed revisions to the federal recognition regulations, 25 C.F.R. Part 83. My client filed a Letter of Intent to file a petition for recognition on July 9, 1976. A very preliminary draft of the petition was submitted to the Office of Federal Acknowledgment (OFA) in January of 2011 and we received a technical assistance (TA) review letter from OFA on June 5, 2012. Since the TA letter, the Tribe has been revising its petition to address issues and concerns raised in the TA letter. In light of the now pending changes to the recognition regulations, my client has stayed any further work on its petition.

In 1992 Congress enacted the Advisory Council on California Indian Policy Act, which established a statewide Indian Council consisting of representatives from federally recognized, terminated and unacknowledged tribes. The Indian Council was directed to submit recommendations to Congress regarding remedial measures to address the special status problems in California’s for terminated and unacknowledged tribes, and the needs of California Indian relating to economic self-sufficiency, health and education. The report was finalized and submitted to Congress in 1997.

In carrying out its mandate, the Advisory Council established a Recognition Task Force to look at the issues facing terminated and unacknowledged tribes and the federal recognition process then in place. After careful research and consultation with terminated and unacknowledged tribes, the Task Force submitted a detailed report and recommendations on the recognition process. The major target of the recommendations was the flawed acknowledgment process, which failed in its evaluation of petitions for recognition to consider the unique history of California Indians, including the shifting, ill-conceived federal policies that resulted in the destruction of tribal institutions and almost total dependency of once self-sufficient tribal

entities. In its concluding paragraphs, the Recognition Report states that, in the absence of congressional action, “the current regulations must be revised to incorporate criteria that fairly address the historical and policy factors that have frustrated the efforts of California tribes to achieve federal recognition.” See ACCIP Recognition Report at 23.

My focus on the Task Force report is to remind you of these tragic and destructive historical events in the state and federal governments’ respective treatment of California Indians and to demonstrate why the federal acknowledgment process must take into account this history under any set of recognition criteria. The Task Force report walks you through: the treaty period in California, the extermination years, the allotment years, the Homeless California Indian Act period, the Indian Reorganization and California Indian Claims cases; and the termination period.

As the Report points out, any revision to the recognition process or criteria must be “responsive to the destructive political, social and economic effects native people who, even during periods of benign federal neglect, were barely surviving at the margins of California society.” Requiring a petitioning tribal group to show continuous community and political influence without interruption is deeply challenging when from 1944 to 1969 the federal policy was to terminate all tribes in California with the end result that 50% of the California tribes lost federal recognition. Since this was the official federal policy on the treatment of federally recognized tribes, it makes little sense for the federal government to insist that unacknowledged tribal groups must demonstrate that, during this same period, they maintained a distinct community and exercised political influence over their membership.

The Task Force recommendations includes some of the proposed changes to Part 83 now being considered, such as using 1934 as the starting year for all petitions. Other recommendations from the report are similar to those being proposed by the National Congress of Native American (NCAI) Task Force on Federal Acknowledgment, which my client supports and incorporates by reference in this comment letter. However, my client would also recommend that petitions from California’s unacknowledged tribes be evaluated under criteria that takes into account the unique history of California Indians. Specific comments are as follows:

1. A general comment is that the regulation is very difficult to read. There are so many cross references it becomes confusing and hard to follow. I recommend establishing a better format for the regulation to make it more user friendly.
2. Please clarify § 83.7(b)(1)(viii) which provides that the criteria can be met if the petitioning group produces evidence of “The persistence of a named, collective Indian identity continuously over a of a period of more than 50 years...” Would evidence of outside sources identifying the petitioning group as a “tribe” meet this criteria? Could the evidence that my client previously collected to meet the now deleted § 83.7(a) be used to meet (viii)?

3. Please clarify § 83.7(b)(2) and (c)(2). Is it accurate to say that if you meet one of these criteria the petitioning group will have automatically met the other? For example, if the petitioning group demonstrates a “continues line of group leaders and means of selection or acquiescence by a majority of the group’s members” under § 83.7(c)(2), will the group be deemed to have automatically meet criteria § 83.7(b)?

4. Under the Expedited Review regulation it provides that the petitioning group must demonstrate that the group has a reservation or that federal government holds land in trust for the group. We recommend that the proposed regulation be revised to allow satisfaction of this criteria if there is evidence that the members of the petitioning group have allotments. The issuance of individual allotments is strong evidence that the federal government acknowledged that the individuals were members of a tribe, which at the time of issuance was a requirement for obtaining an allotment. Also, there is strong evidence in various official reports and correspondence that, in a number of instances, the allotments were considered “in lieu of” the creation of a communal tribal land base for groups that the federal government otherwise had recognized as distinct tribal entities. In light of this, evidence that members of the group still hold allotments should be sufficient to obtain expedited review.

5. Please clarify under § 83.7(f)(2) what is meant by “It members do not maintain a bilateral political relationship with the acknowledged tribe.” Does this mean the petitioning group’s members who are enrolled in other tribes do not vote in tribal elections, hold political office in the tribe, attend general or tribal council meetings or essentially participate in tribal matters? My client has tribal members enrolled in other tribes because they need housing, land, and other BIA and IHS services, which they cannot obtain through my client due to its lack of recognition. We are optimistic that once recognized these members will disenroll in the acknowledged tribe and become exclusively enrolled with my client. We recommend some provision in the regulation to allow for such evidence and that the petitioning group would not be penalized for its members being dual enrolled during the review of its petition.

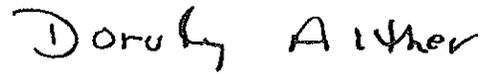
6. My we recommend addition of rebuttable presumptions to: (1) mitigate the historical effects on California’s unacknowledged tribes of repressive federal and state Indian laws and policies that sought to destroy or discourage essential aspects of tribal authority and cultural and social modes of organization and interaction; (2) extend federal acknowledgment to tribes meeting the previous federal acknowledgment standards; and (3) establish distinct community and political influence criteria that take into account the federal and state governments’ respective historical actions and policies that sought to undermine and destroy communal tribal governance and existence.

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7. Finally, we disagree with any page limit on a petition.

My client appreciates this opportunity to submit the following comments and unique history of the treatment of California tribes.

Sincerely yours,

A handwritten signature in black ink that reads "Dorothy Alther". The letters are cursive and somewhat slanted to the right.

Dorothy Alther

Enclosure