

June 30, 2014

## Comments to BIAs proposed final regulations for federal recognition

My name is Wataswan, Katherine Sebastian Dring. I am an Elder of Eastern Pequot Tribal Nation (EPTN) People of the Hawk and Turtle clans and serve on the Tribal Council. I am the daughter of Chief Hockeo, Running Deer, Roy Sebastian who is a Sachem celebrating (88) years of life. He was Chair of the tribe for 20 years and spent countless days and nights working with his brothers, Sub-Chief and Genealogist, Neese Mattux, Two Trees William Sebastian, and Ponoc, Elder Lawrence Sebastian Keeper of the Land, living on the reservation over 40 years and Beseka, Elder Donald Sebastian, an Algonquian Speaker, along with the Tribal Council, Elders, members, and professionals to gather evidence to support the Eastern Pequot petition filed in 1978. They retrieved thousands of documents from the Connecticut state archives showing hundreds of years of the historic tribal relationships with the State of Connecticut. The submission to BIA was over 60,000 pages of documentation showing the Eastern Pequot Tribal Nation as a sovereign Native American nation and their continuous occupancy and control over their reservation established in 1683, one of the oldest reservations in the country.

The tribe sought federal acknowledgment to receive federal assistance in health, education and housing. The tribe had no infrastructure to support housing with water, sewer, electricity, road improvements or health and education benefits.

Finally after 22 years and 2 presidential administrations BIA issued 2 positive determinations for the historic Eastern Pequot Tribal Nation: a preliminary positive decision in 2000 and a final positive decision in 2002. In 2003 CT and 29 towns appealed through the Interior Board of Indian Appeals (IBIA) and in 2 years overturned the Eastern Pequot Tribal Nation positive decisions.

During this time the Chief's brother and sub-chief, and many Elders passed into the spiritual world and their descendants struggled with a high incidence of diabetes and other life-threatening illnesses, inadequate housing and health assistance. The tribe continued to honor its mission to protect its sovereignty and historic reservation. Still there was no infrastructure development for housing, health, or education since EPTN federal recognition had been unjustly stripped away.

The tribe did engage in a ten year collaborative archaeological field school with the University of Massachusetts, Boston on the historic Eastern Pequot reservation established in 1683. The results included: archaeological field school training, location of ten tribal house sites dating between 1750-1850, pottery and glass from colonial markets, and recovery of valuable tribal artifacts thousands of years old. Further, this historical archaeological project provided a "study to understand the persistence of the Eastern Pequot community in the colonial world of New England over the last three centuries."

BIA issued the proposed, reform regulations in 2013. After public hearing and lobbying from the state of Connecticut to the President in 2014, BIA added to the final proposed regulations a third party veto provision against some tribes seeking to apply under the new, reform regulations. The 3<sup>rd</sup> party veto undermines BIA's intent to create an equitable and objective process for tribes.

### **Intent of Reformed Federal recognition regulations**

Since BIA's intent is to "reform a broken system" and "maintain the integrity of the process" for tribes, 3rd parties should not be given a right to veto a tribes request to apply because it is in contravention of BIA's expressly stated purpose and intent. Commendably, the reformed regulations afford great consideration to historic tribes with state reservations established since 1934 granting them expedited consideration and an exemption from the requirements of (b) and (c) to establish that they existed as a tribal community with political authority. Moreover, BIA's reformed regulations eliminate the need for tribes to demonstrate that third parties identified the petitioner as a tribe. BIA explained that "a state reservation is a formalization of "collective rights in Indian land" that the Department identified as a dispositive indicator of an Indian tribe.

The reformed regulations would make it "more transparent, promote consistent implementation and maintain the integrity of the process which was "broken" and in need of reform" because the process was "expensive, burdensome, inefficient, less than transparent and unpredictable for tribes."

### **Identification of 3<sup>rd</sup> party political interest in Connecticut**

Governor Daniel Malloy wrote in a letter to President Obama that "All of the petitioning groups have expressed interest in developing casinos and pursuing land claims if they obtain federal recognition. I need your help in incorporating our proposed changes."

To "maintain the integrity" of the federal recognition process and a standard of objectivity and fairness, a state's political position concerning gaming or land claims should not unduly interfere with a tribe's right to apply under the reformed federal recognition regulations.

National Congress of American Indians (NCAI) identified these political issues in 2003 after BIA issued a final positive federal recognition decision for the historic Eastern Pequot Tribal Nation. NCAI resolution: #ABQ-03-135 in 2003, "Title: Support for Continued Federal Recognition of the Eastern Pequot Nation

"... the State of Connecticut and other appellants appear driven not by concerns about compliance with the recognition regulations, but instead by a desire to stop the expansion of Indian gaming and prohibit future acquisition of federal trust land in Connecticut to ensure that the EPTN can never bring a claim for land against the state; and the action of the State of Connecticut in appealing the federal recognition of the EPTN is an attempt to undermine the process of federal recognition of Indian tribes and hurts all tribes."

NCAI further" urges the State of Connecticut its representatives, and its towns to recognize its legal, historical, and political relationship with those tribes within Connecticut whose tribal, social, and political structures predate the Constitution of the United States, to respect the inherent sovereignty of those tribes and to engage in good faith bargaining regarding land acquisition, gaming compacting and other issues of mutual concern and to refrain from using the Bureau of Indian Affairs regulatory process and the courts to delay a legitimate federal tribal recognition decision.

### **3<sup>rd</sup> party veto and IBIA process**

BIAs deference to third parties participating in the IBIA process contradicts BIAs elimination of the IBIA process in the reformed regulations. BIA explains that the Assistant Secretary's decision should be final in the Department to promote efficiency. Moreover, BIA states that this process is the only instance in which the Assistant's Secretary's decision is subject to IBIA review.

BIA unfairly states that it weighed the interests of the state and found that the third parties had "expended sometimes significant resources to participate in an adjudication and had developed a reliance interest in the outcome." However, BIA does not state that it weighed the interests of tribes. EPTN's federal recognition decision was overturned in the IBIA after decades in the BIAs "broken process" and enormous tribal expenses to submit voluminous documentary evidence for a preliminary positive and a final positive decision. Nor does BIA state that it considered the fact that the EPTN positive decisions were unjustly overturned by IBIA without precedent. The fact remains that but for the IBIA process the EPTN would still be federally recognized. BIA did not consider the tribe's reliance on a fair and equitable federal acknowledgment process to access assistance for health, education, and housing.

### **State and Federal Obligations to Sovereign Tribal Nations**

BIA failed to consider the long, oppressive history of the State of Connecticut, "a third party" undermining the existence and sovereignty of the Eastern Pequot Tribal Nation. The State of Connecticut has attempted: to detribalize the Eastern Pequot Tribal Nation, take away its sovereignty, sell tribal lands, and disenfranchise all tribal members. Further, contrary to statutory obligations to assist the tribe in procuring benefits for housing and other necessary services (see Connecticut General Statutes (CGS § 47-65), the State of Connecticut has disregarded its responsibilities to the tribe and has lobbied against the tribe in its efforts to become federally recognized for assistance in housing, education, and health. Moreover, they have used taxpayer monies (some from Eastern Pequots) to execute their anti-federal recognition acts against the tribe.

In 2007 the United Nations (UN) General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples establishing minimum standards for the survival, health, safety, dignity and basic rights of indigenous peoples. In 2010 President Obama endorsed the declaration with a plan to support the UN Declaration on the Rights of Indigenous Peoples to protect historic and sacred sites in consultation with Native American tribes.

The Creator has endowed the EPTN as a sovereign nation with inherent tribal rights and as citizens of their tribe, the state of Connecticut and the United States. As citizens they are entitled to the equal protection of the laws in accordance with the United States Constitution. This 3<sup>rd</sup> party veto by BIA is an arbitrary and inequitable provision, inconsistent with the intent of the BIA regulations that was imposed by BIA after political pressure by the state of Connecticut. Further it impinges on EPTN's fundamental rights to have an equal and fair opportunity to apply for federal recognition under the reformed regulations for recognition to access health, housing and education benefits for the citizens of the tribe.

Justice requires that BIA strike the 3rd Party veto provision and allow all tribes a fair and equal opportunity to apply under the reformed federal recognition regulations.

