



NATIONAL CONGRESS OF AMERICAN INDIANS

June 26, 2014

The Honorable Kevin Washburn
Assistant Secretary – Indian Affairs
1849 C Street, NW
Washington, DC 20240

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Swinomish Tribe

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Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
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Dear Assistant Secretary Washburn:

I write to express our strong support for the development of the amended regulation for Federal Acknowledgement of American Indian Tribes, published May 29, 2014, 79 FR 30766. Please see attached NCAI Resolution TUL-13-002.

These regulations were first developed in 1978. Before then, the Bureau of Indian Affairs used an acknowledgement process based on the ratification of tribal constitutions under the Indian Reorganization Act, and a list of criteria in the BIA Handbook of Federal Indian Law. In the 1970's the number of tribes seeking federal acknowledgement increased because of federal court decisions reaffirming treaty fishing rights and tribal land claims.

In 1978 NCAI held the first big national conference on the issue of federal recognition. It was a controversial issue, but the tribal leaders worked through it and came up with a united position. Our members expressed their support for the establishment of federal standards and an accountable decision making process. They believed that a tribe should demonstrate a continuous history of tribal relations in order to receive federal acknowledgement. The principles articulated at that convention developed into the federal acknowledgement process that is codified at 25 C.F.R. Part 83.

At the NCAI conference in 1978, the BIA indicated it would work quickly to resolve applications for federal acknowledgment. "We envision that we will have somewhere around 150 applicants and depending on the staff that's assigned to the project, we estimate about four years to do the bulk of the work..."

Today it is 36 years later and the BIA has resolved only 51 applications. Thirty-four have been denied and only 17 granted. The most recent decisions have been on applications that were pending for more than thirty years. The Little Shell Tribe of Chippewa was recently denied acknowledgement based on a petition they submitted in 1978. These delays seriously undermine the process, and the proposed regulations will do much to increase efficiency.

In recent years, significant concerns have also been raised when actions during the acknowledgment process created the appearance that political forces influenced the decisions. NCAI and its members are committed to a fair and equitable process that results in a timely determination. The proposed rule creates an avenue for appeal to an Administrative Law Judge that should be helpful in addressing concerns about politicization.

While the proposed rule will improve the process, the standards remain essentially the same. We continue to believe the central question in federal acknowledgement is whether the tribe has maintained tribal relations. The process should have reasonable documentation requirements and allow tribes to address any gaps in the historical record. Most importantly, the integrity of the process should be restored.

Thank you for your work on the proposed rule. We know that our members will want to provide comments on technical issues within the regulations, but the overall commitment to improving the process is widely appreciated. We hope that you will continue your good work in consulting with all tribes as you develop the final rule.

Sincerely,

A handwritten signature in cursive script that reads "Brian Cladoosby".

Brian Cladoosby

Enclosure

cc: Jodi Gillette
Senior Policy Advisor for Native American Affairs



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-13-002

TITLE: Supporting the Bureau of Indian Affairs Proposed Reform of the Federal Recognition Process

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, during the 2012 Annual Conference of the NCAI in Sacramento, California, Assistant Secretary - Indian Affairs Kevin Washburn addressed both the NCAI General Assembly stating that a major priority for the BIA was the reform of the Federal Acknowledgment Process; and

WHEREAS, on March 19, 2013, Assistant Secretary - Indian Affairs Kevin Washburn testified before the Senate Committee on Indian Affairs, acknowledging the criticism that the Federal Acknowledgment Process has become “expensive, inefficient, burdensome, intrusive, less than transparent and unpredictable,” further indicating that the Bureau of Indian Affairs (BIA) was “reviewing our existing regulations to consider ways to improve the process to address these criticisms”... and to promote transparency, timeliness, efficiency, and flexibility; and

WHEREAS, on June 21, 2013, Assistant Secretary - Indian Affairs Kevin Washburn announced a discussion draft of potential changes to the Department of the Interior’s “Part 83” process for federal acknowledgment of tribes, with the BIA subsequently conducting a series of consultations and hearings, receiving both oral and written testimony regarding that draft; and

WHEREAS, the NCAI was founded to protect and advance Tribal Governance and Tribal Sovereignty in direct response to termination and assimilation policies that the United States had and continues to sponsor; and

WHEREAS, the NCAI recently reaffirmed and broadened the eligibility for membership of tribes not yet listed by the BIA as federally recognized, thereby affirming that NCAI 's mission implicitly includes advancing the interest of those member tribes; and

WHEREAS, while the FAP established a framework to document justification of tribal status, recent proceedings have raised the threshold for documented petitions beyond the few hundred pages initially required to approaching get 200,000 pages, and then only after federal court intervention following 30 years of administrative delay; and

WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have the right (inter alia) of self-determination, self-government in matters relating to their internal and local affairs [Article 4], the right to “distinct political, legal, economic, social and cultural institutions” [Article 5], “the right to the recognition, observance, and enforcement of treaties, agreements and other constructive arrangements concluded with the States or their successors and to have States honour and respect such treaties agreements and other constructive arrangements” [Article 36] and that States shall “take the appropriate measures, including legislative measures, to achieve the ends of this Declaration” [Article 38]; and

WHEREAS, the August 30, 2012 addendum on the situation of indigenous peoples in the United States of America in the Report of the Special Rapporteur, James Anaya, on the rights of indigenous peoples to the United Nations General Assembly mentions the inequities of the federal acknowledgment process and how it has left many tribes “especially disadvantaged” and reports the opinion that “it is not a system that is working under any stretch of the imagination;” and

WHEREAS, the proposed reform is consistent with NCAI Resolution # PHX-08-055 “NCAI Policy on Federal Recognition of Indian Tribes,” which cited the inequities of the Federal Acknowledgment Process (FAP), asserting that the FAP has “severely deteriorated since its beginning, with unreasonable decades-long delays in considering applications, irrational documentation requirements that defy historical and cultural realities, and [there are] legitimate questions about the fairness and integrity of the process” and that the FAP “has strayed from its original intentions, and has become a barrier to federal recognition, rather than a fair process for facilitating recognition of tribes who meet the criteria” and that the NCAI “strongly urges the Department of Interior to repair the administration of the FAP process to ensure that applications are considered in a reasonable time, that the documentation requirements for the criteria are fair and allow applicants to address gaps in the historical record, and that the integrity of the process is restored.”

NOW THEREFORE BE IT RESOLVED, that the NCAI supports the current process of the BIA to reform the “Part 83” federal acknowledgment process and that the NCAI supports, as a matter of long overdue justice and fairness, the BIA’s efforts to review, address, and modify the particular areas of the regulations that have wrongfully become an obstacle to the recognition of legitimate tribes; and

BE IT FURTHER RESOLVED, that the NCAI calls on the BIA to ensure that the reform of the Part 83 regulations results in a fair and just process for the acknowledgment of Indian tribes unjustly left off of the list of federally recognized tribes; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.



President

ATTEST:



Recording Secretary