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Information Collection Clearance Officer
Indian Affairs, Mail Stop 4141
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Washington, D. C. 20240

RE: Preliminary Discussion Draft Comments - Chapter 1 Bureau of Indian Affairs, Department of the Interior: Part 83 Procedures for Establishing that an American Indian Group Exists as an Indian Tribe

Dear Information Collection Clearance Officer,

The California State Association of Counties (CSAC) submits these comments on the preliminary discussion draft to identify for the Bureau of Indian Affairs (Bureau) potential improvements to the federal acknowledgment process to improve the integrity of the Bureau's decisions to acknowledge particular groups as Indian Tribes. Federal acknowledgment grants Indian Tribes a number of rights and privileges, only one of which includes the ability to have the federal government take land into trust on a Tribe's behalf. CSAC respects the rights of Indian Tribes to seek federal recognition and in so doing be granted sovereign status and gain access to and a host of federal programs and services. While acknowledgement by the federal government is a necessary step for a Tribe to have land taken into trust, recognition does not guarantee that a Tribe will seek trust lands.

Already home to 109 federally recognized tribes, California has potentially hundreds of Indian groups which may desire acknowledgment from the federal government as an Indian tribe, and which may desire to have land removed from state and local jurisdiction through the fee to trust process, particularly for gaming purposes, upon or in connection with acknowledgment. Since the acknowledgement process can be a precursor to Tribes taking land into trust for gaming and other non-gaming development and activities, counties have an interest in the regulations governing decisions related to federal acknowledgement. CSAC advocates for federal legislation and regulations that gives counties an effective voice in the decision making process that may lead to the removal of land from state and local jurisdiction for the benefit of an Indian tribe. As a result, we take very seriously the process and criteria guiding acknowledgement decisions for the recognition of a group as an Indian tribe, where such recognition would allow the federal government to remove land from state and local jurisdiction for the benefit of such tribe.

We recognize that we are not obligated to comment since there is no OMB Control Number assigned to this draft. However, we would like to make some recommendations for the collection of information that may be helpful in preparation of an official proposed rule for Part 83. In addition, for the reasons discussed in this letter, we would oppose many aspects of the preliminary discussion draft if set forth as proposed rules.

Discussion

CSAC understands that the current acknowledgment process has been criticized as expensive, burdensome, less than transparent, and inflexible. CSAC, however, believes that modifications to the current process, if any, to address these criticisms, must not compromise the integrity of the Bureau's decisions to recognizes a group as an Indian tribe – a political entity with a distinct "government-to-government relationship with the United States" that has been in continuous existence as a political entity and social community since the time of first contact with non-Indians. Acknowledgement confers

significant political and economic benefits to the recognized tribe and creates a powerful government-to-government relationship stretching into perpetuity. County governments interact on a government-to-government basis with federally recognized tribes on important matters ranging from child welfare to economic development to prevention of environmental and cultural degradation. County governments, therefore, are particularly interested in the accuracy of acknowledgement decisions. Moreover, County governments often already have a relationship with an unrecognized Tribe or group, and can contribute directly to the Bureau's investigation. We believe that the acknowledgment process would be greatly improved if the Bureau was required to affirmatively seek input from local governments concerning petitions for acknowledgments at the earliest opportunity. We believe acknowledgment must be objective, based on verifiable evidence received from all interested parties, and made according to uniformly applied and rigorous criteria. In short, such an important decision should be made with deliberate care.

We are concerned about changes to the rights of local governments to participate. The current Part 83 process does provide for limited and constructive participation of Informed and Interested Parties. There is a comment period of 180 days to submit arguments and evidence on the proposed finding and an opportunity to participate in a formal meeting. However, such a meeting must be requested by the tribal group or the Interested Parties. Unfortunately, the last opportunity for Informed and Interested Parties is an Appeal Process on the final determination. An Appeal or Reconsideration usually involves difficult, adversarial and protracted litigation, none of which is efficient, cost- or time-saving. *If* the current process needs improvement, it is in the area of inclusion of the public and greater input from affected state and local governments, particularly counties. Unfortunately, the preliminary discussion draft does not strengthen the role of interested parties; it diminishes their rights. We object to the proposed requirement that evidence must be read in a light most favorable to the petitioner. The current rules impose a rigorous burden of proof on the petitioner; a reasonable requirement considering the extensive benefits that are conferred on federally recognized tribes. We also object to the unfair page limit imposed on interested party submissions; the one-way requirement that interested parties must submit their evidence and argument to petitioners, but not vice versa; the ability for petitioners to cease active review whenever they want, despite the cost and disruption caused to interested parties; the elimination of the requirement for an interested party to file a notice of intent, which serves as early notice to local governments; the elimination of the administrative appeal to the Interior Board of Indian Appeals, which provides a check on improper decisions by BIA; the denial of technical assistance to interested parties, even though it is provided to petitioners; and providing petitioners, but not interested parties, the right to submit evidence at a hearing. These changes are all one-sided in favor of petitioners, and they go too far.

Also, if adopted, the proposed changes would significantly loosen the evidentiary showing needed to qualify for acknowledgment. Moreover, if adopted, the proposed changes would permit a previously denied applicant to re-petition for acknowledgement if "by a preponderance of the evidence, that a change from the previous version of the regulations to the current version of the regulations warrants reversal of the final determination." We are concerned that revised criteria will lead to a significant increase in the number of recognized tribes in California in particular, some of which may have overlapping traditional territories, and to a loss of significant acreage from state and local jurisdiction primarily for the purpose of gaming, without protections in place to guarantee mitigation of impacts experienced by state and local governments due to such tribal economic or other development. Taken together, these proposed changes suggest that the purpose of the proposal is not to improve the efficiency of the acknowledgment process but instead to simply lower the bar to make possible a very significant increase in the number of federally recognized tribes.

Recommendations for Information Collection

Because of the impact that Indian Gaming Regulatory Act (IGRA) has had on Acknowledgement, Restoration, and Reaffirmation, CSAC recommends that, in addition to removing the problematic proposals discussed above, the Bureau should include the following steps in the "conversation of the draft discussion":

- Solicit input from and convene consultation meetings with local governments, including counties in particular, concerning acknowledgment petitions, at the earliest opportunity. Counties have government-to-government relationships with tribes affecting a variety of important interests from child welfare, to gaming, to environmental protection and mitigation of off-reservation impacts created by on-reservation development, including gaming in particular. As a result, counties are uniquely positioned to contribute important evidence to the acknowledgment process. Additionally, counties should be consulted prior to the Bureau authorizing re-petition by a previously denied petitioner.

- Facilitate and encourage constructive public participation in the review process. Several consultation hearings should be scheduled in California where there are more tribes than any other state petitioning for federal recognition or seeking reaffirmation.

- Additionally, since newly acknowledged tribes are a clear and indisputable exception under section 20 of IGRA, although a separate process, a stringent and transparent fee to trust process with significant input from all stakeholders must be considered regarding "initial" reservation lands. Of course, Bureau-acquired trust land is not currently available to newly acknowledged tribes as a result of the *Carcieri* decision, and this fact should be acknowledged by BIA.

California counties are uniquely interested in the acknowledgement process not only because of the sheer number of current and potential petitions, but also due to the potential for tribal recognition to lead to the removal of land from state and local jurisdiction. Additionally, due to their government-to-government relations with tribes that span a host of matters important to the federal government, tribal governments, and state government, California counties have significant interests in the process through which groups are granted federal recognition. Finally, California counties have important information to contribute to the acknowledgement process that should be considered when acknowledgement decisions are made. Towards these ends, the Bureau should be required to fully engage and solicit information from counties concerning acknowledgement petitions, or authorization for re-petitions. CSAC welcomes the opportunity to fully engage in the acknowledgment process and is available to work with federal, tribal, state, and local governments regarding draft proposals designed to improve the acknowledgment process.

Sincerely,

Matt Cate
Executive Director
California State Association of Counties