



Antelope Valley Indian Community

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July 16, 2013

Elizabeth Appel, Acting Director
Office of Regulatory Affairs & Collaborative Action
United States Department of the Interior
1849 C Street NW., MS 4141
Washington, D.C. 20240

Subject: "1076-AF18" 25 CFR Part 83 Preliminary Discussion Draft

Dear Ms. Appel,

Thank you for the opportunity to make comments concerning the preliminary discussion draft on 25 CFR Part 83: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe (Regulatory Part 83 Process). Assistant Secretary Kevin Washburn's prompt action to revise the existing Part 83 regulations is highly commendable and potentially improves the quality of life for many American Indian Tribes and their membership.

As indicated in the Federal Register notice (vol. 78 No. 124/ Thursday, June 27, 2013/ Proposed Rules pg. 38617); *"The Part 83 Process is criticized for being, among other things, expensive, burdensome, less than transparent, and inflexible"*.

Since the inception of the regulatory process established in 1978, it has been very difficult for Tribes to establish/confirm a government to government relationship with the United States. In 1994, this process was seemingly relaxed to include new procedures for Tribes that can prove *"unambiguous previous acknowledgment"* and some Tribes have rightfully benefitted by using the "new" criteria (section 83.8). However, the entire process is still far from workable for that most Tribes and Indian citizens lack the necessary financial resources and expertise required to successfully complete documented petitions.

Assistant Secretary Washburn's proposed "red line" draft version of part 83 is an excellent start toward an eventual final rule but I would like to offer my input on how certain sections can be improved and or clarified.

Listed below section by section are revisions (where applicable) which I believe would help the regulation to become more easily adhered to while preserving the integrity of the process.

§ 83.1 Definitions.

- *"Acknowledged"* or *"Acknowledgment"*- Please provide definition(s).

- “Descend” or “Descendant” - Please provide definition(s).
- “Indian Reorganization Act (IRA)” - Please provide definition(s).
- “Pages” (proposed red line revision) - Defines a format change while § 83.5 Duties of the Department states: *“OFA’s example of a documented petition format, while preferable, shall not preclude the use of any other format”*. A defined format would help both the petitioner and OFA, provided, the format would not include special printing and production (print shop quality in a bound book(s) etc.).

§ 83.3 Scope.

- (b)- Does this include “acknowledgment” as a community of half-bloods? Do communities having this type of “recognition” follow the part 83 process or do they follow existing departmental regulations to “organize” under a federal statute?
 - **Note the following proposed finding issued by the Branch of Acknowledgment and Research (BAR, now OFA) in Death Valley (Timbisha) Shoshone- Dated Feb. 9, 1981:** *“The Death Valley Band did not have to choose the Federal acknowledgment route to Federal recognition. The band had earlier been found eligible to organize as a half-blood Indian community under Section 19 of the Indian Reorganization Act subject to having land taken in trust for it. Section 19 of the IRA provides in part: The term ‘Indian’ as used in this Act shall include all persons of Indian descent who are members of any recognized tribe under Federal jurisdiction, ..., and shall further include all other persons of one-half or more Indian blood. (Emphasis supplied)”*
 - **Further noted is the Technical Assistance letter to the Mono Lake Kutzadika Tribe (aka Mono Lake Indian Community) issued by the Office of Federal Acknowledgment (OFA)- Dated Jun. 5, 2012:** *“The petitioner may also wish to explore in more detail an event from the 1970s that it described only briefly in its narrative. On September 8, 1977, the Bureau of Indian Affairs ‘recognized’ the ‘members of the Mono Lake Indian community possessing at least one-half degree Indian blood’ as Indian ‘within the meaning of Section 19 of the Indian Reorganization Act [IRA] of June 18, 1934’ (Finale 9/8/1977). The Bureau also stated that if the ‘half blood’ members of the community formed an association, and ‘if a land base’ was ‘secured for the band and placed into trust,’ the group ‘would be entitled to organize’ under Section 16 of the IRA. The petitioner, however, presented no evidence showing if it attempted to organize under Section 16. Please provide this evidence, as it may be useful in addressing criteria 83.7(b) and (c)”*.

§ 83.7 Mandatory criteria for Federal acknowledgment.

- (c) (2) - Develop additional criteria from *“mechanisms exist or existed which.”... “(i) Show significant dealings with or cooperative action with Federal Agencies and or Officials in completing agreements affecting the group and or its members”*.
- (f)- This provision is confusing because OFA has consistently stated this practice to be “prohibited” and could result in an expedited negative finding.

§ 83.8 Previous Federal acknowledgment.

- (c) (3) – *“Evidence that the group has been treated by the Federal Government as having collective rights in; Tribal political processes under IRA, tribal lands or funds”*. Recommend

adding "Tribal political processes under IRA..." because some Tribes were "recognized" within the meaning of the IRA but did not have land bases.

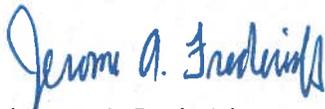
§ 83.10 Processing of the documented petition.

- (g) (3) "*The expedited favorable criteria are...*" Recommend adding the following at a new "(iii)": "The United States has recognized the group or community within the meaning of the Indian Reorganization Act (IRA) prior to the implementation of the acknowledgment regulations issued in 1978". Prior to 1978, Tribes were "recognized" on an "*ad hoc basis*".

By consulting with Tribes and the general public in drafting these much needed revisions to Part 83, Assistant Secretary Washburn and Secretary of the Interior Sally Jewell have ushered in a new era of responsibility and transparency at the Department of Interior. Indian Country looks forward to the future with optimistic eyes.

If you should have any questions or need further information, please contact me. I may be contacted by: Mail at the Tribal address listed on the letterhead above or email at jafredericks@representative.com or by phone (760)-937-0206. Thank you for considering my comments on the draft Part 83 regulations.

Sincerely,



Jerome A. Fredericks
Chairman, Antelope Valley Indian Community