



September 25, 2014

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street NW, MS 4141
Washington, DC 20240

**RE: Proposed Rule – Federal Acknowledgment of American Indian Tribes
(Docket ID BIA-2013-0007) (RIN 1076-AF18)**

Dear Ms. Appel:

On behalf of the California State Association of Counties (CSAC), I'm submitting these comments in response to the Bureau of Indian Affairs' (BIA) proposed rule regarding the federal acknowledgment of American Indian tribes. Founded in 1895, CSAC is the unified voice of all 58 of California's counties. The primary purpose of the association is to represent county government before the California Legislature, administrative agencies, and the federal government.

CSAC's policies recognize and respect American Indian tribes' rights to self-governance, to provide for the economic self-sufficiency of tribal members, and to preserve traditional tribal heritage and culture. In a similar fashion, CSAC recognizes and promotes the empowerment of county governments to provide for the health, safety and general welfare of all residents of their communities, Indian and non-Indian alike. Our association's primary purpose with respect to Indian law is to find a harmony that reflects the roles and responsibilities of each governmental entity and assures equity and fairness in federal and state law.

Federal acknowledgment offers significant benefits to American Indian tribes, including the ability to have the federal government to remove land from local government regulatory jurisdiction and place it into trust status on a tribe's behalf. CSAC respects the rights of American Indian tribes to seek federal acknowledgement and understands the importance to tribes of establishing that they have a special government-to-government relationship with the United States of America. 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. Nevertheless, CSAC advocates for federal legislation and regulations that give counties an effective voice in the decision making process that may lead to the removal of land from state and local jurisdiction.

The stated purposes of the proposed rule are to make the system for federal acknowledgment more transparent, promote consistency in decision making, and increase the timeliness and efficiency, all while maintaining the integrity of the process. While these are laudable goals, as the current process can be very lengthy, burdensome, and costly, CSAC finds that many proposed changes would challenge the integrity of the decision-making process. Most egregious are the proposed changes that would significantly diminish the ability of counties and other interested parties to participate in the federal acknowledgment process.

CSAC is extremely concerned with the proposed changes to the definition of "interested parties". Specifically, by deleting the existing definition of interested parties, counties and other stakeholders would not get timely and important information about acknowledgment petitions. Only states and other tribes would be given full status under the proposed rule even though counties have played, and should continue to play, an important

role in contributing evidence to inform the decision-making process. This proposed change is just one of many proposed changes within the rule that suggest a theme of procedural defects meant to exclude impacted counties and other interested parties. While this may speed up the acknowledgment process, it comes at the cost of the integrity and transparency of decision-making.

Other examples include changes to the availability of technical assistance, which, once again, excludes interested parties. The proposed rule would only provide this service to petitioners. Limiting procedural requirements does not provide equal opportunities and rights to interested parties. The proposed rule also eliminates the requirement that petitioners submit letters of intent. Counties would be left in the dark about an Indian group in their area that is seeking acknowledgment until a petition has been filed. The changes within the proposed rule that would create a multi-phase evaluation of petitions also negatively impact interested parties. Interested parties would find it very difficult under the new rule to monitor the progress of a petition, especially when considered in concert with the changes limiting notice to interested parties. The reduced comment periods (from 180 to 90 days on a Proposed Finding and from 180 to 60 days for an extension option) present a significant burden to interested parties to gather and submit evidence. CSAC recognizes this is one way to speed up the process, but the suggested timeframes of 90-days and 60-days is too short a window to effectively give all parties an opportunity to weigh in. Finally, the instatement of a 100-page limitation on the explanation of the BIA's evaluation of the evidence is inadequate. Limiting an explanation of decision-making to 100 pages appears arbitrary and actually makes the process more opaque.

In terms of opportunities to appeal decisions, the proposed rule would replace the existing appeal process with formal administrative hearings offered only in limited circumstances to appeal Proposed Findings. A formal hearing process will be more burdensome for interested parties. The current process provides for essential checks and balances that result in more accurate findings. Concerning final determinations, litigation would become the only option for interested parties to appeal a final decision – which is more costly and time consuming than the existing Interior Board of Indian Appeals (IBIA) appeals process. Again, this has the appearance of attempting to limit the involvement of interested parties.

Finally, many of California's counties have expressed concerns with and opposition to changes to the existing criteria that will reduce the evidentiary showing required by petitioners to achieve federal acknowledgment. California is already home to 109 federally recognized tribes and a recent report entitled "California Indian Petitioners and the Proposed Revisions of the Federal Acknowledgement Process," found that the overall impact of the proposed rule in California could result in as many as 34 newly recognized American Indian tribes. These additional acknowledgements could lead to the acquisition of a significant amount of trust lands which, the authors of the aforementioned report suggest, could in turn lead to the development of 22 casinos (CA is already home to 61 facilities).

In light of the significant impacts to local governments these potential acknowledgements could entail and because the proposed rule diminishes the role of interested parties, CSAC urges the BIA to eliminate and/or modify some of the proposed changes discussed above and recirculate for public comment before taking action to finalize the rule.

Sincerely,

Matt L. Cate
Executive Director