

Stop the Discrimination of Native Americans

July 3, 2013

TO: President Obama
Senator Mark Warner
Senator Tim Kaine
Congressman Scott Rigell
Committee on Indian Affairs
Congressman Raul M. Grijalva
Congressman Don Young
Congresswoman Colleen Hanabusa
Chairman, Committee on Natural Resources, U.S. Senate
Representative Markey, Committee on Natural Resources
Lee Fleming, Bureau of Indian Affairs
Office of Regulatory Affairs & Collaborative Action - Indian Affairs
Ms. Elizabeth K. Appel, Acting Director, "
Letters to the Editor, Virginian-Pilot and Ledger Star

Gentlemen,

Subject: Bureau of Indian Affairs - A Preliminary Discussion Draft (Red Lined PROPOSED Version)
- 25 CFR Part 83 Procedures for Establishing that American Indian Group Exists as an Indian Tribe

Reference: My letter proposing changes to 83.7, dated May 15, 2013

The entire draft proposed version is poorly written and inconsistent in all respects. If the draft proposal to change Federal Recognition criteria is a serious effort to improve clarity and understanding of this process, it is an intentional failure.

My comments and requested changes to subject, which are limited to the Mandatory Criteria Section 83.7, are shown below. Attached is my previous letter, dated May 15, 2013, requesting specific 83.7 changes, which was received by your office.

I did not expect all of my recommendations to be incorporated; however, the current preliminary draft proposed version does NOT streamline or eliminate the Jim Crow discrimination requirements embedded within the document, specifically in the 'Mandatory Requirements' Section 83.7.

My Comments and Requested Changes to the Preliminary Discussion Draft Proposed Version:

1. No historical credit is acknowledged for tribes that existed in the 1800's and still exist today, unless they existed almost 'continuously' since 1934, when in fact, being an Indian was against the law in most states until 1974. My grandfather told me in 1964 that we would be shipped off to a Reservation if we ever told anyone we were Indian. Does the BIA believe that Native Americans did not exist prior to 1934, when Federal records prove otherwise?

Recommendation: Acknowledge historical credit for tribes that existed in the 1800's (before & during the time of forced removal). The BIA does not even acknowledge the 'friendly' tribes, or their tribal community members, who helped Andrew Jackson, as recorded in historical documents. They were not forced onto Reservations, but had to hide and blend in, and are still not 'recognized' for their help or for even being Native Americans (by the BIA).

2. The BIA must believe that Native American tribes must have 'inter-bred' to have survived; however, Native Americans did not inter-marry, because they knew the results of marrying into your own family. Historic documents state that they married into different clans or families, but not into their own family. They were not 'inter-bred' as implied. As a result: Remove Section 83.7 (b) (1) (i), and Section 83.7 (b) (2) (ii), and renumber accordingly:

Remove section 83.7 (b) (1) (i)

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

Remove section 83.7 (b) (2) (ii)

(ii) At least 50 XX percent of the marriages in the group are between members of the group;

3. The percentage requirements make the acknowledgement process of Native American tribes discriminatory, when it should be based on historical documents, and not what percent of a tribe does what. Recommendation: **Eliminate percentage requirements altogether.**

4. Do not eliminate the existing rule that allows requests for recognition that have been turned down previously, to be resubmitted.

African Americans do not have to prove their heritage to be recognized under such Jim Crow wording. Indigenous peoples did not start becoming a tribe in 1934. They were here when DeSoto arrived.

Maybe we need some other independent authority to guard the hen house, other than the self interested fox.

PLEASE simplify and expedite the approval process. It should not take tens of years and many thousands of dollars when Federal historical records exist. Also, the unrecognized tribes are poor and struggling, marked by years of discrimination by the Federal Gov't as well as other recognized tribes.

Please provide a written or email reply to the specifics of my proposals, and what if any will be considered and implemented, as soon as possible.

Respectfully,

AT McDaniel
828 Boxhill Rd, Va Beach, VA 23464 - zharley.dude@gmail.com
& members of my website, www.JacksonCountyCreeks.org

ATTACHMENT TO AT McDaniel Letter dated 7/3/2013

Below are my comments and requested changes from my previous letter dated May 15, 2013: No response has been received to date.

Please seriously consider the below proposals (1 through 6), and advise on each item, as to if it will be enacted, or a response or comment as to why it will not be considered.

1. The United States should adopt the United Nations Declaration of RIGHTS of INDIGENOUS PEOPLES.

http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

2. Native American tribes are Indigenous Peoples to the United States, and have been discriminated against to this day, especially in recognizing that they actually exist. See <http://tinyurl.com/aku84r8>.

3. Any Native American tribe that is not recognized by the Federal Gov't, but existed before 1934, and still exists, should be recognized by the Federal Government.

4. Transfer land and money held in 'trust', back to the tribes, with an Exemption from state and local taxes.

5. If Bureau of Indian Affairs can be eliminated, a cost savings of 27 billion in 10 yrs, can be realized.

6. Please seriously consider the attached "Proposed Changes to the Seven Criteria".

Please provide a written reply to the specifics of my proposals and what if any will be considered and implemented, as soon as possible.

Respectfully,

AT McDaniel
828 Boxhill Rd, Va Beach, VA 23464
& members of my website, JacksonCountyCreeks.org

PROPOSED CHANGES TO THE SEVEN CRITERIA

As custodians of Indian Records, federal authorities know well the centuries of pain and suffering, mistreatment and injustice the government has committed against American Indians from first encounter to present. Repeating any or all abuses here is of little use as centuries old complaints and appeals have continued to fall on deaf ears. Therefore, the purpose of this document is to recommend changes in the seven criteria for Federal recognition of Native American Groups and Organizations.

Specific requested changes to Part 83.7 are shown below, with comments and word insertions in **bold**, and ~~strike through~~ for deleted wording.

CHAPTER I: BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER F: TRIBAL GOVERNMENT

PART 83: PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

83.7 - Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

>**REPLACE "on a substantially continuous basis since 1900" with "prior to 1934".**

(a) The petitioner has been identified as an American Indian entity **prior to 1934** ~~on a substantially continuous basis since 1900~~. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

>**REPLACE "by Federal authorities" with "historical records".**

(1) Identification as an Indian entity utilizing **historical records** ~~by Federal authorities~~.

(2) Relationships with State governments based on identification of the group as Indian.

(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

>**ELIMINATE "predominant"; REPLACE "existed" with "were leaders"; REPLACE "community" with "Native American community prior to 1934.", and ELIMINATE REST OF THE SENTENCE.**

(b) A ~~predominant~~ portion of the petitioning group comprises of members whose ancestors **were leaders** ~~existed~~ in a distinct ~~community~~ **Native American community prior to 1934**. ~~, and existed as a community from historical times until the present.~~

>**ELIMINATE (1) through 2 (v).**

~~(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of community set forth in 83.1~~

~~(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned-out marriages with other Indian populations.~~

~~(ii) Significant social relationships connecting individual members.~~

~~(iii) Significant rates of informal social interaction which exist broadly among the members of a group.~~

~~(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.~~

~~(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.~~

~~(vi) Shared sacred or secular ritual activity encompassing most of the group.~~

~~(vii) Cultural patterns shared with among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.~~

~~(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.~~

~~(ix) A demonstration of historical political influence under the criterion in 83.7(c) shall be evidence for demonstrating historical community.~~

~~(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:~~

~~(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;~~

~~(ii) At least 50 percent of the marriages in the group are between members of the group;~~

~~(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;~~

~~(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or~~

~~(v) The group has met the criterion in 83.7(c) using evidence described in 83.7(c)(2).~~

>REPLACE “has maintained political” with “maintains”; and ELIMINATE “as an autonomous entity from historical times until the present”.

(c) The petitioner **maintains** ~~has maintained political~~ influence or authority over its members ~~as an autonomous entity from historical times until the present~~.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in 83.1.

>MOST UNRECOGNIZED TRIBES ARE STRUGGLING AND DO NOT HAVE SIGNIFICANT RESOURCES.

>REPLACE "significant numbers of" with "most"; AND ELIMINATE "and significant resources from its members".

(i) The group is able to mobilize **most** ~~significant numbers of members and significant resources from its members~~ for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

>ELIMINATE SECTIONS (iv and v).

~~(iv) The group meets the criterion in 83.7(b) at more than a minimal level.~~

~~(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.~~

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which:

>INSERT "and" AFTER "land,"; ELIMINATE "and the like on a consistent basis"; AND CHANGE PERIOD "." to a semi-colon. ";".

(i) Allocate group resources such as land, **and** residence rights ~~and the like on a consistent basis.~~;

>ELIMINATE "on a regular basis".

(ii) Settle disputes between members or subgroups by mediation or other means ~~on a regular basis~~;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

ELIMINATE (iv) and (3).

~~(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.~~

~~(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.~~

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or

from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

>ELIMINATE "throughout history until the present"; ELIMINATE "do not maintain bilateral political relationship with the acknowledged tribe, and that it's members".

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned ~~throughout history until the present~~ as a separate and autonomous Indian tribal entity, that its members ~~do not maintain a bilateral political relationship with the acknowledged tribe, and that its members~~ have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.