GABRIELENO
BAND OF MISSION INDIANS-SAN GABRIEL

September 25, 2013

United States Department of the Interior
Office of Regulatory Affairs and Collaborative Action
1849 C Street NW, MS-4141 MIB
Washington DC, 20240

Attn: Kevin Washburn
Assistant Secretary-Indian Affairs

Re: Comments on Preliminary Discussion Draft of Part 83 - Tribal Recognition

Dear Assistant Secretary Washburn:

As Chairman of the Gabrieleño Band of Mission Indians-San Gabriel (Tribe), I am writing to express the Tribe's concerns with the "Preliminary Discussion Draft of the Part 83 Procedures for Establishing that an American Indian Group Exists as an Indian Tribe." While the Tribe is not seeking recognition under Part 83, we believe a review of the Department of the Interior's (DOI) recognition procedures is timely, provided that it does not result in further delay to tribes currently seeking reaffirmation. The Assistant Secretary for Indian Affairs (AS-IA) has previously "reaffirmed" tribes formerly recognized and not included or erroneously left off the annually published list of "Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs." The Gabrieleño Tribe was recognized by the federal government as early as 1850 but was erroneously left off the list of federally recognized tribes.

Our ancestors occupied the lands at and around Mission San Gabriel, De Archangel. We are the only tribe with primary aboriginal territory located in the Los Angeles basin. In the early 1800's, the Mexican government provided many of our ancestors with grants for land in the Mission's proximity or formerly under the Mission's control. These patents required that patent holders reside on and make improvements to the land in order to maintain possession. After Mexico ceded land to the United States, the United States government confirmed many of these grants, including those given to my ancestors. President Harding executed a United States patent in 1923 that affirmed our ancestor's rights to these lands. In a separate effort by the federal

government, Indian agent, C.E. Kelsey, identified lands "recently purchased" for the Tribe at San Gabriel in or around 1913.

Other notable indicia of recognition and a government-to-government relationship between the Tribe and the federal government are present throughout the 1800 and 1900's. The Gabrieleño Band of Mission Indians was a party to the Docket 80a water rights claim brought under the Indian Claims Commission (ICC). The case was originally titled the "46 Bands v. U.S." and later came to be known as Baron Long v. United States of America (Docket 80), filed in 1951. In 1978 the Gabrieleño Tribe was dismissed without prejudice preserving our right to file a future claim. The Solicitor of the Interior ruled that the 46 Bands of Mission Indians that brought the original water suit were comprised of "identifiable Indian Bands" of which Gabrieleño was one of these 46 Indian bands. The federal government provided the Tribe with an attorney in the ICC action. The attorney's contract was approved by the DOI in compliance with 25 U.S.C. § 81, along with some 29 other Mission Indian tribes.

The Tribe and its members are listed in numerous Bureau of Indian Affairs (BIA) Census documents. Gabrieleño Indians were listed with "half-blood" status and many adult tribal members have BIA issued Certification(s) of Degree of Indian Blood and receive federal benefits for themselves and their children.

Despite this indisputable history, our Tribe is still characterized as "non-recognized." As a result, our members receive little in the form of health care, education, or employment assistance. We are barred from meaningful consultation under the Native American Graves Protection and Repatriation Act (NAGPRA) and cannot protect our ancestor's remains. This is consistent with the challenges faced by non-recognized tribes in California.

The existing Part 83 process is impossible for California tribes to navigate successfully. As noted in the Advisory Council on California Indian Policy, Final Report to the Congress of the United States, Pursuant to Public Law 102-416:

> **"The current federal acknowledgment process (25 C.F.R. Part 83) is not appropriate for California Tribes. Since the procedure was established in 1978, only one [two] California tribes has successfully completed the process. A major problem with the current process is that it requires unacknowledged tribes to prove their status as a self-governing entity continuously throughout history, substantially without interruption, as though that history did not include the federal and state policies that contributed to the destruction and repression of these very same native peoples and their cultures."**
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> ACCIP, Final Report and Recommendations to the Congress of the United States Pursuant to Public Law 102-416, Executive Summary, September 1997

Any revision to the Part 83 process must account for the unique needs and special circumstances of California Indian tribes. Our recommendations are as follows:

1. There is no provision within Part 83 or the Preliminary Discussion Draft of Part 83 to review and analyze requests for "reaffirmation" of federal status. The AS-IA has, on several occasions, "reaffirmed" tribes formerly recognized and not included or erroneously left off the annually published list of "Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs." The Part 83 process should include expedited review for tribes formerly recognized by the federal government but erroneously left off the annually published list. However, those tribes with pending requests for reaffirmation should not be subject to this new process, nor should they be delayed as this process is developed. Tribes with pending reaffirmation requests should be reviewed under Interior's previous application of reaffirmation.

2. Indicia that demonstrate former recognition sufficient to establish reaffirmation could be as follows:
    a. Any mention of a tribe, band or identifiable group in a federal document, including census reports, treaties or other official documents;
    b. Citation to a tribe, band or identifiable group within historical, anthropological and ethnological documents, writings and reports;
    c. Documents and/or official or government conduct that tends to show interest in a tribe, band or identifiable group;
    d. Grants of real property or federal patents provided to Indians or placed into trust on behalf of a tribe, band or identifiable group by individuals and/or a non-government grantor;
    e. Grants of real property that include a covenant permitting Indians to remain within aboriginal or historical lands;
    f. Federally authorized or DOI approved documents demonstrating services, funds, or benefits expended to or on behalf of a tribe, band or identifiable group, or an individual claiming membership in a tribe, band of identifiable group
    g. Lawsuits and or legal actions brought by or on behalf of a tribe, band or identifiable group to protect property and or water rights
    h. Former recognition need not require evidence of a "government to government" relationship but acknowledgment of the existence of the tribe, band or identifiable group, via listing in a historical document conducted by the agent or agency, as a government official, prior to 1978 or receiving services as an Indian community or as an individual on behalf of a tribe, band, or identifiable group. An Indian tribe, band or identifiable group should only have to establish continuity from the point of identification to meet the standard of previous unambiguous acknowledgment. Such proof should be sufficient to have the AS-IA reaffirm the tribe and place the Tribe on the official list of federally recognized tribes.

Acknowledgment of a tribe by an act of Congress or the Executive branch or by a Federal court should be considered federal acknowledgment by the Department.

3. Presumptions
   a. A "presumption" should be granted clearly indicating that it is to be presumed that the burden of proof is on the Department of the Interior when reviewing evidence produced by or on behalf of a tribe, band, or identifiable group seeking reaffirmation.
   b. 1934 Presumption. A "presumption" should be provided that if a Tribe, band or identifiable group existed in 1934, that the Tribe descended from a historical tribe at the time of contact with non-Indians. This requires a shift in the meaning of "historic" in the existing and proposed regulations to refer to distinct communities identified in 1934.

4. Evidence
   a. Evidence submitted by a tribe, band or identifiable group should be reviewed in the light most favorable to the tribe, band or identifiable group. The standard of review should be based upon the "totality of the evidence presented" and requests for reaffirmation should not be denied due to gaps or lapses in evidence. Gaps in evidence of less than forty (40) years should not have a negative effect on a reaffirmation request when evidence prior or subsequent to the gap demonstrates community continuity. Gaps longer than forty (40) years should not reflect negatively on the request, with reasonable explanation and if the weight of the evidence demonstrates community continuity.
   b. Evidence presented by third or unsolicited parties should be given *minimum weight*, especially, if the evidence is from a tribe, band or group, located at, near or in close proximity to the petitioners stated aboriginal territory. Documentary evidence supporting that the petitioner has aboriginal ties to the area should conclusively end any further Department inquiry.

5. Assistant Secretary of Indian Affairs Discretion

   The AS-IA and or his designee should have broader discretion to review and approve Petitions for reaffirmation of status, with both the Bureau of Indian Affairs and the Solicitor General's Office playing supporting and collaborating roles. The existing and proposed regulations, in general, provide a larger role than necessary and OFA should play a supporting or recommending role with the Assistant Secretary making the final decision.

6. Response Timelines

   The Department should develop and implement a docketing system to track requests and to timely respond to questions from petitioners when seeking technical assistance or asking to clarify questions related to a specific petition to remedy communication challenges between petitioners and the DOI.

Additionally, petitioners and or proponents requesting reaffirmation should not have to submit additional documentation if the DOI does not review materials in a timely manner.

7. Technical Assistance

   Petitioners should have access to technical assistance with their petition if needed. However, petitions could be screened initially and petitions that appear lacking as to obtainable evidentiary support could be provided the option to transition to the full Part 83 process.

8. Preliminary Decision

   The AS-IA or his designee, should issue a preliminary decision on the request for reaffirmation within a reasonable time, possibly one-hundred and eighty (180) days after petition submission; and or after the technical assistance screens the petition for completeness or transition to the full Part 83 process. Reasonable extensions, not to exceed two one-hundred and eighty (180) day periods, could be implemented. The petitioner, upon receipt of a negative preliminary decision should have the option of providing a single supplemental documentation submission addressing the identified deficiencies.

9. Final Decision

   After supplemental documentation or no action by the petitioner, the AS-IA may issue a final decision on the petition within thirty (30) days of conclusion of the preliminary decision periods stated in Paragraph 8.

10. Appeal

    Negative final decisions may be appealed to the Office of Hearing and Appeals (OHA). OHA could overturn the AS-IA's decision under the "substantial evidence" standard of review.

The Gabrieleño Band of Mission Indians appreciates this opportunity to submit comments on the Part 83 revision process. A review of the DOI's recognition procedures is timely, provided that it does not result in further delay to tribes currently pursuing reaffirmation. While the Tribe is not seeking review under Part 83, we look favorably on the DOI's attempt to develop an objective, efficient process that would benefit tribes seeking recognition and we hope to continue moving forward with you on the Tribe's reaffirmation request.

Sincerely,

Anthony Morales Sr.

Chairman Anthony Morales, Sr.
Gabrieleño Band of Mission Indians - San Gabriel