



The Confederated Tribes of the Grand Ronde Community of Oregon

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September 25, 2013

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

*sent via email to:
consultation@bia.gov*

Re: 1076-AF18 – Comments Regarding the Procedures for Establishing that an American Indian Group Exists as an Indian Tribe (25 C.F.R. Part 83)

Dear Ms. Appel:

The Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde”) offers the following comments in response to the Bureau of Indian Affairs (“BIA”) request for written comments on the discussion draft of proposed revisions to 25 C.F.R. Part 83, “Procedures for Establishing that an American Indian Group exists as an Indian Tribe” (“Part 83 Process”). Grand Ronde appreciates the BIA’s efforts to improve the Part 83 Process. Grand Ronde, as a terminated and restored Tribe, supports the ability of non-recognized tribes to pursue federal acknowledgment either administratively or legislatively, but believes the process must be transparent as well as fair to recognized tribes who may be impacted by acknowledgment of another tribe near its reservation or homelands. Grand Ronde expects to have additional and more specific comments on future drafts, but for purposes of the current discussion draft will focus on the aforementioned issue.

It is imperative that the regulations provide the BIA with a process for evaluating and addressing impacts on any recognized tribe or tribes affected by a favorable acknowledgment determination. An acknowledgment might negatively impact recognized tribes in the area, for example, by reducing land, resources, or funding available. Impacts on existing tribes should be identified and addressed as part of the acknowledgment process. The regulations should contain a specific requirement that BIA consult with affected tribes as well as require BIA to perform a full evaluation of impacts on affected tribes during the review process. This is necessary in order to satisfy the BIA’s trust responsibility to those recognized tribes, as well as being part of its government-to-government relationship with each recognized tribe.

The regulations should also prohibit any acknowledgment determinations from being made that negatively impact any recognized tribe, unless the negative impacts are appropriately addressed. If negative impacts are found, it should be the burden of the petitioning tribe to demonstrate that

Ms. Elizabeth Appel
September 25, 2013
Page 2

these impacts will be successfully mitigated. Confirmation of the affected tribe's concurrence in the determination or evidence that negative impacts will be mitigated should be among the required criteria for issuing a proposed finding in favor of acknowledgement.

In order to ensure that tribes who may be impacted by acknowledgment of another tribe have a fair opportunity to participate the acknowledgment process, potentially impacted tribes must receive proper notice of a petition. Paragraph (b) of Section 83.9 (Notice of receipt of a petition) describes the parties required to be notified of a petition, including "any federal recognized tribe or other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgement determination." The BIA should insert the phrase "or who shares the geographical area in which the petitioner claims to reside, presently or in the past," after the phrase "a historical or present relationship with the petitioner." An examination by the BIA of the geographical area claimed by the petitioner will help assist the agency in identifying, for notice purposes, any recognized tribe or other petitioner which might be affected by a particular petition for acknowledgment. Further, when providing required notices pursuant to the regulations, the BIA should apply this definitional term of "Interested Parties" liberally with respect to recognized Indian tribes so that the agency receives the broadest range of comments on an acknowledgment petition of interest to impacted tribes.

As a final matter, the technical review process in Section 83.10(b) is flawed as it involves the BIA's examination of evidence without the comment or involvement of interested parties. It is not until after completion of the technical review that interested parties receive notice that the petition has moved to "active consideration" stage. At a minimum, BIA should consult with the tribes who received notice of the petition during the technical review stage and this consultation process should be described in this Section.

Thank you for the opportunity to comment on this discussion draft.

Very truly yours,



Jack Giffen, Jr.
Tribal Council Vice Chairman

cc: Tribal Council
Tribal Attorney