



Pointe-au-Chien Indian Tribe

P.O. Box 416
Montegut, LA 70377

Chairman Charles Verdin, Sr.
(985) 594-6250

Second Chairman Donald Dardar
(985) 594-7916

25 September 2013

Elizabeth Appel
Office of Regulatory Affairs, AS-IA
U.S. Department of the Interior
1849 C Street, NW
Mail Stop 4141
Washington, DC 20240

VIA EMAIL: consultation@bia.gov

RE: Comments on FAP Discussion Draft

Dear Ms. Appel,

On behalf of the Pointe-au-Chien Indian Tribe (Petitioner #56b), I would like to thank the Department of the Interior and the Assistant Secretary of Indian Affairs for taking on the task to revise the Federal Acknowledgment Process. The Federal Acknowledgment Process under the current regulations has been cumbersome for our Tribe, and we welcome changes to the process that will make it less cumbersome and more efficient. We also hope that any proposed changes will result in more consistent standards applied to petitioners. Below are the Pointe-au-Chien Indian Tribe's comments on the Discussion Draft.

Standard of Review

The Pointe-au-Chien Indian Tribe is in support of incorporating preponderance of evidence as the legal standard of review as set forth in 83.6(d)(1). It is appropriate to have the facts viewed in the light most favorable to the petitioner, as opposed to the current condition which seems to view the evidence against acknowledgement.

Criteria

Recognition by Outside Entities

While we met criterion (a) in our Amended Proposed Finding, we are not opposed to the removal of criterion (a) since most of this information could also be included to support either criterion (b) and/or criterion (c).

Social Community

The Department is considering whether to clarify what is meant by “cultural patterns.” The petition reviewers must take into consideration that culture is not stagnant. One of the many problems we have faced is that our traditional homelands have been destroyed over the past century due to the exploration and drilling of oil in the gulf, land loss, and increased salinization. This destruction of our homelands has caused a change in our cultural practices. For example, until roughly the 1950’s our community was able to survive on the land with fishing and subsistence farming. However, because of salt water intrusion, we are no longer able to survive in this manner. This has changed not only our culture but our community because some of our members have had to move to find work in order to support their families.

Political Community

In the handouts that the Department issued during the consultation meetings there was a proposal regarding whether criterion 83.7(c) should require evidence of a “bilateral relationship”. It is unclear what sort of relationship and with whom the Department is referring. Without more detail or clarification we cannot provide a substantive comment.

First Sustained Contact v. 1934

We support the Department’s recommendation throughout the regulations to change first sustained contact to 1934. We highly support the Department’s proposal to only require documentation since 1934 for social and political community. This change in the requirement would take a substantial burden off of us from doing costly and time consuming research. Because Louisiana was a French colony and a Spanish colony, the available documents are either sparse or in another language. This change would reduce the burden of getting many documents translated from French and Spanish into English. This change would also reduce the amount of documentation needed, and therefore make the process more efficient.

Historical Tribes or Tribes

The Pointe-au-Chien Indian Tribe supports the addition of adding historian and anthropological conclusions to prove descent from a historical tribe or tribes in Section 83.7(e)(v). We also ask that the Department take into consideration the following example. Our tribe has been studied by historians and anthropologists over the past century, some of whom did not rely on primary research in part because “historical records” were unavailable. While all of them agree that we are descendents of a historic tribe or tribes, they do not always agree on which one(s). We would suggest that this criterion be amended to take into account that historians and anthropologists may not always agree on a petitioners’ historical tribe(s), primarily because of the lack of historical records prior to 1900. This criterion should take into account options for determining historical tribe when “historical” data may not be available.

According to the leading historian on Louisiana History, Dr. Carl Brasseaux, the former Director of the Center for Louisiana Studies at the University of Louisiana Lafayette, there has been no comprehensive historical review of Spanish Period (1763-1803) documents for tribes inhabiting Louisiana’s coastal region. The Center has three collections of Spanish era documents that he states have been “woefully neglected by Historians” due to language impediments. These collections include the Audencia de Santa Domingo Papers, the Cuban Papers and Louisiana courthouse original acts. The Audencia Papers include over 500,000 documents written primarily in Spanish. The Cuban Papers include 15-18 million folios written in primarily Spanish and French, and the original acts contain several thousand pages of

documents filed in Louisiana courthouses during the Spanish period. All of these collections pre-date Louisiana's admittance to the United States. Dr. Brasseaux states that there has been no "comprehensive examination of the primary documentation dealing with Indian Tribes," and in fact, most modern researchers focus on Twentieth Century materials. While these collections may not identify names of tribal individuals, they should provide some light as to what was happening in Louisiana during this time and relationships the Spanish had with Louisiana Tribes. Unfortunately, there is no historian currently working on Louisiana Indian research during this era, and the Tribe does not have the resources or funds to undergo a review of these documents. While the Tribe is hopeful that these collections could provide some information, the Department should take into account the lack of available evidence. Lack of available evidence should include that which is not written in English and easily accessible to review.

Exchange of Documents

In section 83.10(k), the regulations should be revised to state that the petitioner will not need to submit a FOIA request in order to obtain the records used by OFA to make the proposed finding. The Department should consider in 83.10(n)(2) that the records must be provided to the petitioner in a timely manner in advance of the hearing. Once the documents have been given to the petitioner, the petitioner should have enough time to review the documents prior to the hearing.

Independent Review Process

The Pointe-au-Chien Indian Tribe supports an independent review process prior to the Final Determination as set forth in 83.10(k). We have a number of questions regarding section 83.10(k).

1. What is the timeframe for requesting a hearing?
2. Will the petitioner be allowed legal representation at the hearing?
3. Will there be some sort of determination issued regarding the hearing, or will it just become part of the overall final determination?
4. Will more than one hearing be allowed, for instance what if information comes out during the hearing that requires more investigation; or what if the petitioner requests a hearing as well as an interested party?
5. If an interested party is able to request a hearing, will the petitioner be allowed to cross-examine the interested party?
6. Will the hearing be open to the public?

Standard Form

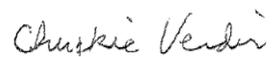
We encourage the Department to adopt a standard form that petitioners can choose to use and be made readily available on the Department's website. This would be very beneficial for Tribes who lack the monetary resources to obtain legal help in preparing an initial petition.

Option for Review

The Pointe-au-Chien Indian Tribe supports the choice for petitioners on active status to have a choice to be reviewed under the revised guidelines pursuant to 83.3(g). It is unclear whether the Tribe will have to go to the back of the line.

Thank you again for the opportunity to submit comments. We look forward to the changes that will make the process less burdensome, more efficient, and transparent.

Sincerely,

A handwritten signature in cursive script that reads "Charles Verdin".

Chairman Charles Verdin