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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

Prepared Statement of Glen G. Gobin

Vice Chairman, the Tulalip Tribes

Legislative Hearing on *The Obama Administration's Part 83 Revision and How They May Allow the Administration to Create Tribes, Not Recognize Them*

The Subcommittee on Indians, Insular, and Alaska Native Affairs

Wednesday, April 22, 2015

Good afternoon Chairman Young, Ranking Member Ruiz and Committee Members, my name is Glen Gobin, Vice-Chairman of the Tulalip Tribes. I would like to thank you for the opportunity to testify on the Department of Interior's proposed rule that changes the Federal acknowledgment process.

Introduction

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish, and a number of allied bands, who have occupied the Puget Sound region in Washington State since time immemorial, and were signatory to the 1855 Treaty of Point Elliot. Under the terms of the treaty, these tribes moved to the Tulalip Indian Reservation and in 1934 under the Indian Reorganization Act, chose to use the name the "Tulalip Tribes" which is named for a bay on the Reservation.

The Tulalip Tribes is very concerned with the proposed revision to 25 CFR Part 83 which extend well beyond an intention to streamline the process. Instead, the proposed rule lowers the standard of proof by which groups can establish recognition as a sovereign Indian tribe. Indeed, the revisions to the acknowledgment process would have a direct effect of watering down the acknowledgment determination itself, undermining the existing sovereign Indian tribes who have been in existence since time immemorial and who have maintained a tribal existence in the face of past federal assimilation and termination policies.

In Washington State there are twenty-nine federally recognized tribes, seven of which obtained federal recognition under the Part 83 process. Other groups have petitioned but were denied because they could not demonstrate a continuous distinct community and political existence since historical times until the present. Some of these groups

claim to be tribes who make up the Tulalip Tribes, or other tribes in the region. We can only conclude that the acknowledgment process has, and is working, albeit through a rigorous review process.

Moreover, when a group receives new Federal recognition as a sovereign Indian tribe, there can be significant practical impacts for existing tribes. There may be competing cultural resource claims where a new group claims authority over an existing tribe's cultural resources. There are off reservation aboriginal areas and natural resources that may become subject to competing claims. And, there are additional impacts on already underfunded trust obligations. This real potential for conflict grows when a tribe seeks federal recognition that is not recognized by other tribes and does not meet basic minimum standards for recognition as a sovereign tribe.

For these reasons, the Tulalip Tribes opposes the proposed rule and has provided detailed comments to the Department of Interior on two occasions. We offer the following comments below to address a few of the more substantial revisions to Part 83.

1. Tulalip Opposes the Proposed Revision because it Lowers the Existing Standard for Establishing Recognition

The proposed rule allows a petitioning group to establish tribal existence by merely giving a "brief narrative" with minimal evidentiary support stating its existence as a tribe during the "historical period," defined as 1900 or earlier. This weakens the acknowledgment process by allowing acknowledgment of racial groups formed in recent history with no demonstration of continuous existence or identity throughout history as a sovereign Indian government, and based only on self-proclaimed identification with scant evidentiary support. The sovereign rights of American Indian tribes that are recognized through the acknowledgment process must be based on credible evidence demonstrating continuous existence as a sovereign Indian nation throughout history, not only in recent times.

Deleting 83.7 (a), that requires that a petitioner demonstrate that it has been identified as an Indian entity since 1900, is unnecessary because if a petitioner can meet the existing criteria in §§ 83.7 (b) and 83.7 (c), it should be able to meet §83.7 (a). Furthermore, the year 1934 provides no basis to assume continuous community and political existence before that time and effectively creates a *presumption* of existence. Such a presumption is nowhere to be seen in fact or law. An individual's native ancestry and some resemblance of tribal existence starting in 1934 until present do not and should not entitle a group to a government-to-government relationship with the Unites States.

The proposed rule also contravenes settled case law. For example, in *U.S. v. Washington*, a petitioner unsuccessfully argued, "because their ancestors belonged to treaty tribe, they benefited from a presumption of continuing existence." The Federal court rejected this argument and found that a tribe must have functioned since treaty times as a "continuous separate and distinct Indian cultural or political communities" (641 F.2d 1374 (9th Circuit 1981)), concluding that a simple demonstration of ancestry is not sufficient; however, the proposed rule ignores this, and potentially allows federal acknowledgment based on ancestry and some form of organization starting in 1934, this lower standard should not entitle a group to a sovereign government-to-government relationship with the United States.

The Department of Interior's primary explanation for this change is to reduce the administrative burden upon the Department as well as the petitioner. The process for Federal acknowledgement should not be an easy process, and the rationale of lowering administrative burdens is inappropriate to support a less than comprehensive process for determining and establishing federal recognition as an Indian tribe.

2. Tulalip Opposes the Proposes Revision that Allow Groups to Repetition for Recognition

The proposed revision allows groups who have previously been denied acknowledgment, after full and fair consideration, another opportunity under certain circumstances to re-petition. The Department maintains that the proposed revisions do not lower the criteria for recognition; however, if the standard for recognition and review is not lower, then there is no purpose in allowing these groups who have already been through the acknowledgement process to re-petition. Again, criticisms of the acknowledgement process in the Congressional record focus on the lack of timeliness, efficiency, and transparency, not the standards applied or the outcome of the acknowledgment decisions, yet the proposed rule will allow groups to reapply who have previously been determined not to be a tribe by the administration or the federal courts.

Furthermore, because the proposed revisions to § 83.7 (b) is vaguely worded, the Bureau has admittedly failed to fully understand the effects of its allowance for re-petitioning under the new regulations. In particular, § 83.4(b)(1)(ii)(A) merely requires a re-petitioning group to show that a change in the regulations "warrants reconsideration of the final determination," without providing any guidance as to how this standard should be applied or what kinds of changes are deserving of reconsideration. The Bureau itself admits that it has not done any analysis as to how these new regulations would affect past acknowledgment decisions, so the effect of this provision allowing for re-petitioning under the new regulations has not been fully understood.[1] Essentially, the Bureau proposes to open the door to an unknown number of petitioners for reconsideration based on a vague and poorly understood standard.

Conclusion

We are not opposed to legitimate petitioners receiving recognition under the current standards, but lowering the standards devalues and undermines the status of all Indian Tribes, as sovereign political entities. The Tulalip Tribes does not support the majority of the Department's proposed revisions and we ask the Department to reconsider the proposed rule. Instead of lowering the standards for federal recognition, we urge the government to limit revisions to correct procedural deficiencies that address timeframes, transparency, and consistency in decision-making processes. The integrity of the Federal acknowledgment process should be upheld and maintained because with the exception of procedural deficiencies, the current substantive standards for federal acknowledgement as a sovereign Indian tribe are fair and appropriate.

Sincerely,

/s/ Glen G. Gobin

Glen G. Gobin
Board Member, Tulalip Tribes

[1] Statement of Larry Roberts, Transcript of July 15, 2014 Tribal Consultation meeting, pg. 46.