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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

* 11404 Moorage Way * La Conner, Washington 98257 *

May 14, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action – Indian Affairs
U.S. Department of the Interior
1848 C Street NW
MS 3642
Washington, DC 20240

RE: ICWA regulations

Dear Ms. Appel,

The Swinomish Indian Tribal Community (SITC), a federally recognized Tribe in Washington state, is pleased to comment on the proposed rule published in the Federal Register March 20, 2015 (80 FR 14880). SITC fully supports making these rules regarding the application of the Indian Child Welfare Act (ICWA) binding on states.

Since ICWA was first enacted in 1978, states and their various internal jurisdictions have applied ICWA with startling irregularity. This is particularly true in jurisdictions where the courts and social service agencies do not have regular working relationship with the local tribes or where ICWA cases are seen infrequently. Too often, state judges and commissioners have little familiarity with ICWA. These regulations would quickly and definitively address such things as the applicability of ICWA right at the initiation of the case, where time is of the essence to prevent the break-up of the family and reduce trauma to the child. The use of binding language is necessary to promote prompt application of ICWA, especially to ensure that the mandatory elements of ICWA, including heightened burden of proof, active efforts, placement preferences, use of qualified expert witnesses, and Tribal rights of notification, determination of membership, intervention, jurisdiction and transfer are all followed in a timely manner.

The Swinomish Indian Tribal Community finds that the following provisions are particularly helpful insuring application of ICWA:

Ms. Elizabeth Appel

May 1, 2015

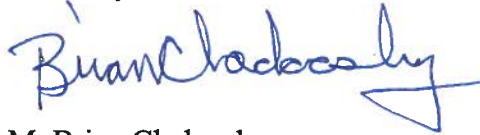
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- 1) Recognition that tribal sovereignty means that tribes have exclusive authority in determining whether a child is a member of the tribe.
- 2) Recognition that the judicially created "Existing Indian Family Exception" is an unlawful interpretation of ICWA.
- 3) Clarification and definition of "active efforts."
- 4) Clarification that prompt notification to the tribe is necessary in all proceedings, including voluntary proceedings, to ensure that a child's tribal membership is defined, tribal resources utilized, and ICWA placement preferences followed.
- 5) Limitation on discretion of state courts to deny transfer to tribal courts, recognizing that ICWA has given tribes "presumptive jurisdiction."

The Swinomish Indian Tribal Community urges the BIA to proceed with the proposed rules as written. If you have any questions, please do not hesitate to contact Ann Reading (reading.ann@gmail.com).

Thank you for consideration of our comments and recommendations.

Sincerely,



M. Brian Cladoosby
Chairman, Swinomish Senate