Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
Indian Affairs, U.S. Department of the Interior
1849 C Street NW, MS 3642
Washington, DC 20240

Re: *Notice of Proposed Rulemaking—Regulations for State Courts and Agencies in Indian Child Custody Proceedings—RIN 1076-AF25—Federal Register (March 20, 2015)*

Dear Ms. Appel,

The Big Sandy Rancheria is pleased to provide comments on the Notice of Public Rulemaking (NPRM) regarding Regulations for State Courts and Agencies in Indian Child Custody Proceedings. This NPRM was published in the *Federal Register* on March 20, 2015, pages 14880–14894. The issuance of these proposed rules is long overdue and we commend the Department of the Interior (DOI) and the Bureau of Indian Affairs (BIA) for proposing much needed regulations in this area.

In Native cultures families are the center of the community and children are sacred gifts from the creator. The Indian Child Welfare Act of 1978 (ICWA) "protects the best interest of the Indian Child and promotes the stability and security of Indian tribes and families" (25 U.S.C. § 1902).

More than 100 federally-recognized tribes are located in California, which make-up over 20 percent of the nation's tribes. As a state, it has the largest Native American population in the country. The majority of the state's current Native American population represents Indian people from out-of-state tribes, so called "urban Indians," who were relocated.

California is also home to the largest number of appellate cases involving the ICWA. On a promising note, the number of appellate cases in California involving the ICWA has declined in recent years with the passage SB 678, a comprehensive bill that incorporated the ICWA into California law. SB 678 created heightened standards that are consistent with many provisions of the proposed regulations. Therefore, it is anticipated that with the additional clarity provided by the proposed regulations the number of appellate cases will continue to decline.

Substantive ICWA regulations that provide rules for its implementation in state courts and by state and public agencies have never been issued. Without guiding regulations, ICWA has been misunderstood and misapplied for decades. This has, in turn, led to the unnecessary break up of Native families and placement instability for Native children. Native children and families and the agencies and courts that implement ICWA need and deserve the clarity that the proposed regulations provide.

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eligible, a court cannot ensure compliance with the law. Lastly, tribes are an essential resource for states and agencies seeking placements in line with ICWA's preferences. Without knowledge of a voluntary proceeding, children can be denied possible placements consistent with ICWA's placement preferences. Notice in voluntary ICWA proceedings, provides agencies and courts the clarity necessary to protect these interests.

- Limiting the discretion of state courts to deny transfer of a case to tribal court. The Supreme Court has clarified that tribes have "presumptive jurisdiction" in child welfare cases that involve their member children. Often, however, state courts inappropriately find "good cause" to not transfer a case because they believe the tribal court will make a decision different from its own. The regulations clarify that this reasoning cannot be used to deny transfer.
- Emphasizing the need to follow the placement preference and limiting the ability of agencies to deviate from the placement preferences. One of ICWA's primary purposes is to keep Native children connected to their families, tribal communities, and cultures. Yet, currently, more than 50% of Native kids adopted are placed in non-Native homes. The regulations provide requirements that will promote placement in accordance with ICWA's language and intent.

We strongly support these regulations, but we are also recommending additional changes to consider. We believe that it is important that the general authority to regulate be carefully articulated and that individual regulations be justified with references to supportive cases, state regulations and policies that reflect best practices, and legislative history. Additionally, the regulations should explicitly address the *Adoptive Couple v. Baby Girl* case: (1) clarifying that it should not be applied outside of the private adoption context; and (2) providing guidance on how this interpretation should be implemented in state court and private agency practice. We also recommend that the regulations consider incorporation of a compliance and measurement standard. We support ICWA-related data collection efforts utilizing the Adoption and Foster Care Analysis and Reporting System (AFCARS). With these additions the proposed regulations will better serve Native children, families, and tribes. Finally, we urge you to strongly consider technical recommendations that will be provided by national Native organizations and attorneys who have expertise in ICWA.

The Big Sandy Rancheria applauds the BIA for their work on the proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings. These proposed rules provide the clarity and certainty necessary for all parties involved in child welfare and private adoption proceedings to comply with the law and promote the best interest of Indian children. It is this clarity and certainty that will preserve Native families and promote permanency for Native children.

Thank you in advance for consideration of our comments.

Sincerely,

Elizabeth Kipp
Tribal Chairperson
Big Sandy Rancheria

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