



# BEAVER VILLAGE COUNCIL

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May 8, 2015

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 Beaver Village Council strongly supports the issuance of proposed ICWA regulations by the Bureau of Indian Affairs. These regulations are critically important for states like Alaska—home to 229 federally recognized Tribes.

ICWA was enacted in 1978 in response to a crisis affecting Indian children, families and tribes. Studies revealed that large numbers of Indian children were being separated from their parents, extended families and communities, and placed in non-Indian homes. Congressional testimony documented the devastating impact this was having upon Indian children, families and tribes. As a result, Congress enacted mandatory legal requirements to be followed by state courts who are adjudicating the rights of Indian children and their families.

Although progress has been made as a result of ICWA, out-of-home placement is still much more prevalent for Indian youth than it is for the general population and Indian children continue to be regularly placed in non-Indian homes. Here in Alaska, Native children account for 20% of the state's youth population, but represent 63% of the children in foster care. Compliance with ICWA by our state is erratic and state court decisions inconsistent. There is a great need for the federal government to provide binding regulations to ensure that the ICWA is enforced and applied properly—not just in Alaska but in all states—so that our children and families are fully protected.

We would note that we believe that the legal basis for regulatory action is strong. The statute provides that “the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act” which is a broad grant of authority. The Act was designed to establish “minimum federal standards” governing state court proceedings. In the last 35 years, however, there have been divergent interpretations of a number of ICWA provisions by our state courts and uneven implementation by state agencies. Indeed, Alaska is an “outlier” in its approach and interpretation of the ICWA. This further undermines ICWA's intent to create consistent minimum federal standards.

Rhonda Pitka, Chief  
Arlene Pitka, 2<sup>nd</sup> Chief  
Selina Petruska, Secretary/Treasurer  
Kody Vanderpool, Aaron Petruska, Matthew Petruska, Vivian Juneby

Although we strongly support these regulations in general, we have a few recommendations that we advance for consideration. We believe that it is important that the rationale for the authority to regulate be carefully explained and that individual provisions should be justified with references to supportive cases, state regulations and policies that reflect best practices, and legislative history. We also believe that the regulations should explicitly address the *Adaptive Couple v. Baby Girl* case by (1) clarifying that it should not be applied outside of the private adoption context and by (2) providing guidance on how the Supreme Court interpretation of the law should be effectuated in state court and agency practice. Finally, we urge you to carefully consider technical recommendations that will be provided by national organizations and attorneys who have expertise in the ICWA from the tribal perspective.

We particularly support the following provisions in the proposed regulations:

- Emphasizing the need to follow the placement preference and limiting the ability of state agencies to deviate from the preferences. The failure of state courts and agencies to place Indian children in relative, tribal, or Indian homes is one of the biggest problems with the ICWA's implementation, especially here in Alaska. Keeping children with their families and within their tribal communities and cultures is vitally important to their well-being and a central purpose of the ICWA.
- Requiring that agencies and courts ask in every proceeding whether a child is Indian. This will help ensure that all of our children are identified and accorded ICWA protections.
- Recognition of a tribe's *exclusive* authority to determine tribal membership. We very much support the affirmation of this key principle of tribal sovereignty.
- Notice to tribes in *voluntary* cases. We are *parens patriae* for our children. Providing notice ensures that we will be able to intervene in the case if necessary. Notice to the tribe is also critical if the state court is to confirm (as it is required to do) whether the child is an Indian child and covered by the ICWA.
- Limiting the discretion of state courts to deny transfer of a case to tribal court. In Alaska, state courts too often refuse to transfer a case because they think that our tribal court will make a decision with which they disagree. The regulations make clear that this is not an appropriate reason to deny transfer.
- Defining active efforts to prevent the breakup of Indian families and requiring that such efforts begin immediately. This provision is vitally important to keeping Indian families together, a central and critical purpose of the ICWA.

Thank you for the opportunity to comment on these regulations. Once again, we very much appreciate the issuance of these proposed regulations and urge you to adopt strong ICWA regulations to ensure that ICWA fulfills its essential purposes of protecting the rights of Indian children, families, and tribes.

Sincerely,



Rhonda Pitka, First Chief  
Beaver Village Council