

May 18, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs and 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 Port Gamble S'Klallam Tribe thanks you for the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) regarding Regulations for State Courts and Agencies in Indian Child Custody Proceedings. Inconsistent interpretation of, or in some cases outright lack of application of the Indian Child Welfare Act of 1978 (ICWA) in States and agencies over the years prove the need for regulations in this area, and we fully support issuance of regulation by the Department of the Interior (DOI) and Bureau of Indian Affairs (BIA).

We are a small tribe located on the Kitsap Peninsula in Washington. Our children are our most valuable resource, and we have, as a sovereign government, prioritized provision of services to protect and strengthen our children and families and promote well-being in our community. Although we do what we can to exercise jurisdiction over our child welfare cases by opening cases in our tribal court or by transferring jurisdiction to our tribal court, our tribe still experiences different interpretations and applications of the ICWA depending on whether a state or county has opened a case involving one of our children. We strongly support these regulations to ensure full and consistent compliance with the ICWA by the states.

We particularly support the following provisions in the proposed regulations:

- Requiring agencies and courts ask in every proceeding whether a child is Indian, and recognition of a tribe's exclusive authority to determine tribal membership. We have lost children to State systems because they have made a determination about tribal membership without tribal input.
- Notice to tribes in voluntary cases. Our tribe is a parent for our children, as are others in our extended community. By providing notice, we can assert our jurisdiction and intervene in the case, which we will do in all cases regarding our children. Notice is critical for a state court to confirm whether a child is an Indian child and covered by ICWA.

- Limiting the discretion of state courts to deny transfer of a case to tribal court. The Supreme Court has clarified tribes have “presumptive jurisdiction” in child welfare cases involving their children. However, state courts often inappropriately find “good cause” not to transfer a case because they believe a tribal court will make a decision different from its own. The regulations make it clear this is not an appropriate reason to deny transfer.
- Defining active efforts to prevent the breakup of Indian families and requiring such efforts begin immediately. We hope this will be read in conjunction with notice to tribes in voluntary cases as well; tribes can often provide tribally appropriate services to families if they know a family has a need for them.
- Emphasizing the need to follow the placement preference and limiting the availability of agencies to deviate from the placement preference. One of ICWA’s primary purposes is to keep Native children connected to their families, community, and cultures. However, currently, more than 50% of Native children adopted are placed in non-Native homes.

The Port Gamble S'Klallam Tribe thanks the BIA for their work on the proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings. We appreciate issuance of these proposed regulations and ask you to adopt strong ICWA regulations to ensure the ICWA protects the rights of Indian children, families, and tribes.

Sincerely,



Jeromy Sullivan
Tribal Chairman