



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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Via Electronic Mail and First Class Mail

May 18, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
Indian Affairs, U.S. Department of the Interior
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Washington, D.C. 20240
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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 Colorado River Indian Tribes 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.

The Supreme Court of the United States recognized that the tribe's interest is distinct from, but on parity with, the parent's interest in their child. The adoption of these proposed rules will strengthen tribes' ability to protect Indian families. Thanks in part to federal programs like urban relocation, tribal members often live far from their reservations throughout the United States. This means that tribal ICWA programs frequently have to intervene in court proceedings far from the reservation. The lack of formal, binding rules has meant that there are often fifty different interpretations of a single ICWA provision. This flies in the face of ICWA's purpose to provide "minimum federal standards" governing state court proceedings with Indian children.

CRIT applauds the BIA's proposed definition of "active efforts." Active efforts are required to remove Indian children from their homes, and before termination, but there is no definition in the act, and the many states have interpreted that provision many different ways. It is important that the regulations include the provision that active efforts include the use of available resources of the tribe, tribal social service agencies and Individual Indian caregivers. The use of tribally and culturally appropriate resources in a parent's case plan ensures their best chance at success. For example, substance abuse is frequently a cause of children coming into

care. But if the parent is simply referred to Alcoholics Anonymous, with its strong Christian focus, the parent may not get the help he or she needs. A substance abuse treatment program that works with a parent's beliefs or culture is more likely to succeed.

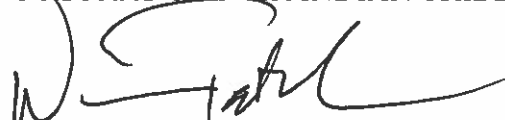
There is also a critical need for guidance on what constitutes "good cause" to deny a transfer. Many courts are quick to deny a transfer because the proceeding is at an "advanced stage." For example, courts in New Mexico have held that just four months is good cause to deny a transfer. This ignores the work that is necessary for a tribe to decide to transfer a case. First, a tribe must receive the petition. Many states send notices to random departments and it often takes time for a petition to reach the right office. Then, the tribe must determine whether the child is eligible for enrollment. States frequently do not provide all the necessary information to make this determination, which delays the process. Then, the tribe must determine whether it believes it is in the family's best interest to transfer a case back to the tribal court, and find a suitable foster home. The petition frequently does not include all the necessary information regarding how the children came into care and about the family's circumstances, creating further delays.

We strongly support these regulations, but we are also recommending additional changes to consider. We believe that the regulations should explicitly address the *Adoptive Couple v. Baby Girl* case: 1) Clarifying that it should not be applied outside the private adoption context, and 2) providing guidance on how this interpretation should be implemented in state court and private agency practice. This is critical in Indian country when in 2013 66 per cent of all births to Native women were unwed mothers.

The Colorado River Indian Tribes 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 interests of Indian children. It is this clarity and certainty that will preserve Native families and promote permanency for Native children.

Very truly yours,

COLORADO RIVER INDIAN TRIBES



Dennis Patch
Chairman

CC: Elizabeth Lorina-Mills, Deputy Attorney General